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THOMAS F. MCFARLAND

September 9, 2016

RECORDATION NO. 32314 FILED

SEP 14 2016 -9 :40 AM

SURFACE TRANSPORTATION BOARD

By UPS overnight mail  
(Monday delivery)

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Dear Ms. Brown:

I am hereby enclosing duplicate originals of the documents identified below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code.

The documents for recording are:

- (1) Loan and Security Agreement
- (2) Promissory Note
- (3) Corporate Guaranty

Those documents are primary documents all of which are dated September 7, 2016, and all of which are part of a single loan transaction.

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

- (1) Lender-Secured Party - Mississippi Transportation Commission, 401 N. West Street, Jackson, MS 39201
- (2) Lendee - Grenada Railroad, LLC, 118 South Clinton, Suite 400, Chicago, IL 60661
- (3) Guarantor - Iowa Pacific Holdings, LLC, 118 South Clinton, Suite 400, Chicago, IL 60661

The equipment covered by the transaction is railroad passenger equipment used and required for interstate rail transportation subject to the jurisdiction of the Surface Transportation

THOMAS F. MCFARLAND

Ms. Cynthia T. Brown, Chief  
September 9, 2016  
Page 2

Board. The specific railroad passenger equipment that constitutes collateral for the transaction is identified in Exhibit 1 attached to this letter. The listing in Exhibit 1 includes the identifying marks associated with each piece of equipment, and the common designations by which the equipment is known.

A filing fee of \$45 is enclosed for recording the documents.

An original of the recorded documents should be returned to the undersigned as attorney for the Lender-Secured Party.

A short summary for the index is:

A Loan and Security Agreement and Promissory Note, evidencing a loan by Mississippi Transportation Commission, 401 N. West Street, Jackson, MS 39201, to Grenada Railroad, LLC, 118 S. Clinton Street, Chicago, IL 60661, guaranteed by Iowa Pacific Holdings, LLC, 118 S. Clinton Street, Chicago, IL 60661, dated September 7, 2016, and covering certain railroad passenger equipment identified in Exhibit 1 attached to this letter.

Respectfully submitted,



Thomas F. McFarland  
*Attorney for Mississippi  
Transportation Commission*

*TMcF:kl:enc:\1740\ltrSTB1*

cc: Ms. Melinda L. McGrath, *by first-class, U.S. mail*  
Roy M. Tipton, Esq., *by first-class, U.S. mail*  
Mr. Ed Ellis, *by first-class, U.S. mail*

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*mcfarland@aol.com*

THOMAS F. MCFARLAND

September 12, 2016

*By UPS overnight mail*

Ms. Karen January  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Dear Ms. January:

Per telephone conversation today, hereby forwarded is a check for \$80 to cover the additional filing fee for the Promissory Note and Corporate Guaranty in conjunction with a Loan and Security Agreement sent to you for filing on September 12.

Respectfully submitted,

*Tom McFarland*

Thomas F. McFarland  
*Attorney for Mississippi  
Transportation Commission*

*TMcf:mg:enc:\1740\lrSTB2*



## Iowa Pacific Holdings, LLC

## Rolling Stock Collateral for Mississippi Department of Transportation

Report Mark	Number	Name	Original RR	Type of car	Builder	Year Built	Orderly Liquidation Value
SLRG	511	"Scenic View"	ATSF	Full Dome table	Budd	1954	5,430,000
SLRG	554	"Summit View"	ATSF	Full Dome	Budd	1954	1,800,000
SLRG	132	"Lock Haven Inn"	PRR	coach	Budd	Circa 1950	1,800,000
SLRG	133	"Chambersburg Inn"	PRR	coach	Budd	Circa 1950	80,000
SLRG	140	"Tyrone Inn"	Pennsylvania Railroad	80 seat coach	Budd	1949	450,000
SLRG	145	"Carnegie Inn"	Pennsylvania Railroad	80 seat coach	Budd	1949	80,000
SLRG	146	"Bucyrus Inn"	Pennsylvania Railroad	80 seat coach	Budd	1949	80,000
SLRG	149	"Steubenville Inn"	Pennsylvania Railroad	80 seat coach	Budd	1949	80,000
SLRG	5525	"Echo Canyon"	Union Pacific	44 seat coach	Budd	1961	80,000
SLRG	2912	LIRR Coach	Long Island	coach 100 seat	Pullman	1955-6	25,000
SLRG	2915	LIRR Coach	Long Island Railroad	Comuter Coach	Pullman	1955	25,000
RPCX	2958	LIRR Coach	Long Island	coach 100 seat	Pullman	1955-6	25,000
RPCX	2960	LIRR Coach	Long Island	coach 100 seat	Pullman	1955-6	25,000
RPCX	2967	LIRR Coach	Long Island	coach 100 seat	Pullman	1955-6	25,000
RPCX	2976	LIRR Coach	Long Island	coach 100 seat	Pullman	1955-6	25,000
SLRG	1100	EMD F10 Locomotive	GM&O		EMD	1950	200,000
SLRG	455/245	EMD F40PH/Slug	Amtrak		EMD	Circa 1976-80	275,000
SLRG	459/257	EMD F40PH/Slug	Amtrak		EMD	Circa 1976-80	275,000

Ltr to C. Brown (STB)

September 9, 2016

Exhibit 1

SEP 14 2015 - 9:40 AM

SURFACE TRANSPORTATION BOARD

**LOAN AND SECURITY AGREEMENT**

This **LOAN AND SECURITY AGREEMENT** dated and effective as of ~~August~~ <sup>SEPTEMBER</sup> 7, 2016 [the "Loan Agreement"] is entered into between and among: Grenada Railroad LLC, an Illinois limited liability company located at 118 S. Clinton Street, Suite 400, Chicago, Illinois 60661 [referred to herein as the "Borrower"]; Borrower's parent company, Iowa Pacific Holdings LLC, an Illinois limited liability company also located at 118 S. Clinton Street, Suite 400, Chicago, Illinois 60661 [referred to herein as the "Guarantor"]; and, the Mississippi Transportation Commission, a body corporate and politic of the State of Mississippi whose address is 401 N. West St, Jackson, Mississippi 39201 [referred to herein as "Commission"], by and through the Executive Director of its Department of Transportation ["MDOT"] [the Commission and MDOT are together referred to herein as the "State"].

**WHEREAS** the Borrower entered into that certain Lease/Purchase and Operating Agreement dated as of June 23, 2015, and later amended by that certain Addendum to Lease/Purchase and Operating Agreement, dated as of July 29, 2015, pursuant to which the Mississippi Development Authority and the North Central Mississippi Regional Railroad Authority agreed to extend financial accommodations to Borrower to allow operation and ownership of certain rail line facilities presently controlled by Grenada Railroad LLC; and

**WHEREAS** the Borrower wishes to obtain additional financing to install cross ties, repair bridges, and reactivate active warning devices to reopen the rail line between Elliot and Canton, Mississippi ["Rail Line"], and repair the Coldwater Bridge ["Bridge"] [collectively the "Project"], in accordance with Federal Railroad Administration ["FRA"] Class I/II Track Safety Standards and in accordance with American Railway Engineering and Maintenance-of-way Association ["AREMA"] Standard Practices for railroad construction at an estimated total cost of Seven Million Three Hundred Thousand Dollars (\$7,300,000.00) ["Project Cost"]; and

**WHEREAS** the Commission, through MDOT, is willing to make available financial assistance through the Railroad Revitalization Revolving Loan Fund to finance Four Million Three Hundred Thousand Dollars (\$4,300,000.00) of the total Project Cost, not to exceed 75% of the Project Cost, as long as the Borrower agrees to finance the balance of such Project Cost;

**WHEREAS** the Guarantor is willing to sign a Corporate Guaranty in favor of the Commission pursuant to the terms and condition set forth in Exhibit E; and

**WHEREAS** MDOT has the authority through Section 57-43-1, et seq., Mississippi Code of 1972, as amended, to enter into this Loan Agreement with the approval of the Commission.

**NOW, THEREFORE**, in consideration of the mutual agreements hereinafter set forth, Borrower, Guarantor, and State hereby agree as follows:

Certified a true and correct copy of the document on file  
in the office of the Mississippi Department of Transportation  
this the 14 day of September, 2015  
Ann K. Hornbeck Secretary  
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## 1. DEFINITIONS.

**1.1 Defined Terms.** For the purposes of this Loan Agreement, the following capitalized words and phrases shall have the meanings set forth below.

"Account Debtor" shall mean any party who is obligated on any Account as a result of said Project.

"Affiliate" shall mean any Person which, directly or indirectly, owns or controls, on an aggregate basis, including all beneficial ownership and ownership or control as a trustee, guardian or other fiduciary, any of the outstanding equity interest having ordinary voting power to elect a majority of the board of directors or other managing group (irrespective of whether at the time, an equity interest of any other class or classes of such entity have or might have voting power by reason of the happening of any contingency) of Borrower or that controls, or is controlled by or is in control with Borrower or any shareholders of Borrower. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause a direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall have the meaning set forth in the Preamble hereof.

"Authorized Borrower Representative" shall mean the person identified as such by Borrower to State in writing.

"Bankruptcy Code" shall mean the United States Bankruptcy Code, as now existing or hereafter amended.

"Borrower" shall have the meaning set forth in the Preamble hereof.

"Business Day" shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Jackson, Mississippi.

"Capital Expenditures" shall mean all expenditures (including obligations under any Capital Lease) that, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of Borrower.

"Capital Lease" shall mean, as to any Person, a lease of any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, by such Person as lessee that is, or should be, in accordance with Financial Accounting Standards Board Statement No. 13, as amended from time to time, or, if such Statement is not then in effect, such statement of GAAP as may be applicable, recorded as a "capital lease" on the balance sheet of such Person prepared in accordance with GAAP.

"Collateral" shall have the meaning set forth in Section 5.1 hereof.

"Computation Period" means each period of twelve (12) consecutive calendar months ending on the last day of each calendar month.

"Contingent Liability" and "Contingent Liabilities" shall mean, respectively, each obligation and liability of Borrower, and all such obligations and liabilities of Borrower, incurred pursuant to any agreement, undertaking or arrangement by which Borrower: (i) guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, dividend, obligation or other liability of any other Person in any manner (other than by endorsement of instruments in the course of collection), including without limitation, any indebtedness, dividend or other obligation that may be issued or incurred at some future time; (ii) guarantees the payment of dividends or other distributions upon the shares or ownership interest of any other Person; (iii) undertakes or agrees (whether contingently or otherwise): (A) to purchase; repurchase, or otherwise acquire any indebtedness, obligation or liability of any other Person or any property or assets constituting security therefore, (B) to advance or provide funds for the payment or discharge of any indebtedness, obligation or liability of any other Person (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), or to maintain solvency assets, level of income, working capital or other financial condition of any other Person (C) to make payment to any other Person other than for value received, (D) agrees to lease property or to purchase securities, property or services from such other Person with the purpose or intent of assuring the owner of such indebtedness or obligation of the ability of such other Person to make payment of the indebtedness or obligation, (E) to induce the issuance of, or in connection with the issuance of, any letter of credit for the benefit of such other Person, or (F) undertakes or agrees otherwise to assure a creditor against loss. The amount of any Contingent Liability shall (subject to any limitation set forth herein) be deemed to be the outstanding principal amount (or maximum permitted principal amount, if larger) of the indebtedness, obligation or other liability guaranteed or supported thereby.

"Default Rate" shall mean a per annum rate of interest allowed to State pursuant to Section 75-17-1(1) of the Mississippi Code of 1972, as amended, being eight percent (8%) per annum using the actuarial method of calculation.

"Depreciation" shall mean the total amounts added to depreciation, amortization, obsolescence, valuation and other proper reserves, as reflected on Borrower's financial statements and determined in accordance with GAAP.

"EBITDA" shall mean, for any period, the sum for such period of: (i) Net Income, plus (ii) Interest Charges, plus (iii) federal and state income taxes as determined in accordance with GAAP, plus (iv) Depreciation, plus (v) all other non-cash charges, minus (vi) any items of gain that are extraordinary items as defined by GAAP, including, without limitation, that portion of net income arising out of the sale of assets outside of the ordinary course of business, minus (vii) income or loss attributable to equity in any affiliated entity; in each case to the extent included in determining Net Income for such period.

"Employee Plan" shall mean any pension, stock bonus, employee stock ownership plan, retirement, disability, medical, dental or other health plan, life insurance or other death benefit

plan, profit sharing, deferred compensation, stock option, bonus or other incentive plan, vacation benefit plan, severance plan or other employee benefit plan or arrangement, including, without limitation, those pension, profit-sharing and retirement plans of Borrower described from time to time in the financial statements of Borrower and any pension plan, welfare plan, Defined Benefit Pension Plan (as defined in ERISA) or any multi-employer plan, maintained or administered by Borrower or to which Borrower is a party or may have any liability or by which Borrower is bound.

"Environmental Laws" shall mean all federal, state, district, local and foreign laws, rules, regulations, ordinances, and consent decrees relating to health, safety, hazardous substances, pollution and environmental matters, as now or at any time hereafter in effect, applicable to Borrower's business or facilities owned or operated by Borrower, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contamination, chemicals, or hazardous, toxic or dangerous substances, materials or wastes in the environment (including, without limitation, ambient air, surface water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

"Event of Default" shall mean any of the events or conditions set forth in Article 10 hereof.

"Funded Indebtedness" shall mean, as to any Person, all Indebtedness of such Person that matures more than one (1) year from the date of its creation or matures within one (1) year of such date but is renewable or extendible, at the option of such person, to a date more than 'one (1) year from such date. The outstanding amount under the Promissory Note shall be considered Funded Indebtedness of Borrower.

"GAAP" shall mean generally accepted accounting principles, using the accrual basis of accounting and consistently applied with prior periods, provided, however, that GAAP with respect to any interim financial statements or reports shall be deemed subject to fiscal year-end adjustments and footnotes made in accordance with GAAP.

"Guarantor" shall mean Iowa Pacific Holdings LLC, the parent company of the Borrower and owner of the Collateral.

"Guaranty" shall mean the Guaranty dated August \_\_\_\_\_, 2016, executed by Guarantor.

"Governmental Authority" shall mean the United States of America, any state, territory or district thereof, and any other political subdivision or body politic created pursuant to any applicable Law, and any court, agency, department, commission, board, bureau or instrumentality of any of the foregoing.

"Hazardous Materials" shall mean any hazardous, toxic or dangerous substances, materials and wastes, including, without limitation, hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including, without limitation,

materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials or wastes that are or become regulated under any Environmental Law (including without limitation, any that are or become classified as hazardous or toxic under any Environmental Law).

"Indebtedness" shall mean at any time (i) all Liabilities of Borrower, (ii) all Capital Lease obligations of Borrower, (iii) all other debt, secured or unsecured, created, issued, incurred or assumed by Borrower for money borrowed or for the deferred purchase price of any fixed or capital asset, (iv) indebtedness secured by any Lien existing on property owned by Borrower whether or not the indebtedness secured thereby has been assumed and (v) all Contingent Liabilities of Borrower whether or not reflected on its balance sheet.

"Indemnified Party" and "Indemnified Parties" shall mean, respectively, each of State's respective officers, directors, employees, attorneys and agents, and all of such parties and entities.

"Interest Charges" shall mean, for any period, the sum of: (i) all interest, charges and related expenses payable with respect to that fiscal period to a lender in connection with borrowed money or the deferred purchase price of assets that are treated as interest in accordance with GAAP, plus (ii) the portion of rent payable with respect to that fiscal period under Capital Leases that should be treated as interest in accordance with GAAP, plus (iii) all charges paid or payable (without duplication) during that period with respect to any Rate Management Agreements.

"Law" shall mean any federal, state or local law, statute, ordinance, order, decree, rule or regulation.

"Liabilities" shall mean at all times all liabilities of Borrower that would be shown as such on a balance sheet of Borrower prepared in accordance with GAAP.

"Lien" shall mean any mortgage, pledge, hypothecation, judgment lien or similar legal process, title retention lien, or other lien or security interest, including, without limitation, the interest of a vendor under any conditional sale or other title retention agreement and the interest of a lessor under a lease of any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, by such Person as lessee that is, or should be, a Capital Lease on the balance sheet of Borrower prepared in accordance with GAAP.

"Net Income" shall mean, with respect to any period, the amount shown opposite the caption "Net Income" or a similar caption on the financial statements of Borrower, prepared in accordance with GAAP.

"Obligations" shall mean the Term Loan, as evidenced by the Promissory Note, all interest accrued thereon, any fees due State hereunder, any expenses incurred by State hereunder and any and all other liabilities and obligations of Borrower (and of any partnership in which Borrower is or may be a partner) to State, howsoever created, arising or evidenced, and howsoever owned, held or acquired, whether now or hereafter existing, whether now due or to

become due, direct or indirect, absolute or contingent, and whether several, joint or joint and several, including, but not "limited to, any and all Rate Management Obligations.

"Obligor" shall mean Borrower, any guarantor, accommodation endorser, third-party pledgor, or any other party liable with respect to the Obligations.

"Parent Company" shall mean Iowa Pacific Holdings LLC, an Illinois limited liability company located at 118 S. Clinton, Suite 400, Chicago, IL 60661.

"Permitted Liens" shall mean Liens permitted under Section 7.2 hereof.

"Person" shall mean any individual, partnership, limited liability company, corporation, trust, joint venture, joint stock company, association, unincorporated organization, government or agency or political subdivision thereof, or other entity.

"Regulatory Change" shall mean the introduction of, or any change in any applicable law, treaty, rule, regulation or guideline or in the interpretation or administration thereof by any Governmental Authority or any central bank or other fiscal, monetary or other authority having jurisdiction over State.

"Rolling Stock" shall mean all railroad locomotives and other railroad equipment pledged as collateral for this loan.

"State" shall have the meaning set forth in the Preamble hereof.

"Stock" shall mean all shares, options, interests, participations or other equivalents, howsoever designated, of or in a corporation, partnership, limited liability company or similar entity whether voting or nonvoting, including, common stock, warrants, preferred stock, convertibles, debentures, partnership interest and all agreements, instruments and documents convertible, in whole or in part, into any one or more of the foregoing.

"Subordinated Debt" shall mean that portion of the Indebtedness of Borrower that is subordinated to the Obligations in a manner satisfactory to State, including, but not limited to, right and time of payment of principal and interest.

"Subsidiary" and "Subsidiaries" shall mean, respectively, each and all such corporations, partnerships, limited partnerships, limited liability companies, limited liability partnerships or other entities of which or in which Borrower owns directly or indirectly fifty percent (50.00%) or more of (i) the combined voting power of all classes of stock having general voting power under ordinary circumstances to elect a majority of the board of directors of such entity if a corporation, (ii) the management authority and capital interest or profits interest of such entity, if a partnership, limited partnership, limited liability company, limited liability partnership, joint venture or similar entity, or (iii) the beneficial interest of such entity, if a trust, association or other unincorporated organization.

"Tangible Assets" shall mean the total of all assets appearing on a balance sheet of Borrower prepared in accordance with GAAP (with Inventory being valued at the lower of cost or market), after deducting all proper reserves (including reserves for Depreciation, obsolescence and amortization) less the sum of (i) goodwill, patents, trademarks, prepaid expenses, deposits, deferred charges and other personal property that is classified as intangible property in accordance with GAAP, and (ii) any amounts due from shareholders, affiliates, officers or employees of Borrower.

"Tangible Net Worth" shall mean at any time the total of Tangible Assets, less Liabilities, plus Subordinated Debt.

"UCC" shall mean the Uniform Commercial Code in effect in Mississippi from time to time.

"Unmatured Event of Default" shall mean any event that has occurred and/or condition that exists that, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

1.2 Accounting Terms. Any accounting terms used in this Agreement that are not specifically defined herein shall have the meanings customarily given them in accordance with GAAP. Calculations and determinations of financial and accounting terms used and not otherwise specifically defined hereunder and the preparation of financial statements to be furnished to State pursuant hereto shall be made and prepared, both as to classification of items and as to amount, in accordance with GAAP as used in the preparation of the financial statements of Borrower on the date of this Agreement. If any changes in accounting principles or practices from those used in the preparation of the financial statements are hereafter occasioned by the promulgation of rules, regulations, pronouncements and opinions by or required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successor thereto or agencies with similar functions), that results in a material change in the method of accounting in the financial statements required to be furnished to State hereunder or in the calculation of financial covenants, standards or terms contained in this Agreement, the parties hereto agree to enter into good faith negotiations to amend such provisions so as equitably to reflect such changes to the end that the criteria for evaluating the financial condition and performance of Borrower will be the same after such changes as they were before such changes; and if the parties fail to agree on the amendment of such provisions, Borrower will furnish financial statements in accordance with such changes but shall provide calculations for all financial covenants, perform all financial covenants and otherwise observe all financial standards and terms in accordance with applicable accounting principles and practices in effect immediately prior to such changes. Calculations with respect to financial covenants required to be stated in accordance with applicable accounting principles and practices in effect immediately prior to such changes shall be reviewed and certified by Borrower's accountants.

1.3 Other Terms Defined in UCC. All other capitalized words and phrases used herein and not otherwise specifically defined shall have the respective meanings assigned to such terms in the UCC, as amended from time to time, to the extent the same are used or defined therein.

1.4 Other Definitional Provisions; Construction. Whenever it is provided in this Agreement that a party "may" perform an act or do anything, it will be construed that such party "may, but will not be obligated to," so perform or so do. The following words and phrases will be construed as follows: (i) "at any time" will be construed as "at any time or from time to time;" (ii) "any" will be construed as "any one or all"; (iii) "include" and "including" will be construed as "including but not limited to;" and (iv) "will" and "shall" will each be construed as mandatory. Except as otherwise specifically indicated, all references to Article and Section numbers and letters will refer to the Articles and Sections of this Agreement. The words "hereby," "hereof," "hereto," "herein" and "hereunder" and any similar terms will refer to this Agreement as a whole and not to any particular paragraph. The word "hereafter" will mean after the date hereof and the word "heretofore" will mean before the date hereof. Words of the masculine, feminine or neuter gender will mean and include the corresponding words of other genders, and words implying the singular number will mean and include the plural number and vice versa. The Article and Section headings are inserted in this Agreement for convenience only and are not intended to, and will not be construed to limit, enlarge or affect the scope or intent of this Agreement or the meaning of any provision hereof. All references to "Exhibits" and "Schedules" shall mean the Exhibits and Schedules attached to this Agreement. All references to any agreement or instrument (including this Agreement) will be to such agreement or instrument as in effect from time to time, including any amendments, replacements, restatements, modifications and/or supplements thereto. An Event of Default or Unmatured Event of Default shall "continue" or be "continuing" until such Event of Default or Unmatured Event of Default has been cured or waived in accordance with Section 12.4. References in this Agreement to any party shall include such party's successors and permitted assigns. To the extent any of the provisions of the other Loan Documents are inconsistent with the terms of this Agreement, the provisions of this Agreement shall govern.

## 2. COMMITMENT OF STATE AND RAILWAY.

### 2.1 Term Loan.

**(a) Term Loan Commitment.** Subject to the terms and conditions of this Agreement and in the other Loan Documents, and in reliance upon the representations and warranties of Borrower set forth herein and in the other Loan Documents, State agrees to make a Term Loan equal to the Term Loan Commitment. The Term Loan shall be available to Borrower in the form of qualified periodic expense reimbursements the proceeds of which are to reimburse the Borrower for the construction of improvements to the Bridge and Rail Line. The Term Loan may be prepaid in whole or in part at any time without penalty, but shall be due in annual principal installments unless otherwise terminated or extended as provided in this Agreement. Any amount of principal that is not paid when due, whether at stated maturity, by acceleration or otherwise, shall bear interest payable on demand at the default rate as provided by Section 75-17-1(1) of the Mississippi Code of 1972, as amended.

**(b) Term Loan Principal Payments.** The outstanding principal balance of the Term Loan shall be repaid in equal annual installments of Six Hundred Fourteen Thousand Two Hundred Eighty-

Five and 72/100 Dollars (\$614,285.72) beginning on August 15, 2017, and continuing on the fifteenth (15th) day of August each year thereafter, with a final payment of all outstanding principal and accrued interest due on the Term Loan Maturity Date. Principal amounts repaid on the Promissory Note may not be borrowed again.

## **2.2 Project**

**(a)** Borrower will perform all work necessary for the installation of the cross ties, repair of bridges, reactivation of active warning devices, and repair of the Coldwater Bridge to achieve or exceed and maintain FRA Class I/II Track Safety Standards and in accordance with AREMA Standard Practices for construction of the Project according to the Project description and cost estimates, attached hereto as Exhibit A and made a part hereof. Work will be accomplished through the efforts of the Borrower or by an independent contractor.

**(b)** All materials supplied and work performed will be in accordance with AREMA Standard Practices and will comply with the supplemental specifications attached hereto as Exhibit B.

**(c)** (1) The total Project Cost is estimated to be Seven Million Three Hundred Thousand Dollars (\$7,300,000.00). Four Million Three Hundred Thousand Dollars (\$4,300,000.00) of the Project Cost, not to exceed seventy-five percent (75%) of the total Project Cost, is to be paid from State funds made available through the Railroad Revitalization Revolving Loan Fund, and the balance of the Project Cost, or an estimated Three Million Dollars (\$3,000,000.00), is to be provided by the Borrower from other sources.

(2) The Borrower shall provide to MDOT evidence of costs incurred for the Project in the form of supplier invoices, quantities, unit cost, and total cost information, which shall total the estimated Project Cost stated in Exhibit A.

(3) All costs incurred for the Project over and above the estimated Project Cost stated in Exhibit A shall be the sole responsibility of and shall be paid by the Borrower.

**(d)** The Borrower shall complete the Project as provided in this Agreement within three hundred sixty-five (365) calendar days following the Borrower's receipt of MDOT's notice to proceed with construction. In the event of unavoidable delays which are in no way the fault of the Borrower, or in the event of delays in completing the Project proximately caused by MDOT, the Borrower will be granted reasonable extensions of time equal to the time of such delays for completion of the Project, provided written request therefor is made by the Borrower to MDOT within thirty (30) days after the event(s) causing the delay. The Borrower shall continue to complete the work or any part thereof after the time fixed for its completion, or after the date to which the time for completion may have been extended, and such continuance will in no way operate as a waiver on the part of MDOT of any of its rights under this Agreement.

**(e)** Prior to issuance of the notice to proceed with construction by MDOT, the Borrower will provide MDOT with a monthly schedule of anticipated work progress.

**(f)** The Borrower shall provide adequate rail service during relocation and Project construction to meet the needs and reasonable convenience of the public and shippers.

**(g)** The Borrower shall submit to MDOT the actual charges, as evidenced by detailed monthly invoices including applicable supplier invoices, for costs incurred on behalf of the Project. Reimbursement by MDOT to the Borrower will be made in monthly progress payments of sixty percent (60%) of the total monthly invoice, less ten percent (10%) retainage. Upon final acceptance of all work, a final statement of costs shall be submitted to MDOT within ten (10) days. The final reimbursement payment to the Borrower, including the ten percent (10%) retainage, shall be made subject to final audit by MDOT.

**(h)** (1) At its election, MDOT may monitor and inspect the work to ensure that it complies with the provisions of both Exhibits A and B. If MDOT determines that any material or workmanship is deficient, the Borrower will replace, solely at its own cost, such material and/or correct such workmanship to the satisfaction of MDOT. Failure of the Borrower to replace such material or correct such workmanship in a timely manner will be considered a breach of contract, and MDOT may, at its sole discretion, correct the deficient material or workmanship or have the deficient material or workmanship corrected and deduct the cost of such corrective measures from the loan amount.

(2) Upon completion of the Project, the Bridge and Rail Line will be made available for final inspection by the MDOT. Upon acceptance of the Project and pursuant to the terms and conditions of this Agreement, MDOT will pay the retainage and the invoiced amount remaining due.

(3) Following approval and final acceptance of the Project by MDOT, the Bridge and the portion of the Rail Line within the boundaries of the Project will be deemed to have a service life of ten (10) years. During this service life period, the Borrower agrees to maintain the Bridge and the Rail Line at or above the FRA Class I/II Track Safety Standards and in accordance with AREMA Standard Practices.

(4) The Borrower shall continuously use and fully utilize the Bridge and the entire Rail Line for rail freight services in keeping with the public need and all lawful requirements.

**(i)** Following completion of the Project, the Borrower agrees to provide common carrier rail service over the Bridge and Rail Line unless it is prohibited from doing so by action of the State or other lawful authority having jurisdiction. If the Borrower fails to comply with any of the terms and conditions of this Agreement, if the Borrower sells or otherwise disposes of a portion of the rail within the boundaries of the Project to an entity which does not continue rail operations over the Bridge and Rail Line and/or does not assume the obligations of the Borrower under this Agreement, or if the Borrower files or participates in an application under Title 49 of the United States Code for abandonment of any portion of the Grenada Railroad LLC within ten (10) years of the date of this Agreement, then the Borrower shall repay to MDOT all of the funds that MDOT has provided for the Project pursuant to this Agreement.

**2.3 Interest and Fee Computation; Collection of Funds**. Except as otherwise set forth herein, all interest and fees shall be calculated on the basis of a year consisting of 360 days and shall be paid for the actual number of days elapsed. Principal payments submitted in funds not immediately available shall continue to bear interest until collected. If any payment to be made by Borrower hereunder or under the Promissory Note shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

### **3. CONDITIONS OF BORROWING.**

Notwithstanding any other provision of this Agreement, State shall not be required to disburse or make the Term Loan if any of the following conditions shall have occurred:

**3.1 Loan Documents**. Borrower shall have failed to execute and deliver to State any of the following Loan Documents (collectively, the "Loan Documents"), all of which must be satisfactory to State and State's counsel in form, substance and execution:

- (a) Loan Agreement;
- (b) Promissory Note;
- (c) Corporate Guaranties;
- (d) Certificate of Authority from the Mississippi Secretary of State; and
- (e) Such other certificates, financial statements, schedules, resolutions, opinions of counsel, notes and other documents that are provided for hereunder or that State shall require from time to time.

**3.2 Event of Default**. Any Event of Default, or Unmatured Event of Default shall have occurred and be continuing.

**3.3 Adverse Changes**. A material adverse change in the financial condition or affairs of Borrower, as determined in State's sole and complete discretion, shall have occurred.

**3.4 Litigation**. Any litigation or governmental proceeding shall have been instituted against Borrower or any of its officers or shareholders that in the discretion of State, reasonably exercised, materially and adversely affects the financial condition or continued operation of Borrower.

**3.5 Representations and Warranties**. Any representation or warranty of Borrower contained herein or in any Loan Document shall be untrue or incorrect in any material respect, except to the extent such representation or warranty expressly relates to an earlier date.

#### **4. PROMISSORY NOTE EVIDENCING TERM LOAN AND MANNER OF BORROWING.**

**4.1 Promissory Note.** The Term Loan shall be evidenced by a single Promissory Note hereto (together with any and all renewal, extension, modification or replacement notes executed by Borrower and given in substitution therefor, the "Promissory Note"), duly executed by Borrower and payable to the order of State. At the time any disbursement is made under the Term Loan or a repayment is made under the Term Loan in whole or in part thereon, an appropriate notation thereof shall be made on the books and records of State. All amounts recorded shall be, absent demonstrable error, conclusive and binding evidence of (i) the principal amount of the Term Loan advanced hereunder, (ii) any unpaid interest owing on the Term Loan and (iii) all amounts repaid on the Term Loan. The failure to record any such amounts or any error in recording such amounts shall not, however, limit or otherwise affect the obligations of Borrower under the Term Note to repay the principal amount of the Term Loan, together with all interest accruing thereon.

**4.2 Manner of Borrowing.** The Term Loan shall be advanced as reimbursements are presented to the State during the construction and completion of the said projects. The Term Loan shall be made available at the office of State by credit to the account of Borrower or by other means requested by Borrower and acceptable to State.

**4.3 Manner of Invoices and Advances.** State is authorized to rely on any written, electronic, telephonic or telecopy loan requests that State believes in its good faith judgment to emanate from an Authorized Borrower Representative, whether or not that is in fact the case. Borrower does hereby irrevocably confirm, ratify and approve all such advances by State and does hereby indemnify State against losses and expenses (including court costs, attorneys' and paralegals' fees) and shall hold State harmless with respect thereto.

#### **5. SECURITY FOR THE OBLIGATIONS.**

**5.1 Security for Obligations.** As security for the payment of the Obligations, Borrower and Guarantor do hereby grant to State a continuing and unconditional security interest in and to the Rolling Stock listed on Exhibit C hereto.

**5.2 Possession and Transfer of Collateral.** Until an Event of Default has occurred hereunder, Borrower and/or Guarantor shall be entitled to possession or use of the Collateral. The cancellation or surrender of the Term Note, upon payment or otherwise, shall not affect the right of State to retain the Collateral for any other of the Obligations. Borrower and Guarantor shall not sell, assign (by operation of law or otherwise), license, lease or otherwise dispose of, or grant any option with respect to any of the Collateral, except that Borrower or Guarantor may (i) lease Rolling Stock in the ordinary course of business and (ii) sell Rolling Stock in the ordinary course of business provided that immediately upon receipt of the sales proceeds it repays to State the Term Loan in an amount determined in accordance with Section 2 hereof.

**5.3 Financing Statements.** Borrower shall, at State's request, at any time and from time to time, execute and deliver to State such financing statements, amendments and other

documents and do such acts as State deems necessary in order to establish and maintain valid, attached and perfected first security interests in the Collateral in favor of State, free and clear of all Liens and claims and rights of third parties whatsoever (except as otherwise specifically set forth in Section 7.2), Borrower hereby irrevocably authorizes State at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as certain assets of Borrower pertaining to Borrower's lease or rental or Rolling Stock or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed; and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower, and (B) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Not in limitation of the generality of the foregoing, Borrower hereby irrevocably authorizes State to file with the Surface Transportation Board pursuant to 49 U.S.C. § 11301, this Agreement, any memorandum thereof, any amendment hereto or thereto or any other document as State deems necessary in order to establish and maintain valid, attached and perfected, the security interests in the Rolling Stock of Borrower. Borrower agrees to furnish any such information to State promptly upon request. Borrower further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by State in any jurisdiction prior to the date of this Agreement.

**5.4 Additional Collateral.** Borrower and/or Guarantor shall deliver to State such other collateral as State may from time to time request in writing, should the value of the Collateral, in State's reasonable estimation, decline, deteriorate, depreciate or become impaired, and do hereby grant to State a continuing security interest in such other collateral, which, when pledged, assigned and transferred to State shall be and become part of the Collateral. State's security interests in each of the foregoing Collateral shall be valid, complete and perfected whether or not covered by a specific assignment.

**5.5 Preservation of the Collateral.** State may, but is not required to, take such action from time to time as State deems appropriate to maintain or protect the Collateral. State shall have exercised reasonable care in the custody and preservation of the Collateral if it takes such action as Borrower shall reasonably request in writing; provided, however, that such request shall not be inconsistent with State's status as a secured party, and the failure of State to comply with any such request shall not be deemed a failure to exercise reasonable care. In addition, any failure of State to preserve or protect any rights with respect to the Collateral against prior or third parties, or to do any act with respect to preservation of the Collateral, not so requested by Borrower, shall not be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral. Borrower shall have the sole responsibility for taking such action as may be necessary, from time to time, to preserve all rights of Borrower and Guarantor, as well as the State, in the Collateral against prior or third parties. Without limiting the generality of

the foregoing, where Collateral consists in whole or in part of securities, Borrower represents to, and covenants with, State that Borrower has made arrangements for keeping informed of changes or potential changes affecting the securities (including, but not limited to, rights to convert or subscribe, payment of dividends, reorganization or other exchanges, tender offers and voting rights), and Borrower agrees that State shall have no responsibility or liability for informing Borrower of any such or other changes or potential changes or for taking any action or omitting to take any action with respect thereto.

**5.6 Other Actions as to any and all Collateral.** Borrower and Guarantor further agree to take any other action reasonably requested by State to ensure the attachment, perfection and first priority of, and the ability of State to enforce, State's security interest in any and all of the Collateral including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code, to the extent, if any, that Borrower's signature thereon is required therefore, (ii) causing State's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of State to enforce, State's security interest in such Collateral, (iii) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of State to enforce, State's security interest in such Collateral (including, but not limited to, § 11301 of Title 49 of the United States Code in respect of Rolling Stock), (iv) obtaining governmental and other third party consents and approvals, including without limitation any consent of any licensor, lessor or other Person obligated on Collateral, (v) obtaining waivers from mortgagees and landlords in form and substance satisfactory to State, and (vi) taking all actions required by the UCC in effect from time to time or by other law, as applicable in any relevant UCC jurisdiction, or by other law as applicable in any foreign jurisdiction.

**5.7 Collateral in the Possession of a Warehouseman or Bailee.** If any of the Collateral at any time is in the possession of a warehouseman or bailee, Borrower shall promptly notify State thereof, and if requested by State; shall promptly obtain an acknowledgment from the warehouseman or bailee, in form and substance satisfactory to State, that the warehouseman or bailee holds such Collateral for the benefit of State and shall act upon the instructions of State, without the further consent of Borrower.

**5.8 Letter-of-Credit Rights.** If Borrower at any time is a beneficiary under a letter of credit now or hereafter issued in favor of Borrower that pertains to any of the Collateral, Borrower shall promptly notify State thereof and, at the request and option of State, Borrower shall, pursuant to an agreement in form and substance satisfactory to State, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to State of the proceeds of any drawing under the letter of credit, or (ii) arrange for State to become the transferee beneficiary of the letter of credit, with State agreeing, in each case, that the proceeds of any drawing under the letter to credit are to be applied as provided in this Agreement.

**5.9 Commercial Tort Claims.** If Borrower shall at any time hold or acquire a commercial tort claim that pertains to any of the Collateral, Borrower shall immediately notify State in a writing signed by Borrower of the details thereof and grant to State in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to State.

**5.10 Electronic Chattel Paper and Transferable Records.** If Borrower at any time holds or acquires an interest in any electronic chattel paper or any "transferable record" that pertains to any of the Collateral, as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in §16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, Borrower shall promptly notify State thereof and, at the request of State, shall take such action as State may reasonably request to vest in State control under Section 9-105 of the UCC of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, § 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.

## **6. REPRESENTATIONS AND WARRANTIES.**

To induce State to make and/or continue the Term Loan, the Borrower makes the following representations and warranties to State, each of which shall be true and correct as of the date of the execution and delivery of this Agreement, and which shall survive the execution and delivery of this Agreement:

**6.1 Borrower Organization and Name.** Such Borrower is a corporation duly organized, existing and in good standing under the laws of the State of Illinois and duly registered to do business with the State with the Mississippi Office of the Secretary of State, with full and adequate corporate power to carry on and conduct its business as presently conducted. Such Borrower is duly licensed or qualified in all foreign jurisdictions wherein the nature of its activities require such qualification or licensing. The exact legal name of such Borrower is as set forth in the first paragraph of this Agreement, and such Borrower currently does not conduct, nor has it since its inception conducted, business under any other name or trade name other than as described in Section 6.7(f) below.

**6.2 Authorization; Validity.** Such Borrower has full right, power and authority to enter into this Agreement, to make the borrowings and execute and deliver the Loan Documents as provided herein and to perform all of its duties and obligations under this Agreement and the Loan Documents. The execution and delivery of this Agreement and the Loan Documents will not, nor will the observance or performance of any of the matters and things herein or therein set forth, violate or contravene any provision of law or of the certificate of incorporation or bylaws of such Borrower. All necessary and appropriate corporate action has been taken on the part of such Borrower to authorize the execution and delivery of this Agreement and the Loan Documents. This Agreement and the Loan Documents are valid and binding agreements and contracts of Borrower in accordance with their respective terms.

**6.3 Compliance with Laws.** The nature and transaction of such Borrower's business and operations and the use of its properties and assets, including, but not limited to, the Collateral or any real estate owned or occupied by such Borrower, do not and during the term of the Loans shall not, violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind or nature, including, without limitation, the provisions of the Fair Labor Standards Act or any zoning, land use, building, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not.

**6.4 Environmental Laws and Hazardous Substances.** Such Borrower represents, warrants and agrees with State that (i) such Borrower has not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off any of the premises of Borrower (whether or not owned by it) in any manner that at any time violates any Environmental Law or any license, permit, certificate, approval or similar authorization thereunder, (ii) the operations of such Borrower comply in all material respects with all Environmental Laws and all licenses, permits certificates, approvals and similar authorizations thereunder, (iii) there has been no investigation, proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other Person, nor is any pending or, to the best of such Borrower's knowledge, threatened, and such Borrower shall immediately notify State upon becoming aware of any such investigation, proceeding, complaint, order, directive, claim, citation or notice, and shall take prompt and appropriate actions to respond thereto, with respect to any non-compliance with, or violation of, the requirements of any Environmental Law by such Borrower or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material or any other environmental, health or safety matter, which affects such Borrower or its business, operations or assets or any properties at which such Borrower has transported, stored or disposed of any Hazardous Materials, (iv) such Borrower has no material liability in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material; and (v) without limiting the generality of the foregoing, such Borrower shall, following determination by State that there is non-compliance, or any condition that requires any action by or on behalf of such Borrower in order to avoid any non-compliance, with any Environmental Law, at such Borrower's sole expense, cause an independent environmental engineer acceptable to State to conduct such tests of the relevant site as are appropriate, and prepare and deliver a report setting forth the result of such tests, a proposed plan for remediation and an estimate of the costs thereof. The Borrower shall promptly notify MDOT of any communication from the United States Environmental Protection Agency which indicates that a rail facility of the Railway is under consideration for inclusion on the EPA's watch lists or List of Violating Facilities.

**6.5 Use of funds.** Use of the funds which are the subject of this Agreement for purposes other than as specified in this Agreement shall constitute a breach of contract and liquidated damages shall be assessed in an amount equal to two hundred percent (200%) of funds misdirected.

**6.6 Absence of Breach.** The execution, delivery and performance of this Agreement, the Loan Documents and any other documents or instruments to be executed and delivered by such Borrower in connection with the Term Loan shall not: (i) violate any provisions of law or any applicable regulation, order, writ, injunction or decree of any court or governmental authority, or (ii) conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which Borrower is a party or by which such Borrower or any of its property or assets may be bound.

**6.7 Collateral Representations.**

(a) Borrower or Guarantor are the sole owners of or have other rights in the Collateral, free from any Lien of any kind, other than the Lien of State and Permitted Liens.

(b) Borrower or Guarantor are the owners of or have other rights in the Collateral and grant the security interest made in Section 5.1 in consideration of value given by State, the sufficiency of which such Borrower hereby acknowledges,

(c) No financing statement or other document concerning the Collateral is on file at any public office, except for any financing statements or other documents filed on behalf of State, each of which (except as specifically otherwise noted therein) such Borrower represents and warrants shall be terminable after the initial funding of the Term Loan.

(d) All Collateral (other than Rolling Stock owned by such Borrower and leased to third parties) is kept solely at the location or locations identified in Exhibit C. Except as specified on Exhibit C, no Collateral is or shall be kept, stored or maintained with a bailee, warehouseman, carrier or similar party without State's prior written consent.

(e) All of such Borrower's places of business, including such Borrower's principal office, are described on Exhibit D. Since its inception, neither Borrower nor any predecessor of such Borrower has maintained a place of business, or any property (other than Rolling Stock leased to third parties in the ordinary course of business), at any location not identified with respect to it on Exhibit D. All Collateral (other than Rolling Stock leased to third parties in the ordinary course of business) covered by this Agreement is and will be kept only at location(s) specified on Exhibit C. Collateral (other than Rolling Stock leased to third parties in the ordinary course of business) shall not be removed to, or kept at, any other place without the prior written consent of State, other than new locations within the 48 contiguous states, provided that (i) at least 60 days prior to the establishment of such new location, such Borrower shall have given State written notice thereof, and (ii) prior to the establishment of such new location, such Borrower shall have delivered to State such financing statements, third-party lien waivers and other documentation as State shall require in connection therewith. If Collateral is at any time kept or located at locations other than those listed, State's security interest therein shall continue.

(f) On September 14, 2015, Borrower filed Articles of Amendment with the Illinois Secretary of State to change its name from Illinois Company Rail Road LLC to Grenada Railroad LLC. Other

than that name change, Borrower has not used any other corporate, fictitious or trade names or trade styles.

(g) The Collateral will not at any time be affixed or attached to any real estate in such a manner that it will become a fixture, unless State shall have a first priority, perfected lien on such real estate as security for the Obligations of such Borrower .

**6.7 Financial Statements**. All financial statements, including any pro-forma financial statements submitted to State have been prepared in accordance with GAAP on a basis, except as otherwise noted therein, consistent with the previous fiscal year and which truly and accurately reflect the financial condition of such Borrower and the results of the operations for such Borrower as of such date and for the periods indicated. Since the date of the most recent financial statements submitted by such Borrower to State, there has been no material adverse change in the financial condition or in the assets or liabilities of such Borrower, or any changes except those occurring in the ordinary course of business,

**6.8 Litigation and Taxes**. There is no litigation, demand, charge, claim, petition or governmental investigation or proceeding pending, or to the best knowledge of such Borrower, threatened, against such Borrower, which, if adversely determined, would result in any material adverse change in the financial condition or properties, business or operations of such Borrower. Such Borrower has duly filed all applicable income or other tax returns and has paid all income or other taxes when due. There is no controversy or objection pending, or to the best knowledge of such Borrower, threatened in respect of any tax returns of Borrower.

**6.9 Event of Default**. No Event of Default has occurred and is continuing, and no Unmatured Event of Default has occurred and such Borrower is not in default (without regard to grace or cure periods) under any contract or agreement to which it is a party, the effect of which default shall materially adversely affect the performance by such Borrower of its obligations pursuant to and as contemplated by the terms and provisions of this Agreement.

**6.10 Adverse Circumstances**. To the best of such Borrower's and Guarantor's knowledge, no condition, circumstance, event, agreement, document instrument, restriction, litigation or proceeding (or threatened litigation or proceeding or basis therefore) exists that (a) could adversely affect the validity or priority of the Liens granted to State under the Loan Documents, (b) could materially adversely affect the ability of such Borrower to perform its obligations under the Loan Documents, (c) would constitute a default under any of the Loan Documents or (d) would constitute such a default with the giving of notice or lapse of time or both.

**6.11 Lending Relationship**. Such Borrower acknowledges and agrees that the relationship hereby created with State is and has been conducted on an open and arm's length basis in which no fiduciary relationship exists and that such Borrower has not relied and is not relying on any such fiduciary relationship in executing this Agreement and in consummating the Term Loan. State represents that it will receive the Term Note payable to its order as evidence of bank loans.

**6.12 Business Loan.** The Term Loan, including interest rate, fees and charges as contemplated hereby, (a) is a business loan within the purview of Mississippi Code of 1972, as amended, (b) is an exempted transaction under the Truth In Lending Act, 12 U.S.C. 1601 et seq., as amended from time to time and (c) does not, and when disbursed shall not, violate the provisions of the Mississippi usury laws, any consumer credit laws or the usury laws of any state that may have jurisdiction over this transaction, such Borrower or any property securing the Term Loan.

**6.13 Compliance with Regulation U.** No portion of the proceeds of the Term Loan shall be used by such Borrower, or any affiliates of such Borrower, either directly or indirectly, for the purpose of purchasing or carrying any margin stock, within the meaning of Regulation U as adopted by the Board of Governors of the Federal Reserve System.

**6.14 Governmental Regulation.** Such Borrower is not, and after giving effect to any loan will not be, subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting its ability to incur indebtedness for borrowed money.

**6.15 Place of Business.** The principal places of business of such Borrower are listed on Exhibit D, and such Borrower shall promptly notify State of any change in such location, Borrower will not remove or permit the Collateral to be removed from such location without the prior written consent of State, except for Rolling Stock owned by Borrower and leased in the usual and ordinary course of such Borrower's business.

**6.16 Indebtedness.** Such Borrower has no outstanding Indebtedness (except to State) or other obligation for borrowed money, or for the deferred purchase price of property or services and such Borrower is not obligated as a guarantor, cosigner or otherwise on any Indebtedness or other obligation of any other kind of any Person, except and to the extent disclosed on the financial statements at the date of this Agreement or incurred in the ordinary course of business.

**6.17 Authorization Consent.** No authorization, consent, license or approval of, or filing or registration with or notification to, any governmental authority is required in connection with the execution, delivery or performance of the Loan Documents by such Borrower.

**6.18 Title to Collateral.** With respect to the Collateral, Borrower and Guarantor has good and marketable title to all collateral all subject to no security interest, encumbrance, lien or claim of any Person excepting only Permitted Liens, and there are no financing statements or other evidence of any such security interest, encumbrance or lien or any claim of any Person on file in any public office other than those evidencing liens in favor of State and Permitted Liens.

**6.19 Subsidiaries.** Such Borrower has no Subsidiaries and does not own, directly or indirectly, any Stock in any Person. All outstanding shares of the Stock of such Borrower have been duly authorized, validly issued, fully paid and are not assessable.

**6.20 Insolvency.** Such Borrower is solvent, no transaction under or contemplated by this Agreement renders or will render such Borrower insolvent, such Borrower retains sufficient capital for the business and transactions in which it engages or intends to engage, no obligation

incurred hereby is beyond the ability of such Borrower to pay as such obligation matures, such Borrower is not contemplating either the filing of a petition under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of any of its property and such Borrower has no knowledge of any Person contemplating the filing of any such petition against it.

**6.21 Complete Information.** This Agreement and all financial statements, schedules, certificates, confirmations, agreements, contracts, and other materials submitted to State in connection with or in furtherance of this Agreement by or on behalf of such Borrower fully and fairly state the matters with which they purport to deal, and neither misstate any material fact nor, separately or in the aggregate, fail to state any material fact necessary to make the statements made not misleading.

## 7. NEGATIVE COVENANTS.

**7.1 Indebtedness.** Borrower shall not, either directly or indirectly, create, assume, incur or have outstanding any Indebtedness (including purchase money indebtedness), or become liable, whether as endorser, guarantor, surety or otherwise, for any debt or obligation of any other Person, except:

- (a) the Obligations;
- (b) obligations of Borrower for taxes, assessments, municipal or other governmental charges that are not yet due and payable;
- (c) obligations of Borrower for accounts payable, other than for money borrowed, incurred in the ordinary course of business;
- (d) obligations existing on the date hereof that are disclosed on the financial statements referred to in Section 6.7 hereof;
- (e) obligations arising under Capital Leases for property acquired (or deemed to be acquired) by Borrower or claims arising from the use or loss of, or damage to, such property; and
- (f) purchase-money indebtedness not exceeding in the aggregate Twenty-Five Thousand and No/100 Dollars (\$25,000.00) incurred during any twelve (12) month period.

**7.2 Encumbrances.** Borrower shall not, either directly or indirectly, create, assume, incur or suffer or permit to exist any Lien or charge of any kind or character upon any asset of Borrower, whether owned at the date hereof or hereafter acquired except ("Permitted Liens"):

- (a) Liens for taxes, assessments or other governmental charges not yet due or which are being contested in good faith by appropriate proceedings in such a manner as not to make the property forfeitable;

(b) Liens or charges incidental to the conduct of its business or the ownership of its, property and assets that were not incurred in connection with the borrowing of money or the obtaining of an advance or credit, and that do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business;

(c) Liens arising out of judgments or awards against Borrower with respect to which it shall concurrently therewith be prosecuting a timely appeal or proceeding for review and with respect to which it shall have secured a stay of execution pending such appeal or proceedings for review;

(d) pledges or deposits to secure obligations under worker's compensation laws or similar legislation;

(e) good faith deposits in connection with lending contracts or leases to which Borrower is a party;

(f) deposits to secure public or statutory obligations of Borrower;

(g) Liens existing on the date hereof and disclosed on the financial statements referred to in Section 6.7 hereof; and

(i) Liens granted to State hereunder.

**7.3 Rolling Stock.** Borrower and Guarantor shall not change any markings or serial numbers on any of the Rolling Stock owned by Borrower until after Borrower has provided written notice to State of its intention to make such change. Borrower shall not lease any Rolling Stock to Amtrak. Borrower agrees to notify State of any other Rolling Stock that Borrower may hereafter acquire or lease from a third party. Borrower agrees that it will execute and deliver to State supplemental security agreements and other instruments and file the same in appropriate recording offices (a) at any time, with respect to the Rolling Stock listed on Exhibit C hereto, and (b) at such times as any assignable right, title or interest is acquired in the future by Borrower in any other Rolling Stock. All such supplemental security agreements shall secure all of the Obligations pro rata and shall be on terms, and conditions satisfactory to State as evidenced by its written consent thereto.

**7.4 Transfer; Merger.** Borrower and Guarantor shall not, either directly or indirectly, merge, consolidate, sell, transfer, license, lease, encumber or otherwise dispose of all or any part of its property or business or all or any substantial part of its assets, or sell or discount (with or without recourse) any of its Promissory Notes, Chattel Paper, Payment Intangibles or Accounts, except that Borrower shall be permitted to (a) lease Rolling Stock in the ordinary course of business (so long as Borrower amends the Assignment of Rents and Leases to include all Rolling Stock being leased), and (b) sell Rolling Stock owned by Borrower in the ordinary course of business provided that immediately upon receipt of the sales proceeds it repays to State the Term Loan in the amounts required under Section 2.1 hereof.

**7.5 Issuance of Stock.** Without the prior written consent of State which shall not be unreasonably withheld, Borrower shall not, either directly or indirectly, issue or distribute any additional capital stock or other securities of Borrower.

**7.6 Change of Legal Status.** Borrower shall not change its name, its organizational identification number, if it has one, its type of organization, its jurisdiction of organization or other legal structure without State's prior written consent, which State may withhold if it reasonably determines that such change negatively impacts the creditworthiness of Borrower or negatively impacts the Collateral.

**7.7 Prepayment.** Borrower shall not prepay any Indebtedness except as expressly permitted hereunder, or enter into or modify any agreement as a result of which the terms of payment of any Indebtedness are waived or modified.

**7.8 Fiscal Year.** Borrower shall not change its fiscal year.

**7.9 Disposition of Assets.** Borrower shall not dispose by sale, assignment, lease, sale and lease-back or otherwise any of its properties or assets, (other than obsolete or worn out property or equipment not used or useful in its business), whether now owned or hereafter acquired and including, without limitation, any notes, Accounts, equipment or machinery, except that so long as no Event of Default shall have occurred and be continuing, Borrower may (a) lease its Rolling Stock in the ordinary course of business activities on the date of this Agreement, for a reasonably equivalent value and (b) sell its Rolling Stock owned by Borrower in the ordinary course of business provided that immediately upon receipt of the sales proceeds Borrower repays to State the Term Loan in the amount determined under Section 2.1 hereof. Borrower shall not transfer, directly or indirectly, any of its assets or payout, directly or indirectly, money or property or provide services or do any other act, or fail to do any act, that would have the effect of materially and adversely affecting its ability to perform its Obligations hereunder.

**7.10 Material Change in Ownership or Structure.** Borrower shall not make any material change in its ownership or financial structure, including the creation of any Subsidiaries, or make any material change in its management.

**7.11 Change of Business.** Borrower shall not engage in business activities or operations substantially different from or unrelated to its business activities on the date of this Agreement.

**7.12 Untrue Statements.** Borrower shall not furnish to State any certificate or other document that will contain or that does contain any untrue statement of material fact or that will omit or does omit to state a material fact necessary to make it not misleading in light of the circumstances under which it was furnished.

## **8. AFFIRMATIVE COVENANTS.**

**8.1 Compliance with Regulatory Requirements.** Upon demand by State, Borrower shall reimburse State for State's additional costs and/or reductions in the amount of principal or interest received or receivable by State if at any time after the date of this Agreement, any law,

treaty or regulation or any change in any law, treaty or regulation or the interpretation thereof by any Governmental Authority charged with the administration thereof or any central bank or other fiscal, monetary or other authority having jurisdiction over State or the Term Loan, whether or not having the force of law, shall impose, modify or deem applicable any reserve (except special deposit requirement against or in respect of assets held by or deposits in or for the account of the Term Loan by State or impose on State any other condition with respect to this Agreement or the Term Loan, the result of which is to either increase the cost to State of making or maintaining the Term Loan or to reduce the amount of principal or interest received or receivable by State, with respect to the Term Loan. Said additional costs and/or reductions will be those that directly result from the imposition of such requirement or condition on the making or maintaining of the Term Loan. The Term Loan shall be deemed to be match funded for the purposes of State's determination in the previous sentence. Notwithstanding the foregoing, Borrower shall not be required to pay any such additional costs that could be avoided by State with the exercise of reasonable conduct and diligence.

**8.2 Corporate Existence.** Borrower shall at all times preserve and maintain its corporate existence, rights, franchises and privileges, and shall at all times continue as a going concern in the business that Borrower is presently conducting. If Borrower does not have a state-issued identification number and later obtains one, Borrower shall promptly notify State of such organizational identification number. Borrower shall register and qualify with the Mississippi Secretary of State to do business in the State of Mississippi as a foreign corporation and/or limited liability company.

**8.3 Maintain Property.** Borrower shall at all times maintain, preserve and keep its plant, properties and Equipment, including, but not limited to, any Collateral, in good repair, working order and condition, normal wear and tear excepted, and shall from time to time make all needful and proper repairs, renewals, replacements, and additions thereto so that at all times the efficiency thereof shall be fully preserved and maintained.

**8.4 Maintain Insurance.** Borrower shall at all times insure and keep insured in insurance companies acceptable to State, all insurable property owned by it which is of a character usually insured by companies similarly situated and operating like properties against loss or damage from fire and such other hazards or risks as are customarily insured against by companies similarly situated and operating like' properties; and shall similarly insure employers', public and professional liability risks. In addition, with respect to each customer of Borrower in which the appraised value of the Rolling Stock leased by such customer is greater than or equal to One-Hundred Thousand Dollars (\$100,000), Borrower shall ensure that State is named as lender's loss payee on the insurance policies of such customers covering such Rolling Stock. Prior to the date of the funding of the Term Note, Borrower shall deliver to State a certificate setting forth in summary form the nature and extent of the insurance maintained by Borrower pursuant to this Section 8.4. All such policies of insurance must be satisfactory to State in relation to the amount and term of the Obligations and type and value of the Collateral and assets of Borrower, shall identify State as lender's loss payee or mortgagee and/or as an additional insured, as applicable. In the event Borrower either fails to provide State with evidence of the insurance

coverage required by this Section or at any time hereafter shall fail to obtain or maintain any of the policies of insurance required above, or to pay any premium in whole or in part relating thereto, then State, without waiving or releasing any obligation or default by Borrower hereunder, may at any time (but shall be under no obligation to so act), obtain and maintain such policies of insurance and pay such premium and take any other action with respect thereto, that State deems advisable. This insurance coverage (a) may, but need not, protect Borrower's Interest in such property, including, but not limited to the Collateral, and (b) may not pay any claim made by, or against, Borrower in connection with such property, including, but not limited to the Collateral, Borrower may later cancel any such insurance purchased by State, but only after providing State with evidence that Borrower has obtained the insurance coverage required by this Section 8.4. The costs of such insurance obtained by State, through and including the effective date such insurance coverage is canceled or expires, shall be payable on demand by Borrower to State, together with interest at the Default Rate on such amounts until repaid and any other charges by State in connection with the placement of such insurance. The costs of such insurance, which may be greater than the cost of insurance which Borrower may be able to obtain on its own, together with interest thereon at the Default Rate and any other charges by State in connection with the placement of such insurance may be added to the total Obligations due and owing.

**8.5 Maintain Insurance-Project Construction.** (a) Borrower will carry during the Term of the Project, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) Railroad liability insurance with a minimum limit of liability of Two Million Dollars (\$2,000,000.00) combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by Borrower's commercial general liability insurance shall apply to the Commission as an additional insured, but only with respect to the Commission's liability arising out of its interest in the Project. Borrower will provide the Commission with evidence of such required insurance coverages which shall not be cancelable without thirty (30) days written notice to Commission. Should any certifications provided under this paragraph expire for any coverage during the term of the Agreement, it is the responsibility of the Borrower to provide copies of the current Insurance Certificate to the Commission. (b) With the Commission's consent, the Borrower may self-insure with respect to any of the above project insurance requirement.

**8.6 Subcontractor Insurance Requirements.** Borrower shall require all of its subcontractors who are not covered by the insurance carried by Borrower to maintain the insurance coverage described in this Section 8. Each insurance policy required by this clause shall be endorsed to State that coverage shall not be suspended, voided, cancelled, or reduced in coverage or limits with thirty (30) days advance written notice to Borrower. Upon request, Borrower and its subcontractors, if any, shall furnish the Commission with copies of the insurance policies or other satisfactory evidence of such insurance. The insurance coverage required herein shall in no way limit the Borrower's liability under this Agreement.

**8.7 Tax Liabilities.** Borrower shall at all times pay and discharge all property and other taxes, assessments and governmental charges upon, and all claims (including claims for labor, materials and supplies) against Borrower or any of its properties, Equipment or Inventory, before the same shall become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith by appropriate proceedings and are insured against or bonded over to the satisfaction of State.

**8.8 ERISA Liabilities; Employee Plans.** Borrower shall (a) keep in full force and effect any and all Employee Plans which are presently in existence or may, from time to time, come into existence under ERISA, and not withdraw from any such Employee Plans, unless such withdrawal can be effected or such Employee Plans can be terminated without liability to Borrower; (b) make contributions to all of such Employee Plans in a timely manner and in a sufficient amount to comply with the standards of ERISA, including the minimum funding standards of ERISA; (c) comply with all material requirements of ERISA which relate to such Employee Plans; (d) notify State immediately upon receipt by Borrower of any notice concerning the imposition of any withdrawal liability or of the institution of any proceeding or other action which may result in the termination of any such Employee Plans or the appointment of a trustee to administer such Employee Plans; (e) promptly advise State of the occurrence of any "Reportable Event" or "Prohibited Transaction" (as such terms are defined in ERISA), with respect to any such Employee Plans; and (f) amend any Employee Plan that is intended to be qualified within the meaning of Section 401 of the Internal Revenue Code of 1986 to the extent necessary to keep the Employee Plan qualified, and to cause the Employee Plan to be administered and operated in a manner that does not cause the Employee Plan to lose its qualified status.

**8.9 Financial Statements.** Borrower and Guarantor shall at all times maintain a standard and modern system of accounting, on the accrual basis of accounting and in all respects in accordance with GAAP, and shall furnish to State or its authorized representatives such information regarding the business affairs, operations and financial condition of Borrower, including, but not limited to:

(a) as soon as available, and in any event, within one hundred twenty (120) days after the close of each of its fiscal years (but reasonably allowing for delay not caused by Borrower or Guarantor), a copy of the annual financial statements of Borrower, including balance sheet, statement of income and retained earnings, statement of cash flows for the fiscal year then ended and such other information (including non-financial information) as State may request, in reasonable detail, prepared and reviewed by an independent certified public accountant acceptable to State; and

(b) as soon as available, and in any event, within thirty (30) days following the end of each calendar month, a copy of the financial statements of Borrower regarding such calendar month, including balance sheet, statement of income and retained earnings, statement of cash flows for the calendar month then ended and such other information

(including nonfinancial information) as State may request, in reasonable detail, prepared and certified as accurate by Borrower.

No change with respect to such accounting principles shall be made by Borrower without giving prior notification to State. Borrower represents and warrants to State that the financial statements delivered to State at or prior to the execution and delivery of this Agreement and to be delivered at all times thereafter accurately reflect and will accurately reflect the financial condition of Borrower. State shall have the right at all times during business hours to inspect the books and records of Borrower and make extracts therefrom. Borrower agrees to advise State immediately of any adverse change in the financial condition, the operations or any other status of Borrower

**8.10 Supplemental Financial Statements.** Borrower shall immediately upon receipt thereof, provide to State copies of interim and supplemental reports if any, submitted to Borrower by independent accountants in connection with any interim audit or review of the books of Borrower.

**8.11 Covenant Compliance Report.** Borrower shall, within thirty (30) days after the end of fiscal quarter commencing with the first fiscal quarter completed subsequent to the date hereof, deliver to State a report showing compliance by Borrower with the financial covenants set forth in Article 9 hereof in a form and in such detail as State may specify, and certified as accurate by Borrower.

**8.12 Other Reports.** Borrower shall, within such period of time as State may specify, deliver to State such other schedules and reports as State may require.

**8.13 Collateral Records.** Borrower shall keep full and accurate books and records relating to the Collateral and shall mark such books and records to indicate State's Lien in the Collateral including, without limitation, placing a legend, in form and content acceptable to State, on all Chattel Paper created by Borrower indicating that State has a Lien in such Chattel Paper.

**8.14 Notice of Proceedings.** Borrower shall, immediately after knowledge thereof shall have come to the attention of any officer of Borrower, give written notice to State of all threatened or pending actions, suits, and proceedings before any court or governmental department, commission, board or other administrative agency which may have a material effect on the business, property or operations of Borrower.

**8.15 Notice of Default.** Borrower shall, immediately after the commencement thereof, give notice to State in writing of the occurrence of an Event of Default or of any Unmatured Event of Default.

**8.16 Covenants Regarding Collateral.**

(a) Immediately upon Borrower's receipt of that portion of the Collateral, if any, that is evidenced by an agreement, instrument and/or document, including promissory notes, documents of title and warehouse receipts [collectively the "Special Collateral"] for the purpose of perfecting

State's security interest in such Special Collateral, Borrower shall deliver the original thereof to State, together with appropriate endorsements and/or specific evidence of the assignment thereof to State, in form and substance acceptable to State.

**(b)** If and to the extent that any of the Collateral is evidenced by, or arises under, any contract with the United States of America or any agency or instrumentality thereof, Borrower will immediately notify State of same.

**(c)** Borrower and Guarantor covenant and agree with State as follows:

(i) Borrower and Guarantor will not hereafter grant a security interest in the Collateral, or sell the Collateral to any other Person, except as specifically permitted by this Agreement.

(ii) Borrower and Guarantor will at all times defend the Collateral against any and all claims of any Person adverse to the claims of State.

**(d)** Borrower shall permit State to inspect and evaluate the Collateral and any books and records of Borrower relating thereto at all reasonable times and to verify any Accounts by any method satisfactory to State, all at the expense and risk of Borrower, provided that State (i) provides to Borrower three (3) Business Days advance notice and (ii) shall only be reimbursed for one (1) complete inspection of all the Collateral during any twelve (12) month period unless an Event of Default has occurred.

**(e)** With respect to Accounts pertaining to Borrower's or and Guarantor's lease or rental of Rolling Stock, Borrower and Guarantor shall:

(i) promptly upon Borrower's learning thereof, inform State in writing of any delay in Borrower's performance of any of its obligations to any Account Debtor and of any assertion of any claims, offsets or counterclaims by any Account Debtor and of any extraordinary allowances, credits and/or other monies granted by Borrower to any Account Debtor;

(ii) not permit or agree to any extension, compromise or settlement or make any change or modification of any kind or nature with respect to any Accounts, including any of the terms relating thereto, unless such action is taken in the ordinary course of Borrower's business and State is contemporaneously notified thereof;

(iii) promptly upon Borrower's receipt or learning thereof, furnish to and inform State of all material adverse information relating to the financial condition of any Account Debtor; and

(iv) keep all goods returned by any Account Debtor and all goods repossessed or stopped in transit by Borrower from any Account Debtor segregated from the other property of Borrower, immediately notify State of Borrower's possession of such goods and hold the same as trustee for State until otherwise directed in writing by State.

(f) Borrower and Guarantor shall keep and maintain the Rolling Stock in good operating condition and repair and shall make all necessary replacements thereof and renewals thereto so that the value and operating efficiency thereof shall at all times be maintained and preserved; provided, however, that Borrower may (i) sell obsolete Rolling Stock for a price that reasonably approximates its fair market value if the proceeds thereof are contemporaneously reinvested in replacement Rolling Stock or are paid directly to State, (ii) lease Rolling Stock in the ordinary course of business (so long as Borrower amends the Assignment of Rents and Leases to include all Rolling Stock being leased) and (iii) sell Rolling Stock in the ordinary course of business provided that immediately upon receipt of the sales proceeds, it repays to State the Term Loan in accordance with Section 2.1 hereof.

**8.17 Annual Appraisal.** On each annual anniversary of this Agreement, State shall engage the Appraiser to conduct a "desk-top" appraisal of all of Borrower's Rolling Stock (both on lease and off lease). State shall instruct the Appraiser to provide a copy of its appraisal report to Borrower. Borrower shall pay all reasonable costs in connection with the annual appraisals.

## 9. FINANCIAL COVENANTS.

**9.1 Tangible Net Worth.** As of the end of each fiscal quarter, Borrower and Guarantor shall maintain Tangible Net Worth in an amount not less \$2,000,000.00.

**9.2 Debt Service Coverage Ratio.** As of the end of each fiscal quarter, Borrower and Guarantor shall maintain for the then-completed Computation Period a ratio of (i) the difference between (A) EBITDA and (B) Capital Expenditures to (ii) the sum of (A) Interest Charges paid in cash during such Computation Period, plus (B) the aggregate amount of principal payments on Funded Indebtedness due and payable during such Computation Period, of not less than 1.25 to 1.00.

## 10. EVENTS OF DEFAULT.

Borrower, without notice or demand of any kind, shall be in default under this Agreement upon the occurrence of any of the following events (each an "Event of Default").

**10.1 Nonpayment of Obligations.** Any amount due and owing on the Term Note or any of the Obligations (including any Rate Management Obligation), whether by its terms or as otherwise provided herein, is not paid within five (5) Business Days of its due date.

**10.2 Misrepresentation.** Any written warranty, representation, certificate or statement in this Agreement, the Loan Documents or any other agreement with State shall be false in any material respect when made or at any time.

**10.3 Nonperformance.** Any failure to perform or default in the performance of any covenant, condition or agreement contained in this Agreement, other than Sections expressly referred to in this Article 10, and if capable of being cured, such failure to perform or default in performance continues for a period of thirty (30) days after Borrower receives notice or knowledge from any source of such failure to perform or default in performance.

**10.4 Default under Loan Documents.** A failure to perform or default under any of the other Loan Documents, including any Rate Management Agreements with State, and such failure to perform or default continues beyond the applicable grace or cure, all of which covenants, conditions and agreements contained therein are hereby incorporated in this Agreement by express reference, shall be and constitute an Event of Default under this Agreement and any other of the Obligations.

**10.5 Assignment for Creditors.** Any Obligor makes an assignment for the benefit of creditors, fails to pay, or admits in writing its inability to pay its debts as they mature; or if a trustee of any substantial part of the assets of any Obligor is applied for or appointed, and in the case of such trustee being appointed in a proceeding brought against such Obligor, the Obligor, by any action or failure to act indicates its approval of, consent to, or acquiescence in such appointment and such appointment is not vacated, stayed on appeal or otherwise shall not have ceased to continue in effect within sixty (60) days after the date of such appointment.

**10.6 Bankruptcy.** Any proceeding involving any Obligor, is commenced by or against such Obligor under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute of the federal government or any state government, and in the case of any such proceeding being instituted against such Obligor, (a) such Obligor, by any action or failure to act indicates its approval of, consent to or acquiescence therein, or (b) an order shall be entered approving the petition in such proceedings and such order is not vacated, stayed on appeal or otherwise shall not have ceased to continue in effect within thirty (30) days after the entry thereof.

**10.7 Judgments.** The entry of any judgment, decree, levy, attachment, garnishment or other process, or the filing of any Lien against any Obligor that is not fully covered by insurance and such judgment or other process shall not have been, within thirty (30) days from the entry thereof, either (a) bonded over to the satisfaction of State and appealed, (b) vacated, or (c) discharged.

**10.8 Change in Control.** Any sale, conveyance, assignment or other transfer, directly or indirectly, of any ownership interest of Borrower, that results in any change in the identity of the individuals or entities previously in control of Borrower or the grant of a security interest in any ownership interest of any Person, directly or indirectly controlling Borrower, that could result in a change in the identity of the individuals or entities previously in control of Borrower. For the purpose hereof, the terms "control" or "controlling" shall mean the possession of the power to direct, or cause the direction of, the management and policies of Borrower by contract or voting of securities.

**10.9 Collateral Impairment.** The entry of any judgment, decree, levy, attachment, garnishment or other process, or the filing of any Lien against, any of the Collateral or any collateral under a separate security agreement securing any of the Obligations and such judgment or other process shall not have been, within thirty (30) days from the entry thereof; (a) bonded over to the satisfaction of State and appealed, (b) vacated, or (c) discharged, or the loss, theft, destruction, seizure or forfeiture, or the occurrence of any material deterioration or impairment

of any of the Collateral or any of the collateral under any security agreement securing any of the Obligations, or any material decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), that causes the Collateral, in the sole opinion of State acting in good faith, to become unsatisfactory as to value or character, or that causes State to reasonably believe that it is insecure and that the likelihood for repayment of the Obligations is or will soon be impaired, time being of the essence. The cause of such deterioration, impairment, decline or depreciation shall include, but is not limited to, the failure by Borrower to do any act deemed necessary by State to preserve and maintain the value and collectability of the Collateral.

## 11. REMEDIES.

Upon the occurrence of an Event of Default, State shall have all rights, powers and remedies set forth in the Loan Documents, in any written agreement or instrument (other than this Agreement or the Loan Documents) relating to any of the Obligations or any security therefore, or as otherwise provided at law or in equity. Without limiting the generality of the foregoing, State may, at its option upon the occurrence of an Event of Default, declare its commitments to Borrower to be terminated and all Obligations to be immediately due and payable, provided, however, that upon the occurrence of an Event of Default under either Section 10.5, "Assignment for Creditors", or Section 10.6, "Bankruptcy", all commitments of State to Borrower shall immediately terminate and all Obligations shall be automatically due and payable; all without demand, notice or further action of any kind required on the part of State. Borrower hereby waives any and all presentment, demand, notice of dishonor, protest, and all other notices and demands in connection with the enforcement of State's rights under the Loan Documents, and hereby consents to, and waives notice of release, with or without consideration, of any of Borrower or of any Collateral, notwithstanding anything contained herein or in the Loan Documents to the contrary. In addition to the foregoing:

**11.1 Possession and Assembly of Collateral.** Upon the occurrence of an Event of Default, State may, without notice, demand or legal process of any kind, take possession of any or all of the Collateral (in addition to Collateral of which State already has possession), wherever it may be found, and for that purpose may pursue the same wherever it may be found, and may enter into any of Borrower's premises where any of the Collateral may be or is supposed to be, and search for, take possession of, remove, keep and store any of the Collateral until the same shall be sold or otherwise disposed of and State shall have the right to store the same in any of Borrower's premises without cost to State. At State's request Borrower will, at Borrower's sole expense, assemble the Collateral and make it available to State at a place or places to be designated by State which is reasonably convenient to State and Borrower.

**11.2 Sale of Collateral.** Upon the occurrence of an Event of Default, State may sell any or all of the Collateral at public or private sale, upon such terms and conditions as State may deem proper, and State may purchase any or all of the Collateral at any such sale. State may apply the net proceeds, after deducting all costs, expenses, attorneys' and paralegals' fees incurred or paid at any time in the collection, protection and sale of the Collateral and the Obligations, to

the payment of the Term Note and/or any of the other Obligations, returning the excess proceeds, if any, to Borrower. Borrower shall remain liable for any amount remaining unpaid after such application, with interest. Any notification of intended disposition of the Collateral required by law shall be conclusively deemed reasonably and properly given if given by State at least ten (10) calendar days before the date of such disposition. Borrower hereby confirms, approves and ratifies all acts and deeds of State relating to the foregoing, and each part thereof.

**11.3 Standards for Exercising Remedies.** To the extent that applicable law imposes duties on State to exercise remedies in a commercially reasonable manner, Borrower acknowledges and agrees that it is not commercially unreasonable for State (a) to fail to incur expenses reasonably deemed significant by State to prepare Collateral for disposition or otherwise to complete raw material or work-in-process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as Borrower, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, including, without limitation, any warranties of title, (k) to purchase insurance or credit enhancements to insure State against risks of loss, collection, or disposition of Collateral or to provide to State a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by State, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist State in the collection or disposition of any of the Collateral. Borrower acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by State would not be commercially unreasonable in State's exercise of remedies against the Collateral and that other actions or omissions by State shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 11.3. Without limitation upon the foregoing, nothing contained in this Section 11.3 shall be construed to grant any rights to Borrower or to impose any duties on State that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 11.3.

**11.4 UCC and Offset Rights.** Upon the occurrence of an Event of Default, State may exercise, from time to time, any and all rights and remedies available to it under the UCC or under any other applicable law in addition to, and not in lieu of, any rights and remedies expressly granted

in this Agreement or in any other agreements between any Obligor and State, and may, without demand or notice of any kind, appropriate and apply toward the payment of such of the Obligations, whether matured or unmatured, including costs of collection and attorneys' and paralegals' fees, and in such order of application as State may, from time to time, elect, any indebtedness of State to any Obligor, however created or arising, including, but not limited to, balances, credits, deposits, accounts or moneys of such Obligor in the possession, control or custody of, or in transit to State, Borrower, on behalf of itself and each Obligor, hereby waives the benefit of any law that would otherwise restrict or limit State in the exercise of its right, which is hereby acknowledged, to appropriate at any time hereafter any such indebtedness owing from State to any Obligor.

**11.5 Additional Remedies.** Upon the occurrence of an Event of Default, State shall have the right and power to:

(a) instruct Borrower, at its own expense, to notify any parties obligated on any of the Collateral, including, but not limited to, any Account Debtors, to make payment directly to State of any amounts due or to become due thereunder, or State may directly notify such obligors of the security interest of State, and/or of the assignment to State of the Collateral and direct such obligors to make payment to State of any amounts due or to become due with respect thereto, and thereafter, collect any such amounts due on the Collateral directly from such Persons obligated thereon;

(b) enforce collection of any of the Collateral, including, but not limited to, any Accounts, by suit or otherwise, or make any compromise or settlement with respect to any of the Collateral, or surrender, release or exchange all or any part thereof, or compromise, extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder;

(c) take possession or control of any proceeds and products of any of the Collateral, including the proceeds of insurance thereon;

(d) extend, renew or modify for one or more periods (whether or not longer than the original period) the Term Note, any other of the Obligations, any obligations of any nature of any other obligor with respect to the Term Note or any of the Obligations;

(e) grant releases, compromises or indulgences with respect to the Note, any of the Obligations, any extension or renewal of any of the Obligations, any security therefore, or to any other obligor with respect to the Term Note or any of the Obligations;

(f) transfer the whole or any part of securities which may constitute Collateral into the name of State or State's nominee without disclosing, if State so desires, that such securities so transferred are subject to the security interest of State, and any corporation, association, or any of the managers or trustees of any trust issuing any of said securities, or any transfer agent, shall not be bound to inquire, in the event that State or said nominee makes any further transfer of said securities, or any portion thereof, as to

whether State or such nominee has the right to make such further transfer, and shall not be liable for transferring the same;

(g) vote the Collateral, where applicable;

(h) make an election with respect to the Collateral under Section 1111 of Bankruptcy Code or take action under Section 364 or any other section of Bankruptcy Code; provided, however, that any such action of State as set forth herein shall not, in any manner whatsoever, impair or affect the liability of Borrower hereunder, nor prejudice, waive, nor be construed to impair, affect, prejudice or waive State's rights and remedies at law, in equity or by statute, nor release, discharge, nor be construed to release or discharge, Borrower, any guarantor or other Person liable to State for the Obligations;

(i) at any time, and from time to time, accept additions to, releases, reductions, exchanges or substitution of the Collateral, without in any way altering, impairing, diminishing or affecting the provisions of this Agreement, the Loan Documents, or any of the other Obligations, or State's rights hereunder, under the Term Note or under any of the other Obligations.

(j) assess interest at the Default Rate.

Borrower hereby ratifies and confirms whatever State may do with respect to the Collateral and agrees that State shall not be liable for any error of judgment or mistakes of fact or law with respect to actions taken in connection with the Collateral.

**11.6 Attorney-in-Fact.** Borrower hereby irrevocably makes, constitutes and appoints State (and any officer of State or any Person designated by State for that purpose) as Borrower's true and lawful proxy and attorney-in-fact (and agent-in-fact) in Borrower's name, place and stead, with full power of substitution, to (a) take such actions as are permitted in this Agreement, (b) execute and/or file such financing statements and other documents and to do such other acts as State may require to perfect and preserve State's security interest in, and to enforce such interests in the Collateral, and (c) upon the occurrence of an Event of Default, carry out any remedy provided for in this Agreement, including, without limitation, endorsing Borrower's name to checks, drafts, instruments and other items of payment, and proceeds of the Collateral, executing change of address forms with the postmaster of the United States Post Office serving the address of Borrower, changing the address of Borrower to that of State, opening all envelopes addressed to Borrower and applying any payments contained therein to the Obligations. Borrower hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. Borrower hereby ratifies and confirms all that said attorney-in-fact may do or cause to be done by virtue of any provision of this Agreement.

**11.7 No Marshaling.** State shall not be required to marshal any present or future collateral security (including but not limited to this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other

assurances of payment in any particular order. To the extent that it lawfully may, Borrower hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of State's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, Borrower hereby irrevocably waives the benefits of all such laws.

**11.8 Application of Proceeds.** State will within five (5) Business Days after receipt of cash or solvent credits from collection of items of payment, proceeds of Collateral or any other source, apply the whole or any part thereof against the Obligations secured hereby. State shall further have the exclusive right to determine how, when and what application of such payments and such credits shall be made on the Obligations, and such determination shall be conclusive upon Borrower. Any proceeds of any disposition by State of all or any part of the Collateral may be first applied by State to the payment of expenses incurred by State in connection with the Collateral, including attorneys' fees and legal expenses as provided for in Article 12 hereof.

**11.9 No Waiver.** No Event of Default shall be waived by State except in writing. No failure or delay on the part of State in exercising any right, power or remedy hereunder shall operate as a waiver of the exercise of the same or any other right at any other time; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. There shall be no obligation on the part of State to exercise any remedy available to State in any order. The remedies provided for herein are cumulative and not exclusive of any remedies provided at law or in equity. Borrower agrees that in the event that Borrower fails to perform, observe or discharge any of its Obligations or liabilities under this Agreement or any other agreements with State, no remedy of law will provide adequate relief to State, and further agrees that State shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

## 12. MISCELLANEOUS.

**12.1 Obligations Absolute.** None of the following shall affect the Obligations of Borrower to State under this Agreement or State's rights with respect to the Collateral:

- (a) acceptance or retention by State of other property or any interest in property as security for the Obligations;
- (b) release by State of Borrower or of all or any part of the Collateral or of any party liable with respect to the Obligations;
- (c) release, extension, renewal, modification or substitution by State of the Promissory Note, or any note evidencing any of the Obligations; or

(d) failure of State to resort to any other security or to pursue Borrower or any other obligor liable for any of the Obligations before resorting to remedies against the Collateral.

**12.2 Subcontractors.** The Commission acknowledges and agrees that the Services to be provided under this Agreement may be performed in whole or in part by outside contractors and subcontractors. Borrower shall be responsible for the quality of the Services performed by its contractors and subcontractors under this Agreement, including proper insurance, licensure, and compliance with Mississippi law at all times during performance of the Agreement.

**12.3 Publicity.** No information relative to this Agreement or the execution thereof shall be released by either Party for publication, advertising or for any other purpose without the prior written approval of the other Party. Unless the Commission or Borrower consents prior to any such use, no publicity or advertising by or on behalf of either Party shall mention the name of the other Party, the name of the other Party or any agency or company logos for any purpose. This Agreement shall not be deemed to mean that either Party endorses or supports the services of the other Party or its subcontractors and vendors. Further, neither Party will use the other Parties' name or logo or issue any press releases pertaining to the Agreement.

**12.4 Entirety; Amendment.** This Agreement and all exhibits and documents hereto constitutes the entire and integrated final Agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral, including all terms of any unsigned or "shrink-wrap" license included in any materials, packages, media or electronic software. With respect to other documents, exhibits and attachments, the Parties intend this Agreement to have the highest precedence and priority. The Borrower acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. The State agrees that no representation of any negotiator, engineer, officer or employee of Borrower or its designee or any contractor or vendor engaged by Borrower or its designee shall operate to vary the written terms hereof. No prior course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition or instruction used in this Agreement, nor be deemed to effect any amendment. This Agreement may be modified, altered or changed only by written agreement signed by the Parties hereto. No amendment, modification, termination, discharge or waiver of any provision of this Agreement or of the Loan Documents, or consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by State, and then such waiver or consent shall be effective only for the specific purpose for which given. The Parties agree to renegotiate this Agreement if Federal, state and/or the Commission revisions of any applicable laws or regulations make changes in this Agreement necessary.

**12.5 Third Party Rights and Actions.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Parties and their successors and assigns. The Borrower shall notify the Commission in writing within five (5) business days of its receipt of

liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Borrower or the Commission by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Borrower's performance under this Contract. Failure of the Borrower to provide such written notice to the Commission shall be considered a material breach of this Agreement and the Commission may, at its sole discretion, pursue its rights as set forth in the herein and any other remedies it may have at law or in equity

**12.6 WAIVER OF DEFENSES.** BORROWER, ON BEHALF OF ITSELF AND ANY GUARANTORS OF ANY OF THE OBLIGATIONS, WAIVES EVERY PRESENT AND FUTURE DEFENSE, CAUSE OF ACTION, COUNTERCLAIM OR SETOFF THAT BORROWER MAY NOW HAVE OR HEREAFTER MAY HAVE TO ANY ACTION BY STATE IN ENFORCING THIS AGREEMENT. BORROWER WAIVES ANY IMPLIED COVENANT OF GOOD FAITH AND RATIFIES AND CONFIRMS WHATEVER STATE MAY DO PURSUANT TO THE TERMS OF THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR STATE GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER.

**12.7 WAIVER OF JURY TRIAL.** STATE AND BORROWER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE PROMISSORY NOTE OR ANY OF THE OTHER OBLIGATIONS, THE COLLATERAL, OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH STATE AND BORROWER ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR STATE GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER.

**12.8 LITIGATION.** TO INDUCE STATE TO MAKE THE LOAN, BORROWER IRREVOCABLY AGREES THAT ALL ACTIONS ARISING, DIRECTLY OR INDIRECTLY, AS A RESULT OR CONSEQUENCE OF THIS AGREEMENT, THE PROMISSORY NOTE, ANY OTHER AGREEMENT WITH STATE OR THE COLLATERAL, SHALL BE INSTITUTED AND LITIGATED ONLY IN COURTS HAVING THEIR SITUS IN THE CITY OF JACKSON, MISSISSIPPI. BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT HAVING ITS SITUS IN SAID CITY, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS.

**12.9 Assignability.** State may at any time assign State's rights in this Agreement, the Term Note, any of the Loan Documents, the Obligations, or any part thereof and transfer State's rights in any or all of the Collateral and State thereafter shall be relieved from all liability with respect to such Collateral. In addition, State may at any time sell one or more participations in the Term Loan. Borrower may not sell or assign this Agreement, any of the Loan Documents or any other agreement with State or any portion thereof, either voluntarily or by operation of law, without the

prior written consent of State. This Agreement shall be binding upon State and Borrower and their respective legal representatives and successors. All references herein to Borrower shall be deemed to include any successors, whether immediate or remote. In the case of a joint venture or partnership, the term "Borrower" shall be deemed to include all joint venturers or partners thereof, who shall be jointly and severally liable hereunder.

**12.10 Not a Joint Venture.** This Agreement does not and shall not be construed to establish a partnership, joint venture or other form of business arrangement between the State and Borrower. Borrower shall at no time act as an agent for the State. No act performed or representation made, whether oral or written, by the Borrower with respect to third parties shall be binding on the State. Neither the Borrower nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Commission and the Commission shall at no time be legally responsible for any negligence or other wrongdoing by the Borrower, its servants, agents, or employees.

**12.11 Confidentiality.** Except as otherwise provided in this Agreement, all material claimed by a party or affiliate to be Confidential Information shall be so marked by stamping it with a designation indicating its confidential nature and the Parties agree that all Confidential Information shall be kept in confidence and shall not, without the prior written consent of the disclosing Party, be disclosed by the receiving Party in any manner whatsoever, in whole or in part, and that the receiving Party shall use the Confidential Information disclosed to the receiving Party solely for the purposes of this Agreement unless otherwise specifically authorized in writing by the disclosing Party, or specifically required by an order of a regulatory agency or court of competent jurisdiction, in which case the receiving Party shall first notify the disclosing Party in writing of the order and permit the disclosing Party to seek an appropriate protective order. Notwithstanding the foregoing, a receiving Party may disclose Confidential Information to its employees, attorneys, agents, parent corporation, partnership or member organization and its and their employees, agents and representatives, provided such disclosure is made only to those persons with a legitimate need to know such Confidential Information for purposes consistent with this Agreement. Borrower and State further agree that this provision shall survive the termination of this Agreement.

**12.12 Binding Effect.** This Agreement shall become effective upon execution by Borrower and State. If this Agreement is not dated or contains any blanks when executed by Borrower, State is hereby authorized, without notice to Borrower, to date this Agreement as of the date when it was executed by Borrower, and to complete any such blanks according to the terms upon which this Agreement is executed.

**12.13 Governing Law.** This Agreement shall be governed and construed by any and all applicable laws of the State of Mississippi, without reference to any conflict of laws doctrine, except where the Federal Supremacy Clause requires otherwise. Parties agree that the venue for resolution of any dispute shall be a state or Federal court of competent jurisdiction located Jackson, Hinds County, Mississippi.

**12.14 Severability; Enforceability.** If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed. In such event, the parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

**12.15 Survival of Borrower Representations.** Neither completion of performance nor any termination or cancellation of this Agreement shall be deemed to relieve either Party of any obligations hereunder that by their nature survive completion of performance, including but not limited to, all confidentiality obligations. All covenants, agreements, representations and warranties made by Borrower herein shall, notwithstanding any investigation by State, be deemed material and relied upon by State and shall survive the making and execution of this Agreement and the Loan Documents and the issuance of the Promissory Note, and shall be deemed to be continuing representations and warranties until such time as Borrower has fulfilled all of its Obligations to State, and State has been paid in full. State, in extending financial accommodations to Borrower, is expressly acting and relying on the aforesaid representations and warranties.

**12.16 Extensions of State's Commitment and Term Note.** This Agreement shall secure and govern the terms of any extensions or renewals of State's commitment hereunder and the Term Note pursuant to the execution of any modification, extension or renewal note executed by Borrower and accepted by State in its sole and absolute discretion in substitution for the Promissory Note.

**12.17 Time of Essence.** Time is of the essence in making payments of all amounts due State under this Agreement and in the performance and observance by Borrower of each covenant, agreement, provision and term of this Agreement

**12.18 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

**12.19 Facsimile Signatures.** State is hereby authorized to rely upon and accept as an original any Loan Documents or other communication which is sent to State by facsimile, telegraphic or other electronic transmission (each, a "Communication") that State in good faith believes has been signed or otherwise authenticated by Borrower and has been delivered to State by a properly authorized representative of Borrower, whether or not that is in fact the case. Notwithstanding the foregoing, State shall not be obligated to accept any such Communication as an original and may in any instance require that an original document be submitted to State in lieu of, or in addition to, any such Communication.

**12.20 Notices.** Except as otherwise provided herein, Borrower waives all notices and demands in connection with the enforcement of State's rights hereunder. All notices, requests, demands and other communications provided for hereunder shall be in writing, sent by certified or registered mail, postage prepaid, by facsimile, telegram or delivered in person, and addressed as follows:

If to Borrower:

Ed Ellis, President  
Grenada Railroad, LLC  
118 S. Clinton Street, Suite 400  
Chicago, Illinois 60661  
Telephone: 312-348-6080  
Cellphone: 312-545-7245  
Facsimile: \_\_\_\_\_

If to State:

Josh C. Stubbs, P.E.  
Rails Engineer, Traffic Engineering Division  
Mississippi Department of Transportation  
P. O. Box 1850  
Jackson, Mississippi 39215 1850  
Telephone: 601-359-1454  
Facsimile: 601-359-5918

or, as to each party, at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this subsection. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

**12.21 Indemnification.** Borrower agrees to defend (with counsel satisfactory to State), protect, indemnify and hold harmless each Indemnified Party from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and distributions of any kind or nature (including, without limitation, the disbursements and the reasonable fees of counsel for each Indemnified Party thereto, which shall also include, without limitation, attorneys' fees and time charges of attorneys who may be employees of State, any parent corporation or affiliated corporation of State), which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential) and whether based on any federal, state or local laws or regulations, including, without limitation, securities, Environmental Laws and commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Agreement or any of the Loan Documents, or any act, event or transaction related or attendant thereto, the preparation, execution and delivery of this Agreement and the Loan Documents, including, but not limited to, the making or issuance and management of the Term Loan, the use or intended use of the proceeds of the Term Loan, the enforcement of State's rights and remedies under this

Agreement, the Loan Documents, the Term Note, any other instruments and documents delivered hereunder, or under any other agreement between Borrower and State; provided, however, that Borrower shall not have any obligations hereunder to any Indemnified Party with respect to matters caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and, failing prompt payment, shall, together with interest thereon at the Default Rate from the date incurred by each Indemnified Party until paid by Borrower, be added to the Obligations of Borrower and be secured by the Collateral. The provisions of this Section 12.21 shall survive the satisfaction and payment of the other Obligations and the termination of this Agreement.

**12.22 Costs, Fees and Expenses.** Borrower shall pay or reimburse State for all reasonable costs, fees and expenses incurred by State or for which State becomes obligated in connection with the negotiation, preparation, consummation, collection of the Obligations or enforcement of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith (including any amendment, supplement or waiver to any Loan Document), or during any workout, restructuring or negotiations in respect thereof, including reasonable consultants' fees and attorneys' fees and time charges of counsel to the State. Any invoice for same shall be considered due upon receipt and deemed delinquent if not paid with thirty (30) days of the date of State's invoice.

**12.23 Administrative Resolution of Disputes:** Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Borrower and Commission, following a good faith first attempt to negotiate a written resolution of such dispute or claim for a period not to exceed thirty (30) days from the date of receipt of a Party's request for such negotiation, shall be decided by the Executive Director of MDOT or his/her designee, consistent with the MDOT policies and procedures regarding permits and encroachments. This decision shall be reduced to writing and a copy thereof mailed or furnished to the Borrower. The decision of the Executive Director or his/her designee shall be final and conclusive, unless within fifteen (15) days from the date of receipt of the decision, the Borrower submits a written request for review of the decision by the Commission. The Commission shall render its decision in writing within thirty (30) days from the date of hearing and a copy thereof mailed or furnished to the Borrower. Disagreement with such decision by either Party shall not constitute a breach under the terms of this Agreement. Nothing in this paragraph shall abridge the right of either Party to seek such other rights and remedies it may have at law or in equity, however, Borrower expressly agrees to exhaust their administrative remedies before resorting to litigation in seeking redress of its grievances under this Agreement.

**12.24 Disclosure.** This Agreement and the transactions contemplated herein are covered records subject to the Mississippi Public Records Act, § 25-61-1, Mississippi Code of 1972, as amended. Notice is hereby given that the Act is not modeled on the records act of any other

state, nor does it track any federal counterpart including the Freedom of Information Act. All records relating to this Agreement shall be retained by Borrower for three (3) years following the expiration or termination of said permitted encroachment; however, if any dispute, litigation or other legal action by or for the Commission has begun that is not completed at the end of the three (3) year period or if an audit finding, litigation, or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until three years after resolution.

**12.25 No Gratuities:** Under penalty of perjury, Borrower attests that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 7-204 (Gratuities) in the current version of the Mississippi Personal Service Contract Procurement Regulations, a copy of which is available at the offices of the Mississippi Personal Service Contract Review Board, 301 North Lamar Street, Jackson, MS, for inspection or the Board's internet web site at: <http://www.spb.state.ms.us>.

**12.26 E-Verify.** Borrower represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code of 1972 as amended, and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify™ Program, or any other successor electronic verification system replacing the E-Verify™ Program. Borrower agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Borrower further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Borrower understands and agrees that any breach of these warranties may subject Borrower to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Borrower by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Borrower would also be liable for any additional costs incurred by the State due to cancellation of this Agreement or loss of license or permit. As of July 1, 2008, the Borrower is required to provide the MDOT a Certification and Agreement prior to the execution of the Agreement. The Borrower is solely responsible for compliance with the requirements of the Mississippi Employment Protection Act and verifying that its subcontractors, if any, are registered and participating in E-Verify™ prior to execution of this Agreement.

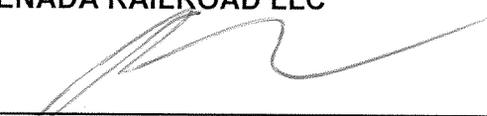
**12.26 Joint and Several Liability.** All the obligations of each Borrower hereunder shall be joint and several, provided however, that the liability of each Borrower hereunder shall not exceed the maximum amount not subject (but for provisions of this provision) to avoidance under the

Bankruptcy Code. To that end, only to the extent such obligations would otherwise be subject to avoidance under the Bankruptcy Code, if a Borrower is not deemed to have received valuable consideration, fair value or reasonably equivalent value for its obligations hereunder, such Borrower's obligations hereunder shall be reduced to that amount that, after giving effect thereto, would not render such Borrower insolvent, or leave such Borrower with an unreasonably small capital to conduct its business, or cause such Borrower to have incurred debts (or intended to have incurred debts) beyond its ability to pay such debts as they mature, at the time such obligations are deemed to have been incurred under the Bankruptcy Code. As used herein, the terms "insolvent" and "unreasonably small capital" shall likewise be determined in accordance with the Bankruptcy Code, This paragraph is intended solely to preserve the rights of State hereunder to the maximum extent not subject to avoidance under the Bankruptcy Code, and no Borrower nor any other Person shall have any right or claim under this paragraph with respect to the limitation described herein, except to the extent necessary so that the obligations of a Borrower hereunder shall not be rendered voidable under the Bankruptcy Code.

**12.27 Further Assurances:** From time to time hereafter, each Party will execute and deliver, or will cause to be executed and delivered, such additional instruments, certificates or documents, and will take all such actions, as the other Party may reasonably request, for the purpose of implementing and/or effectuating the provisions of this Agreement

**IN WITNESS WHEREOF,** Borrower and State have executed this Loan and Security Agreement as of the date first above written.

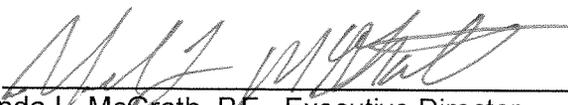
**BORROWER  
GRENADA RAILROAD LLC**

By:   
Edwin E. Ellis, President

**GUARANTOR  
IOWA-PACIFIC HOLDINGS LLC**

By:   
Edwin E. Ellis, President

**MISSISSIPPI TRANSPORTATION COMMISSION,**  
by and through the duly authorized Executive  
Director of the Mississippi Department of  
Transportation

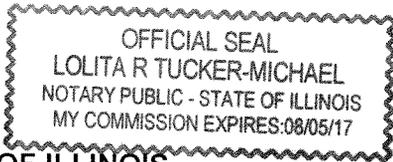
By:   
Melinda L. McGrath, P.E., Executive Director  
Mississippi Department of Transportation

*Dm 20 05 24 2*

STATE OF ILLINOIS  
COUNTY OF COOK:

Personally appeared before me, the undersigned authority in and for the said county and state, on this 7TH day of SEPTEMBER, 2016, within my jurisdiction, the within named Edwin E. Ellis, who acknowledged that he is President of Grenada Railroad LLC of Chicago, Illinois, an Illinois limited liability company, and that for and on behalf of the said company, and as its act and deed he executed the above and foregoing Loan and Security Agreement, after first having been duly authorized by said company so to do.

(SEAL)



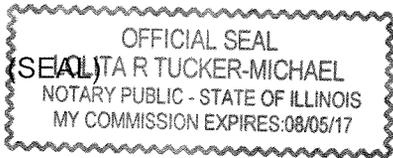
*Lolita R Tucker-Michael*

NOTARY PUBLIC

My commission expires: 8.5.17

STATE OF ILLINOIS  
COUNTY OF COOK:

Personally appeared before me, the undersigned authority in and for the said county and state, on this 7TH day of SEPTEMBER, 2016, within my jurisdiction, the within named Edwin E. Ellis, who acknowledged that he is President of Iowa-Pacific Holdings LLC of Chicago, Illinois, an Illinois limited liability company, and that for and on behalf of the said company, and as its act and deed he executed the above and foregoing Loan and Security Agreement, after first having been duly authorized by said company so to do.



*Lolita R Tucker-Michael*

NOTARY PUBLIC

My commission expires: 8.5.17

STATE OF MISSISSIPPI  
COUNTY OF HINDS:

Personally appeared before me, the undersigned authority in and for the said county and state, on this 7th day of Sept., 2016, within my jurisdiction, the within named Melinda L. McGrath, who acknowledged that she is Executive Director of the Mississippi Department of Transportation, a body politic of the Mississippi Transportation Commission, a public body corporate and politic, and that for and on behalf of the said department and commission respectively, and as its act and deed she executed the above and foregoing Loan and Security Agreement, after first having been duly authorized by said company so to do.

(SEAL)

*Melinda L. McGrath*

NOTARY PUBLIC

SECRETARY

MISSISSIPPI TRANSPORTATION COMMISSION  
EX OFFICIO NOTARY PUBLIC

My commission expires: \_\_\_\_\_

**Exhibit A - Project Description and Cost Estimate**

**Exhibit B - Supplemental Project Specifications**

**Exhibit C - Rolling Stock Collateral and Location**

“Pooled assets pledged as recourse shall be released or substituted on maturity or early redemption in ascending order of stated/appraised collateral value. The Executive Director of MDOT shall have the authority to release and substitute collateral only on maturity or early redemption.”

**Exhibit D - Borrower's Principal Office and Places of Business**

**Exhibit E – Corporate Guaranty**

**EXHIBIT A**

# Grenada Railroad Development Program

This document describes the facilities and equipment affected by the Grenada Railroad Development Program are the properties and operations of the Grenada Railroad (GRYR) located in north central Mississippi, and provides a description of the proposed project along with cost estimates.

## Mainline Infrastructure, Condition and Capacity

The core of the Grenada Railroad (GRYR) is a single-track mainline (the “Grenada Subdivision”) running south from the Tennessee-Mississippi border (Milepost 403 designated as “Mississee” interchange, at the city of Southaven, Mississippi) 175.4 miles to a point just north of Canton, Mississippi (Milepost 703.8 designated as “Annalyn” interchange). Both interchange points physically connect with the Canadian National Railroad (the former Illinois Central Railroad). From Mississee the CN tracks lead north to their Memphis Yard and connections to the BNSF Railroad, Norfolk Southern Railroad, Union Pacific Railroad and CSX Transportation. From Annalyn the CN tracks lead to CN’s North Jackson Yard and interchange with the Kansas City Southern. There are ten major stations running north to south: Horn Lake, Hernando, Batesville, Water Valley Junction, North Grenada, Grenada, Duck Hill, Winona, Durant, and Aberdeen Junction. This line contains 16 passing sidings, ranging between 1,650 feet and 5,820 feet, totaling 51,489 track-feet. The ruling grade is 1.20 northbound and 1.25 southbound.

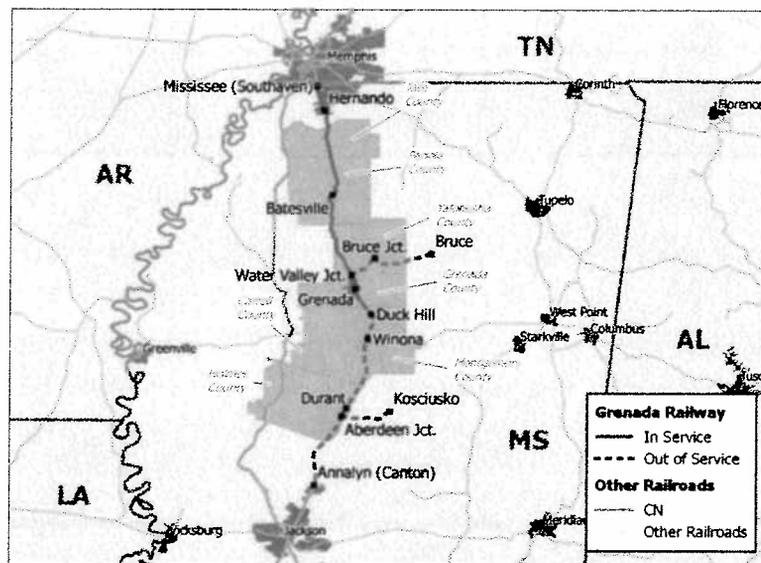


Figure 1: Map of the GRYR Service Area Highlighting NCMRRA Member Counties

This line has nearly 300 bridges, including a substantial number of very old bridges. About 75 percent of the bridges (224) were built before 1969, and about 56% (168) were built before 1935. The oldest is a brick arch structure built in 1860.

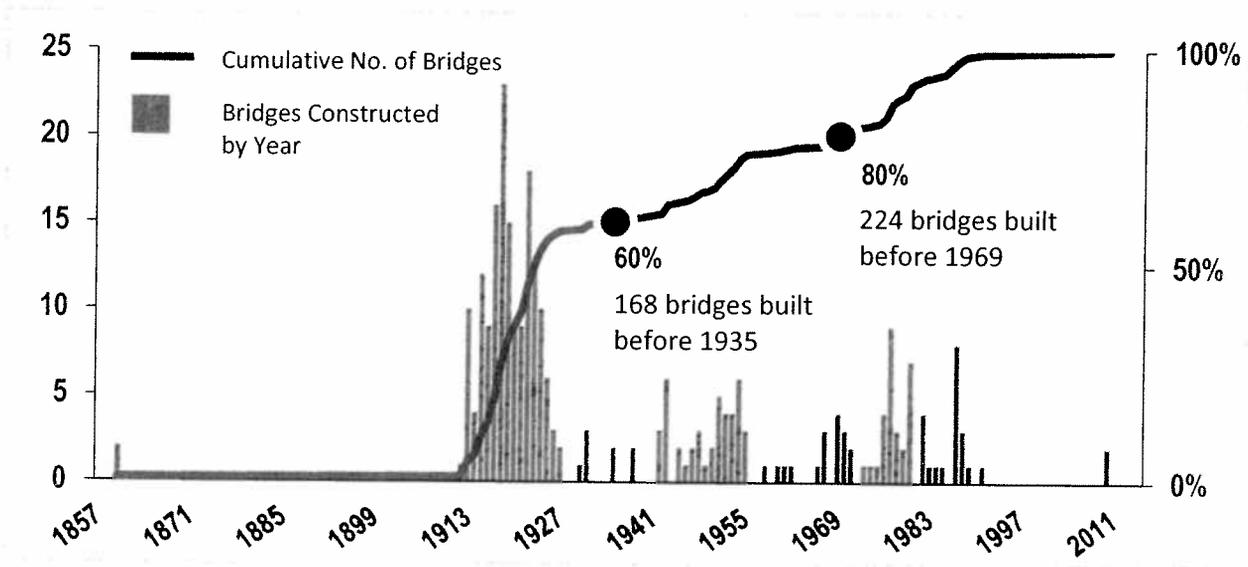


Figure 2: The 279 Bridges on the Grenada Subdivision (GRYR Mainline) by Year of Construction

The combined span length of all mainline bridges is 29,525 feet or 5.6 miles. Only about 1800' or 6% of this length is open deck, the rest is ballast deck. A range of bridge design types are utilized on the GRYR including concrete slabs and boxes, I-beam, through-plate girders, deck plate girders, timber trestles, and steel trusses. Due to age and deferred maintenance and investment, many of these bridges suffer from a range of problems. These include cracking of concrete supporting structures, damaged or worn out bents and stringers, damaged walkways, degraded pier footings, and scour around in-water bridge piers. By geography the frequency of mainline bridge structures is slightly skewed, with about 65% of structures located on the southern half of the line.

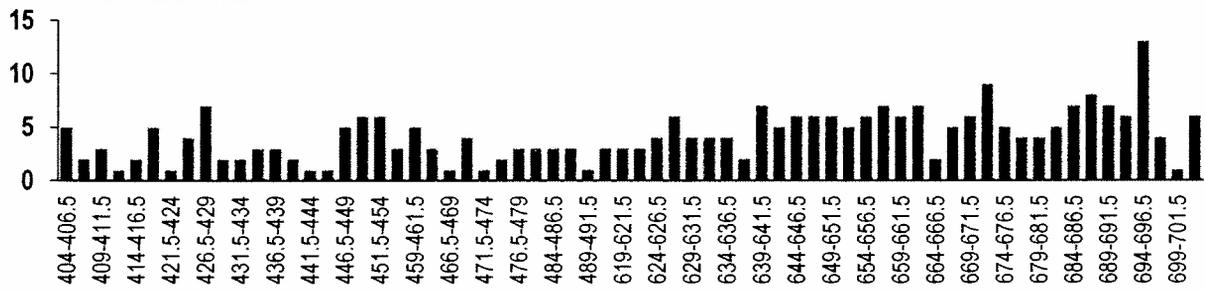


Figure 3: Distribution of the 298 Bridges on the GRYR Grenada Subdivision across Milepost Segments



Figure 4: View of the longest bridge on the GRYR system over the Coldwater River

The mainline has 261 at-grade crossings, 99 of which are private. More than half of crossings (138) are timber surfaced and another 46 are constructed with unconsolidated surfaces.

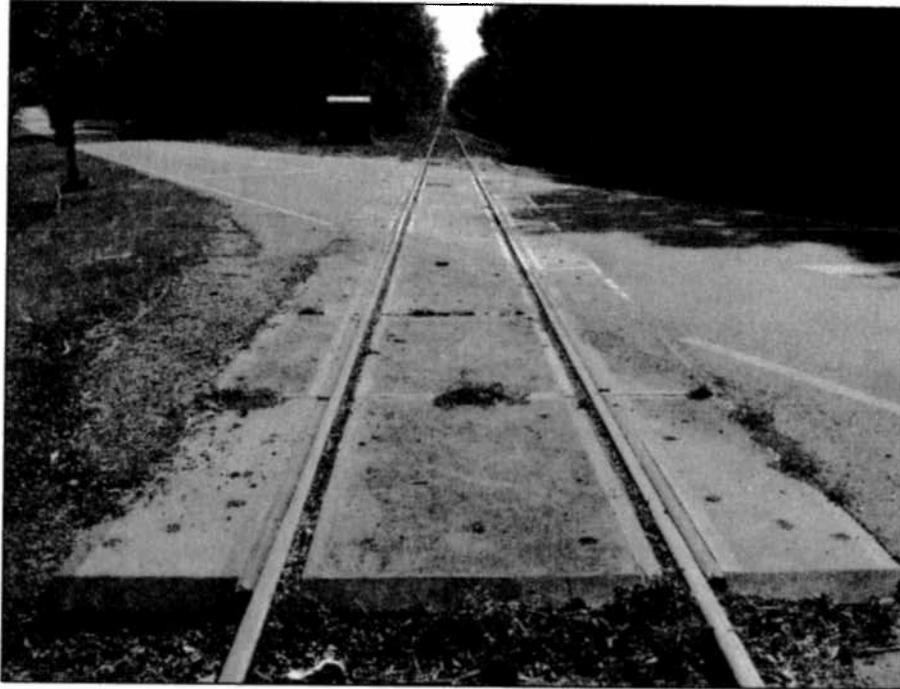


Figure 5: Representative crossing at MP 703.53

<b>Crossing Surface</b>	<b>Count</b>	<b>As % of Total</b>
Timber	138	53%
Unconsolidated	46	18%
Not recorded	26	10%
Rubber	15	6%
Asphalt or Asphalt and Timber	20	8%
Composite	8	3%
Concrete or Concrete and Rubber	8	3%
<b>Total</b>	<b>261</b>	<b>100%</b>

Figure 6: GRYR Grenada Subdivision at-grade crossings by surface.

The mainline is out of service from Milepost 625.7 south to Annalyn Interchange since 2011. Besides bridge deficiencies, the southern segment closure is also due to 18 at-grade crossings with automatic warning devices that are nonfunctional, having had their electronics stripped by the railroad's previous owner.

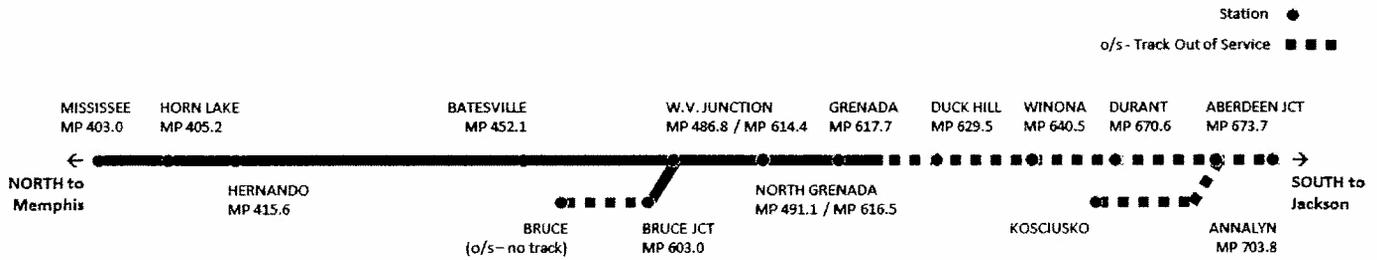


Figure 7: Diagram of interchanges, mainline, branches and stations of the GRYR

The northern segment from MP 403.0 at Mississee Interchange to MP 625.7 is presently operated as FRA Class 2 track at speeds of 25 mph for freight and 30 mph for passenger. There are a significant number of slow orders in place due to poor bridge and track conditions. The Grenada Subdivision clearance envelope can accommodate AAR Plates H and K (double-stack container well cars and tri-level autoracks, respectively). This segment is limited to transporting railcars only up to 263,000 pounds in weight, primarily due to bridge deficiencies. The mainline track is composed of #112 or #115 lb. rail, approximately 38 miles is continuously welded rail (CWR).

## Yards

The GRYR's primary railyards are located at Grenada and Durant, with a total of 22,272 track-feet of rail lines between them. Sidings and yard tracks are #90 lb. bolted rail.



Figure 8: GRYR Grenada North Yard at MP 616.



Figure 9: GRYR Durant Yard at MP 671.

## Branch Lines and Spurs, Connections, and Shared Use Shipper Facilities

GRYR currently provides freight service to the D.R. Craig Industrial Complex, connecting to multiple spurs in the park at MP 449.5. This is referred to as the “Batesville Industrial Park” on the track charts.



Figure 10: Plan of the D.R. Craig Industrial Complex in Batesville

At MP 454.2, also in Batesville, a spur is available for team loading and transloading.

The first of the two main branch lines, the Water Valley District, connects to the Grenada Subdivision at MP 486.8 and runs east 11.4 miles to Bruce Junction. The line is presently used to store cars. The track is composed of #90 lb. bolted rail on wooden crossties. The line originally ran further east to the city of Bruce, and while the right-of-way remains and is a part of the railroad, all track on this segment has been pulled up and salvaged.

At MP 489 in Grenada a spur serves the Sealed Air Corporation facility directly, one of several tenants at the Grenada Air Industrial Park which covers 1,175 acres immediately adjacent to the Grenada Municipal Airport and the intersection of U.S. highway 51 and MS state route 7. This airport has an instrument landing system and twin paved asphalt runways of 7,000 and 5,000 feet. Other industries at this location include Resolute Forest Products, Luvata (HVAC heat

transfer products), Suburban Plastics (injection molding) and Advanced Distributor Products (manufactures HVAC evaporator coils).

The Y&MV Spur, extends west approximately 1900' from Grenada Yard connecting at Grenada Subdivision MP 617.5. Track and structure is in place on this line but is only in service to the crossing with North Main Street in Grenada at which point the crossing is paved over. This track is presently being used for rail car storage, and has the potential to be fully reopened with limited rehabilitation.

At MP 639.1 GRYR provides service to the Montgomery County Industrial Park, which includes the National Guard Armory at Winona.

At MP 640.3 GRYR is connected to the presently out-of-service east-west line of the Columbus and Greenville Railroad (CAGY). This line is owned by Genesee and Wyoming, Inc. and presently only operated from Greenville to Greenwood which lies approximately 30 miles to the west. The crossing diamond at the intersection with the GRYR has been removed, though an eastward connecting spur remains. This infrastructure is in mostly very poor condition with numerous interruptions where track has been pulled up at crossings.

The second major branch line is the single-track Aberdeen District. This connects to the Grenada Subdivision at MP 673.5 and runs east about 21.5 miles to the city of Kosciusko. This line is presently out of service. This line was owned by the state and operated under concession by the Kosciusko and Southern Railroad (KSRY) until the previous owner of the GRYR terminated service to this connector by embargoing a bridge adjacent to the interchange. This property is in the process of being transferred from the state to the NCMRRA. The track on this line consists of a mix of #85 and #95-pound bolted rail on wooden crossties. East of Kosciusko this line is abandoned/out of service although some ties and rail are in place.

## **Headquarters and Operations Facilities**

Local railroad management, equipment maintenance, and maintenance of way activities are based out of the Grenada Depot facility. Crew reporting occurs there and at Batesville. Heavy equipment for maintenance of way includes a 2008 Sterling hirail Grapple truck, a 2015 F550 hirail section truck with hydraulic tools, a 2014 CAT 420F backhoe with trailer and extra bucket and forks, and two smaller hirail trucks.



Figure 11: View of the GRYR Depot at Grenada.

The railroad operates under track warrant control under GCOR with dispatch occurring at IPH's Janesville Dispatch Center. RailTerm's TrainMaster software is used to manage operations.



Figure 12: Dispatching for GRYR provided from IPH's center located in Janesville, Wisconsin

Iowa Pacific Holdings provides the local operating team with management services in the areas of commercial and business development, engineering management, operations oversight and planning, safety management and standards, accounting, finance, and human resources. The NCMRRA provides oversight of the operating lease of the railroad to IPH, and serves to support the development of the railroad, including through liaison and coordination with the state and other local units of government.



Figure 13: View of the layout of the GRYR Grenada Depot Facility at MP 617.5

## Rolling Stock

The railroad presently operates a fleet of five locomotives. The primary road power is GP-38's and GP40's leased from GATX, and GP-20R's leased from CIT. Two additional locomotives, E-8's, are on the property provided by Heritage Rail Leasing Corp. (Isla Largo) to support the operations of the seasonal Polar Express passenger excursion service the GRYR hosted in 2015, and for other passenger services.

## Interchange

GRYR provides regular freight rail service between Grenada and CN's Memphis Yard. Under their 2015 Interchange Agreement, GRYR may operate trains north of Mississee to the Memphis Yard for the purpose of interchange with CN at the designated interchange track. Interchange service is provided three times weekly on Thursday, Saturday, and Monday. Local service to industry such as for picking up and dropping off railcars, spotting and switching occurs on Tuesday, Friday, and Sunday. Wednesday is a lay-in day used for administration, maintenance and recovery activities. Historically interchange also occurred with CN at the Annalyn Interchange point at MP 703.8, until the southern segment was taken out of service.

## External Impacts

The development of the GRYR will have an impact on adjacent facilities of the Canadian National Railroad. The CN Memphis Yard is the present interchange point. This facility will see

two major impacts from the project. First, the GRYR will no longer need to turn equipment at this facility once their North Grenada Wye is restored. Second, as the Development Program proceeds, rail traffic volumes through this interchange to and from the GRYR are projected to increase. CN's North Jackson Yard will be reconnected to the GRYR early in the Program and it is the intent of the GRYR to establish an interchange agreement equivalent to that in place with CN on the north end of the railroad. Consequently flows to and from the GRYR at this facility are also expected to increase. Operations on CN's Yazoo Subdivision "Low Line" mainline running west and parallel to the GRYR are also expected to be affected by this Program. This line carries more than 18 through freight trains per day at speeds of up to 60 miles per hour and Amtrak passenger trains at up to 79 MPH (FRA Class 4 track conditions). Reconnection of the GRYR mainline and capacity upgrades will provide a viable bypass option for this segment of mainline during periods of congestion, maintenance, or emergency incidents that interrupt service.<sup>1</sup>



Figure 14: Overhead views of CN's Memphis (Top) and North Jackson Yards.

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<sup>1</sup> This mainline has had three major incidents in recent history that have significantly interrupted service: an Amtrak derailment near Flores in 2004; a train collision at Anding in 2005, and; a serious flood in 2011.



Figure 15: View of the CN Low Line on the Yazoo Subdivision during 2011 flooding.

(Image Source: Terry Redecker, RRPicture Archives.NET, 2011)

## Project Elements and Cost Estimates

Below is a description of the elements of the Grenada Railroad Development Program for 2016, including cost estimates for each element.

### **Element 1 – Reopen the line between Elliott and Canton**

This element includes the following activities: Vegetation removal, reactivation of active warning devices, bridge repairs and tie installation.

Vegetation removal – During the years the line was out of service, no vegetation control was undertaken. As a result, substantial growth of woody plants, grasses, weeds and kudzu continued unchecked. Addressing this situation requires a combination of heavy brushcutting equipment, smaller handheld weed cutting equipment, and chemical spray. This work has already begun.

Reactivation of active warning devices – The previous owner of the line removed the signal control equipment from most signal cases along the line, and also removed gate arms and other equipment. A total of 18 active warning devices must be restored and reactivated.

Bridge repairs – Certain bridges require replacement of structural members, cleanout of debris, driftwood or silt, and replacement of crossties and/or ballast

Tie installation – At present tie condition is insufficient to meet FRA Class I, and installation of about 500 ties per mile is necessary to achieve compliance. About 21,10 ties will be installed in this phase, raising 40 miles of track to FRA Class I.

**Element 2 – Repair Coldwater River bridge**

The Coldwater River bridge is the longest bridge on the Grenada Railroad. It is a combination of ballast-deck pile trestle and steel through plate girder, and it is presently limited to 263,000 pounds at 5 mph due to deteriorated conditions. Two years ago, Grenada issued a request for proposals to repair the bridge and the lowest price proposals for labor, equipment and material totaled about \$1.1 million. For purposes of estimating cost in 2016, 10% per year was added to this cost.

**Cost Estimates**

The estimates below were prepared by Iowa Pacific after detailed inspection of the line, and represent the best available knowledge. Iowa Pacific and Grenada Railroad recognize that any cost overruns are the responsibility of Grenada Railroad.

Grenada Railroad				
Grenada Subdivision				
2016 Development Program				
Cost Estimates				
Element/Activity	Unit	Total Units	Unit Cost	Total Cost
Element 1 - Vegetation Removal	Line Segment	1	\$1,100,000	\$1,100,000
Element 1 - Reactivation of Active Warning Devices	Crossing	18	\$111,500	\$2,007,000
Element 1 - Bridge repairs	Bridge	5	\$95,000	\$475,000
Element 1 - Tie installation	Tie	21,800	\$110	\$2,398,000
Element 2 - Coldwater Bridge repair	Bridge	1	\$1,318,000	\$1,318,000
Total				\$7,298,000

**Project Development Schedule**

- March 31, 2016 – Submit RRF loan application
- May 1, 2016 – Complete contract for Coldwater Bridge
- June 1, 2016 – Complete contract for tie installation
- June 15, 2016 – Vegetation removal completed
- August 1, 2016 – Elliott-Canton bridge repairs completed
- August 15, 2016 – Reactivation of warning devices completed
- September 30, 2016 – Tie installation completed
- October 31, 2016 – Coldwater bridge repairs completed.

**EXHIBIT B**

## Grenada Railroad Development Programs

### 2016 Project Elements

#### Element 1.1 – Vegetation Removal, Milepost 625.7 to Milepost 703.8, 78.1 miles

- 1.1.1 **Brushcutting** – An on-track brushcutter will be used to mechanically cut brush to 20 feet either side of the centerline of the rail, and in a radius of 25 feet extending from the centerline to a point directly above the centerline.
- 1.1.2 **Brush Treatment** – After cutting, brush will be chipped on site by a mechanical chipper and distributed as specified by the Roadmaster.
- 1.1.3 **Ground Cover Vegetation Control** – The track zone will be sprayed to 12 feet either side of the centerline of the track with a mixture designed to kill Kudzu and other plants growing in the track zone. A follow-up spraying will likely be necessary as it has been several years since this line was sprayed.

#### Element 1.2 – Reactivation of Active Warning Devices

18 active warning devices will be reactivated to operation based on the specifications of the device. The attached table indicates the location of each device, and the type of device at each crossing. Existing material at the crossing will be used to the extent possible, and new material purchased will meet all Federal Railroad Administration requirements.

#### Element 1.3 – Bridge Repairs

- 1.3.1 **Bridge 648.8** – This is a concrete ballasted-deck bridge, which has two cracked spans. The track will be removed from the bridge and stored nearby. The ballast will be removed from the bridge and stored nearby. The existing spans will be removed and replaced with new spans. The track and ballast will be replaced, and the bridge will be surfaced and aligned. New ballast will be installed as necessary.
- 1.3.2 **Bridge 656.4** – This is a concrete ballasted-deck bridge, which has a sinking pier and two cracked spans. . The track will be removed from the bridge and stored nearby. The ballast will be removed from the bridge and stored nearby. The defective pier will be replaced. The existing spans will be removed and replaced with new spans. The track and ballast will be replaced, and the bridge will be surfaced and aligned. New ballast will be installed as necessary.
- 1.3.3 **Bridge 690.3** – This is a concrete ballasted-deck bridge which, which has a defective concrete abutment, due to scouring. The hole in the abutment will be addressed with placement of rip-rap and filled with small stone.

#### Element 1.4 – Tie installation, Milepost 625.7 to Milepost 703.8, 78.1 miles

A total of 28,194 ties will be installed, an average 361 ties per mile. The ties will be grade 4 or 5 new ties, meeting AREMA specifications. The ties will be mechanically installed and the track surfaced after installation. Each tie will be plated and will have four spikes per plate. Removed ties will be placed along the right of way at the direction of the Roadmaster.

**Element 2 - Coldwater Bridge, Milepost 422.7**

Work will be done during a 4 day work window each week to provide the contractor sufficient productive time to make replacements on a segment and return the track to service.

**2.1 Track and Ballast Removal** - Remove the track and ballast from Bent #1 to Bent #100 (beginning of steel bridge section) and Bent #101 (end of steel bridge section) to Bent #125 to facilitate the renewal of the stringers and deck boards. All reusable crossties will be stored until the track is reassembled. Remove the existing ballast and store until reassemble of the track occurs. Care will be taken to salvage as much of the ballast as possible. It is expected that at least 50 percent will be salvaged.

**2.2 Deck Board Replacement** - All 4"x 8" x 12' deck boards from Bent #1 to Bent #100 and Bent #101 to Bent #125 are to be removed and replaced with new 4"x 8" x 16'. All installed deck boards shall be nailed to each stringer using a 12" galvanized smooth spike nail. All existing deck boards salvageable shall be placed in storage near the bridge. All debris from the removal shall be disposed of on site. Care shall be taken to salvage as many of the removed deck boards as possible. All new deck boards shall be stockpiled at the nearest road crossing and transported to the bridge.

**2.3 Stringer Removal and Installation** -All stringers listed below or otherwise stated shall be replaced with ten (10) new 8" x 16" x 28' timbers. The existing 7" x 16" stringers shall be separated to ascertain which ones are suitable to be used in the construction of the ballast guards on Bents 1 to 100 and Bents 101 to 125 on the east and west side of the bridge. All other stringers not used in the construction of the ballast guards shall be stored at a location near the bridge. All new stringers shall be stockpiled at the nearest road crossing and transported to the bridge.

Replace stringers on bents

Bent 1 to 35, replace all 10	total 175 stringers
Bent 35 to 37 replace just 2 of 10	total 2 stringers
Bent 37 to 38 replace all 10	total 5 stringers
Bent 38 to 40 replace just 2	total 2 stringers
Bent 40 to 60 replace all 10	total 100 stringers
Bent 60 to 62 replace none	total 0 stringers
Bent 62 to 66 replace all 10	total 20 stringers
Bent 67 to 87 replace all 10	total 100 stringers
Bent 87 to 89 replace none	total 0 stringers
Bent 89 to 100 replace all 10	total 55 stringers
Bent 101 to 125 replace all 10	total 120 stringers

Every other stringer installed shall be drifted to the cap using a thread-all bolt with top nut. Each string cord of five stringers shall be bolted together with a 48" thread-all bolt with an OG washer on each end.

**2.4 Timber Cap Replacement** - While stringers are being replaced, the caps on bents will also be replaced on 12, 13, 25, 32, 34, 35, 38, 47, 52, 55, 68, 73, 93, 94, 98, 104, 108, 109, 110, 111, 115, 116, and 120 for a total of 23 caps. Care will be taken to ensure that none of the bent post are realigned or moved. Each cap will be drifted into each post with thread-all bolt with top nut. All bolts will be driven even with the top of the cap. Each cap will be centered to the bent when installed. All removed caps shall be store near the bridge. All new caps shall be stockpiled at the nearest road crossing and transported to the bridge.

**2.5 Ballast Guard Installation** - Once the deck boards have been installed, the removed used 7" x 16" stringers shall be installed on each side of the bridge as ballast guards. Guard rails will also be installed. Total guard installation shall be 1605' on each side of the ballast deck. Ballast Guards are to be secured to Deck Boards using a 3/4" thread-all bolt through a used tie plate at the bottom and top of the Ballast Guard. New ballast shall be stockpiled at the nearest road crossing and transported to the bridge.

**2.6 Walkway Hand Rail** - After the deck boards, ballast guards, track, and ballast have been installed, a dual 3/8" wire rope cable and 4" x 4" hand rail post shall be installed. A 4" x 8" x 16' timber shall be placed at the end and on top of the deck boards and secured to every eighth deck board with screws. Once installed a 4"x4"x 8' timber shall be cut into two four foot (4') pieces to be used as walkway post. These post will be placed on the outside of the deck board and installed 4"x8" x 16' board. These posts are to be every eight (8) feet along walkway and secured with a screw through post into deck boards and installed 4"x8" board. A pilot hole will be drilled prior to the screw being install. Once all 4"x 4" x 4' post have been installed, a 5/8" eye bolt shall be drilled and installed at the top and bottom of the post as shown on the drawing. Once install the 3/8" wire rope cable will be placed through the eye bolts for a distance of 50'. At the end of the 50' section a turn buckle shall be installed to allow tightening of the cable installed. Every 48' a 4" x 8" brace shall be installed on the walkway post as shown on the drawing. This brace material will come from the used deck boards removed. Total length of walkway installed will be approximately 1605'

All new walkway materials shall be stockpiled at the nearest road crossing and transported to the bridge.

**2.7 Unloading Additional Ballast on Bridge** - The estimated 450 tons of additional ballast needed to surface the bridge will be delivered to the nearest road crossing. The ballast will be moved by hi-rail dump truck into the bridge and placed on the track to bring the bridge up to grade.

**2.8 Tamping, surfacing, and aligning track.** - The track shall be surfaced and aligned on the bridge to a constant grade from the headwall on bent #1 to the end of the project on bent #125. The aligning of the track should take place prior to applying the final ballasting to the track. Approximate total surfacing and alignment shall be 1605 track-feet.

**2.9 Replacing Defective Crossties** - Approximately 250 defective crossties will be replaced on the bridge. Defective crossties will be marked by the Roadmaster prior to work beginning. The new crossties will be stockpiled at the nearest road crossing and transported to the bridge. All crossties removed from the bridge shall be placed on the right of way as designated by the Roadmaster.

Grenada Railroad Warning Devices to be reactivated

Railroad	Track Name	DOT #	MP	Hwy #	Hwy Name	State	City/Town	Traffic Ctrl Device	Xing Position	Xing Type
GRENADA	GRENADA SUB	309187G	625.77		GEORGIA PACIFIC	MS	DISTRICT 1	Flash. Lights with Auto. Gates	At Grade	Private
GRENADA	GRENADA SUB	299628W	629.60	STH 404	STATE HWY 404 / ALVA RD	MS	DUCK HILL	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299632L	630.95		CEDAR HILL RD / MIERS RD	MS	DISTRICT 1	Flashing Lights	At Grade	Public
GRENADA	GRENADA SUB	299638C	633.70		DIVIDING RIDGE RD / ESKRIDGE RD / FOUR FORKS RD	MS	ESKRIDGE - DISTRICT 1	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299644F	637.58		SAWYER RD	MS	DISTRICT 1	Flashing Lights	At Grade	Public
GRENADA	GRENADA SUB	299649P	640.40		LIBERTY ST / MAGNOLIA ST	MS	WINONA	Flashing Lights	At Grade	Public
GRENADA	GRENADA SUB	299651R	640.80		RATLIFF ST	MS	WINONA	Flashing Lights	At Grade	Public
GRENADA	GRENADA SUB	299653E	641.13	STH 407	STATE HWY 407	MS	WINONA	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299661W	651.04	STH 430	MULBERRY ST / STATE HWY 430	MS	VAIDEN	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299663K	651.16		MAGNOLIA ST	MS	VAIDEN	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299682P	660.95	STH 19	STATE HWY 19	MS	WEST	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299684D	661.15		OLD STATE HWY 19 / EMORY ST	MS	WEST	Flashing Lights	At Grade	Public
GRENADA	GRENADA SUB	299701S	670.50	STH 12	MULBERRY ST / STATE HWY 12	MS	DURANT	Flashing Lights	At Grade	Public
GRENADA	GRENADA SUB	299711X	678.50	STH 14	MAIN ST / STATE HWY 14	MS	GOODMAN	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299726M	685.28		E 1ST ST / LIBERTY ST	MS	PICKENS	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299727U	685.40		MADISON ST	MS	PICKENS	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299742W	700.19		DAVIS CROSSING RD	MS	DAVIS - DISTRICT 5	Flash. Lights with Auto. Gates	At Grade	Public
GRENADA	GRENADA SUB	299744K	703.53	STH 16	STATE HWY 16	MS	CANTON	Flash. Lights with Auto. Gates	At Grade	Public

Grenada Railroad development project

2015 2016 2017  
 Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec



**EXHIBIT C**



**EXHIBIT D**

Grenada Railroad LLC  
118 S. Clinton Street, Ste 400  
Chicago, Illinois 60661

**EXHIBIT E**