

Wisconsin Department of Transportation

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May 4, 2012

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

232266

ENTERED
Office of Proceedings
May 4, 2012
Part of
Public Record

ELECTRONIC FILING

RE: STB Finance Docket No. FD 35401
Wisconsin Department of Transportation - Amended Petition for Declaratory
Order - Gibson Line in Milwaukee, WI

Dear Ms. Brown:

Wisconsin Department of Transportation ("WisDOT") is the state rail agency. Enclosed for filing is an Amended Petition for Declaratory Order by the Wisconsin Department of Transportation.

WisDOT respectfully requests that the Board accept this filing, and consider it in place of the Petition in this docket filed by WisDOT on September 17, 2010.

Please contact me with any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Chung".

Kathleen Chung
Attorney

Attachments

232266

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Office of Proceedings
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Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35401

**WISCONSIN DEPARTMENT OF TRANSPORTATION
--AMENDED PETITION FOR DECLARATORY ORDER--
GIBSON LINE IN MILWAUKEE, WI**

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Attorney for Petitioner

EXPEDITED HANDLING REQUESTED

ELECTRONIC FILING

Dated: May 4, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35401

**WISCONSIN DEPARTMENT OF TRANSPORTATION
--AMENDED PETITION FOR DECLARATORY ORDER--
GIBSON LINE IN MILWAUKEE, WI**

I. INTRODUCTION

The Wisconsin Department of Transportation (“WisDOT”) is a governmental entity and the designated state agency in rail matters in the State of Wisconsin.¹ On September 17, 2010, WisDOT filed a Petition (the “first Gibson Petition”) under this docket seeking a Declaratory Order from the Surface Transportation Board (“the Board”) that, pursuant to the State of Maine² line of cases, no Board authority was required for WisDOT’s proposed acquisition of 4.05 miles of railroad trackage located in the City of

¹ See, 49 U.S.C. Appx. § 1654(a) (formerly § 1654(j)), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats.

² Maine DOT -- Acquisition Exemption -- Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991) (“State of Maine”); State of Georgia, DOT – Acquisition Exemption – Georgia Southwestern Railroad, Inc., STB Finance Docket No. 33876, Decision served July 7, 2000 (“State of Georgia”); State of Wisconsin – Petition for Declaratory Order, STB Finance Docket No. 34623, Decision served December 23, 2004 (“State of Wisconsin – Plymouth Line”); State of Wisconsin – Petition for Declaratory Order, STB Finance Docket No. 35195, Decision served April 22, 2009 (“State of Wisconsin – Kohler Line”); and State of Wisconsin Petition for Declaratory Order – Petition for Declaratory Order – Almena, Cameron and Rice Lake, in Barron County, WI, Finance Docket No. 35455, Decision Served November 10, 2011, (“State of Wisconsin – Barron County”).

Milwaukee, WI. The subject trackage, collectively known as the Gibson Line (“the Rail Lines”) is owned and operated by the Wisconsin & Southern Railroad, LLC (“WSOR”).³

Since that first Gibson Petition, the Board has reviewed and issued orders in a similar WisDOT transaction involving rail lines in Barron County, Wisconsin, which has caused WisDOT to revise these Gibson transaction documents. WisDOT now submits this Amended Gibson Petition for Declaratory Order with the transaction documents revised consistent with the Board’s rulings in the Barron County decisions.

As before, WisDOT respectfully requests that the Board issue a decision within 90 days of filing this Petition effective upon service so that it may close this transaction as soon as possible.

II. PROCEDURAL BACKGROUND

That first Gibson Petition was accompanied by transaction documents that were very similar to those WisDOT filed in April 2010, in a similar Petition (the “first Barron County Petition”) for the same type of Declaratory Order.⁴

Days after submitting the first Gibson Petition in this docket (FD 35401), the Board issued its decision in the previously filed first Barron County Petition, Service Date September 23, 2010.⁵ The Board’s first Barron County decision found that the first Barron County transaction documents failed to unambiguously allow the selling railroad

³ The railroad was formerly known as the Wisconsin & Southern Railroad Co. at the time of the first Gibson filing. See discussion at page 6, *infra*, regarding the change in WSOR’s corporate status.

⁴ See State of Wisconsin Petition for Declaratory Order – Petition for Declaratory Order – Almena, Cameron and Rice Lake, in Barron County, WI, Finance Docket No. 35366, Decision Served September 23, 2010, (“State of Wisconsin – Barron County,” or “the first Barron County Decision.”

⁵ *Id.*

to retain the rights and ability to carry out its common carrier obligation.⁶ Thus, the proposed Gibson transaction would be subject to Board's authority.

Because the first Gibson transaction documents were very similar to the first Barron County transaction documents, WisDOT requested that the Board delay ruling on the first Gibson Petition until WisDOT could review the Barron County decision and similar transaction documents.

WisDOT reviewed the first Barron County decision, received guidance from the Board's Office of Public Assistance, Governmental Affairs, and Compliance, and revised the Barron County transaction documents accordingly. WisDOT filed a second Barron County Petition for Declaratory Order, filed with the revised transaction documents. The Board granted the second Barron County Petition, finding that based on the revised transaction documents, the proposed Barron County transaction did come within the purview of the State of Maine line of precedent and, therefore, was not subject to the Board's authority.⁷

WisDOT has revised the Gibson transaction documents to reflect the changes approved by the Board in the second Barron County Decision. Thus, WisDOT submits this second Gibson petition upon new information and belief that it has properly amended its transaction agreements to comport with the requirements of the Board's State of Maine line of precedents, and respectfully requests that the Board consider this petition in place of the petition that WisDOT submitted on September 17, 2010.

⁶ *Id.*

⁷ State of Wisconsin Petition for Declaratory Order – Petition for Declaratory Order – Almena, Cameron and Rice Lake, in Barron County, WI, Finance Docket No. 35455, Decision Served November 10, 2011, (“State of Wisconsin – Barron County,” or “the second Barron County Decision.”)

WisDOT, WSOR and the East Wisconsin Counties Rail Consortium (variously identified as either “the Consortium” or “the Commission”⁸ in the accompanying exhibits), have executed a series of amended transaction documents whereby WisDOT would purchase the Rail Lines for Commission use (by Land Use Agreement), with WSOR continuing its common carrier operations over the Rail Lines pursuant to the reservation of a permanent exclusive operating easement. With these new transaction documents, WisDOT again seeks a ruling that no Board authority is required for WisDOT’s acquisition of the Rail Lines because the parties have intentionally and specifically amended the transaction to comport with the terms and conditions of State of Maine and its line of cases. WisDOT also asks the Board to rule that it will not become a common carrier as a result of this acquisition transaction.

III. FACTUAL BACKGROUND

The Rail Lines are located in the City of Milwaukee, in Milwaukee County, WI and consists of the following four track segments: (1) the Horicon Line, from milepost 93.72, the division of ownership with the State of Wisconsin, to milepost 93.20 in the vicinity of Glendale Yard; (2) the Canco Line, from milepost 93.20 extending in a northerly direction to milepost 95.18, the division of ownership with Canadian National Railways; (3) the Nut Line, from milepost 93.20 extending to milepost 94.35; and (4) a short spur extending from the switch on the Canco Line at milepost 93.46 to the switch

⁸ For clarity in this filing, the term “Commission” shall mean the East Wisconsin Counties Railroad Consortium.

on the Nut Line at Milepost 93.86.⁹ The total distance is approximately 4.05 miles. The Rail Lines also include the additional tracks referred to as the "North Milwaukee" yard. *See* Exhibit A, map of the Rail Lines.

WSOR is an existing class II railroad common carrier operating over 700 miles of trackage in Wisconsin and adjacent northern Illinois. Originally established in 1980 to operate segments of the former Milwaukee Road that were being abandoned and subsequently acquired by the State of Wisconsin, WSOR has grown substantially over the past 30 years. Starting as a class III short line rail carrier operating 93 miles of trackage, WSOR eventually took over several former CP Rail and Union Pacific lines radiating out of Madison, WI, as well as former CP Rail trackage in Milwaukee. In 1992, WSOR's owner and President William Gardner acquired control of another class III Wisconsin-based short line railroad, the Wisconsin & Calumet Railroad ("WICT"). In 1996, WSOR merged WICT's operations and properties into WSOR, leaving WSOR as the surviving company.¹⁰ WSOR also acquired trackage rights from other railroads for the purpose of connecting all of these lines. Early in 2003, WSOR's revenues increased to the point where it became a small class II railroad. WSOR purchased the Rail Lines about ten (10) years ago.¹¹

On or about November 29, 2011, Watco Holdings, Inc., and Watco Transportation Services, L.L.C., filed with the Board a Notice of Exemption for Watco Holdings, Inc., indirectly to control WSOR indirectly, which transaction was consummated on or about

⁹ Petitioner takes no position as to whether this short track segment may be exempt from the Board's acquisition jurisdiction under 49 U.S.C. 10906.

¹⁰ *See Wisconsin & Southern Railroad Co.-Corporate Family Transaction Exemption-Wisconsin and Calumet Railroad Company*, STB Finance Docket No. 33450, STB served Sept. 5, 1997.

¹¹ *See Wisconsin & Southern Railroad Company – Acquisition Exemption – Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway*, STB Finance Docket No. 33801, STB served June 5, 2000.

January 1, 2012.¹² Wisconsin and Southern Railroad, LLC, will be referenced as “WSOR” in this petition.

Now, WSOR desires to sell the Rail Lines to WisDOT but will continue providing service over them. WisDOT intends to acquire the Rail Lines subject to the reservation by WSOR of a permanent exclusive operating easement to enable it to continue its rail service.

WSOR, WisDOT, and another Wisconsin public agency, the East Wisconsin Counties Rail Consortium have executed a series of four revised transaction documents (hereafter “the Transaction Agreement Documents”) covering this transaction. These transaction documents will be executed upon a favorable ruling from the Board.

WisDOT and WSOR have drafted the Asset Purchase Agreement whereby WSOR will sell and WisDOT will purchase the Rail Lines. This document, identified here as “the Gibson Line Asset Purchase Agreement” and appended to this Petition as Exhibit B, will not be closed absent a ruling from the Board that the transaction will not result in WisDOT acquiring any common carrier obligation, which shall continue to reside in WSOR. WSOR will retain its common carrier obligation pursuant to the reserved permanent exclusive operating easement. The second agreement, the Land Use Agreement¹³ with the Consortium¹⁴ delineates WisDOT’s and the Commission’s

¹² See Watco Holding, Inc., and Watco Transportation Services, LLC – Acquisition of Control Exemption – Wisconsin & Southern Railroad, LLC, STB Finance Docket No. 35573, filing dates, Nov. 29, 2011 and Jan. 6, 2012.

¹³ The Land Use Agreement between WisDOT and the Consortium (hereafter “the Land Use Agreement”) will grant the Consortium access to the Land for the purpose of providing freight rail service pursuant to the Operating Agreement. A copy of this agreement is identified as Exhibit C hereto.

¹⁴ The Consortium is a public entity consisting of interested Wisconsin counties, created under the provisions of Wisconsin Statutes Section 66.0301, which was established, in part, to oversee the preservation of rail service on certain rail lines acquired by the State of Wisconsin. The Consortium was created to undertake rail preservation activities for the State, because the State of Wisconsin could not, prior to an April 1992 constitutional amendment, lawfully engage in the acquisition, improvement or construction of railways or other

respective responsibilities as to the Rail Lines. The Land Use Agreement, attached as Exhibit C, provides for WisDOT to acquire, improve, preserve, and maintain the Rail Lines and for the Consortium to develop, maintain, and contract for the operation of freight railroad service over the WisDOT-owned Rail Lines. That Land Use Agreement also provides that the Consortium may contract out railroad operations to a specific operator, WSOR. The terms of the Land Use Agreement are subject to a third agreement, the “Grant Agreement for Rail Service Continuation By and Between East Wisconsin Counties Railroad Consortium and Wisconsin Department of Transportation” (“the Grant Agreement”), marked as Exhibit D. Finally, the parties will execute an operating agreement (“the Operating Agreement”), between the Consortium and WSOR which provides for WSOR to conduct all rail operations on the Rail Lines. The Operating Agreement is submitted here as Exhibit E.

IV. ARGUMENT

Sections 5 U.S.C. 554(e) and 49 U.S.C. 721, give the Board discretion to issue a declaratory order to terminate a controversy or remove uncertainty, specifically whether WisDOT’s acquisition of the Rail Lines will render WisDOT a rail carrier under section 10102(5) of the I.C.C. Termination Act, 49 U.S.C. 10102(5), and subject to prior Board authorization under section 10901 of the ICCTA. The Board has previously granted declaratory petitions filed by WisDOT seeking a ruling that its acquisition of rail lines under similar circumstances is not subject to Board approval and will not render it a

railway facilities (or to be a party to any such works) and from borrowing money to invest in rail line improvements and rehabilitation. *See* Article VIII, Section 10, Wisconsin Constitution.

common carrier under the ICCTA. *See* State of Wisconsin – Kohler Line, *supra*, at 1. WisDOT asserts that the instant Gibson transaction has met that test because WisDOT has intentionally and specifically amended it to comport with the terms and conditions of State of Maine and similar precedent cited above, and specifically, the recent Barron County decisions (FD 35366, FD 35455).

WisDOT has an almost 30-year old policy of acquiring and preserving rail service over light density branch lines in Wisconsin dating back to the bankruptcy of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Many of those lines purchased by the State were acquired after they had been authorized for abandonment by the former Interstate Commerce Commission and/or Surface Transportation Board. Wisconsin Department of Transportation and East Wisconsin Counties Rail Consortium—Petition for Declaratory Order—Common Carrier Status of Certain Operations in the State of Wisconsin, STB Finance Docket No. 32717, STB served December 8, 1997. More recently, WisDOT acting as the State’s agent has acquired several WSOR lines pursuant to the agency’s State of Maine precedent. *See, e.g.*, Wisconsin Department of Transportation – Petition for Declaratory Order-Rail Lines in Janesville, Rock County, WI, STB Finance Docket No. 35301, STB served Dec. 11, 2009; Wisconsin Department of Transportation – Petition for Declaratory Order, STB Finance Docket No. 34764, STB served Mar. 13, 2006; State of Wisconsin – Plymouth Line, *supra*; and State of Wisconsin – Kohler Line, *supra*. This Petition presents another transaction implementing the State’s policy of acquiring light density rail lines for continued rail operation by short line and regional railroads independent of State control,

but carefully observes the provisions of both Barron County decisions (FD 35366, FD 35455).

WisDOT has designed this transaction to ensure that WisDOT does not assume any common carrier obligation by contracting for railroad operations through the Consortium, with WSOR. As a result, the conveyance of the Rail Lines to WisDOT is not the acquisition of a “railroad line” within the intent and meaning of 49 U.S.C. 10901, and thus does not require Board approval. The terms and conditions of the Transaction Agreement Documents specifically provide that WisDOT shall acquire the Rail Lines and improvements thereon from WSOR, as set forth in the Deed’s legal description, and that the Seller, WSOR, reserves the common carrier obligation, and a permanent exclusive operating easement, which is subject only to the Board’s authority.

WisDOT neither provides, nor is either equipped to provide, common carrier, “for-hire” rail freight service. It is WisDOT's and the Consortium’s intention to preserve service over light density or abandoned rail lines through WSOR without themselves incurring a common carrier obligation, and these parties have attempted to fashion this rail line transaction to avoid the imposition of this obligation. In the instant case, WSOR will operate the Rail Lines subject to the terms and conditions of the Transaction Agreement Documents so that the common carrier obligation will continue to reside with WSOR after the exercise of WisDOT’s purchase and the recording of the Transaction Agreement Documents.

The Grant Agreement.

For example, Section 2.1(a) of the Grant Agreement grants the Consortium the right and authority to manage the land with an operator that has a permanent exclusive

operating easement, and to use the land for the purpose of providing freight rail service. Section 2.1(b) further states that this agreement shall commence upon execution by the Consortium and WisDOT and shall be perpetual.

Section 5.1(a) of the Grant Agreement requires the Commission to verify that the Operator does indeed obtain and/or maintain its common carrier obligation from the Board. Section 5.1(b) of the Grant Agreement provides that the Consortium shall work with the Operator, here WSOR, which shall exclusively control, manage, and staff and plan for the provision of freight rail service. The same section allows the Consortium to grant to WSOR the power to effect changes and improvements in the trackage and property, adopt or promulgate rules governing access to, use of, and operation of the land and improvements. *See* The Port of Seattle – Acquisition Exemption – Certain Assets of BNSF Railway Company, STB Finance Docket No. 35128, STB served October 27, 2008 (“Port of Seattle”).

The Operating Agreement.

Section 2.1(a) of the Operating Agreement provides that the Consortium shall lease the land to WSOR, which shall operate rail services thereon, subject to WSOR’s permanent exclusive operating easement, and shall use the Land for the purpose of providing freight rail service and for all other purposes necessary to the foregoing...” While section 2.2 reserves certain rights including the State’s right to sell land not needed for continued freight service and the Consortium’s right to contract for the provision of passenger service, section 2.2(j) specifically states that this section does not limit the Operator’s [WSOR’s] ability to provide freight service.

Significantly, the Operating Agreement states at Section 5.1(b) that the Commission will work with “Operator for Operator to exclusively control, manage, staff and plan for the provision of freight rail service,” . . . including “exclusive originating and terminating freight rail service . . . including line-haul and switching services to shippers, [all] pursuant to Operatory’s permanent exclusive operating easement.”

Section 7 of the Operating Agreement addresses Termination, and provides that neither the Commission nor WisDOT may evict WSOR from the premises without permission from the Board for discontinuance authority, or adverse discontinuance authority.

Indeed all transaction documents have been carefully amended to recognize the Board’s authority to assign common carrier obligation to the Operator, and Operator’s exclusive permanent operating easement. All transaction documents now contain a specific provision to resolve relevant ambiguities in accordance with the Board’s State of Maine line of precedents. (*See* Sec. 20 Land Use Agreement; Sec. 13.2 Grant Agreement; and Sec. 13.2 Operating Agreement.)

Finally, these agreements, unlike those submitted previously, are stand alone agreements, not subject to any master agreement or lease. Thus, the terms and provisions contained in these transaction documents reflect the totality of the transaction.

V. EXPEDITED HANDLING REQUESTED

WisDOT also requests that the Board issue its decision within 90 days of filing this Petition effective upon service so that it may close this transaction as soon as

possible. WisDOT believes that a 90-day schedule is consistent with the processing time the Board has utilized in deciding similar State of Maine declaratory relief cases.

This transaction has experienced significant delay based on WisDOT review of the Barron County decisions, and WSOR's corporate status change. All parties hope to complete the transaction and accomplish the objective upgrades to the track within the Wisconsin construction season. And, WisDOT does not anticipate that this request will pose any new or unique policy issues for the Board or will generate any opposition.

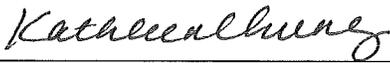
Therefore, WisDOT respectfully requests that the Board expedite its review of this Petition and issue its decision within 90 days of this amended filing.

VI. CONCLUSION

Based on its amendment of the transaction documents to comport with State of Maine requirements, WisDOT respectfully requests that the Board issue a Declaratory Order stating that Board approval is not required for the subject acquisition transaction and that WisDOT will not become a railroad common carrier as a result of this transaction.

WisDOT also requests that the Board issue its decision within 90 days of filing this Petition effective upon service so that it may close this transaction as soon as possible.

Respectfully submitted,



Kathleen Chung

Dated: May 4, 2012

ATTORNEY CERTIFICATION OF SERVICE

I, Kathleen Chung, an attorney-at-law of the State of Wisconsin, hereby Certify under penalty of perjury that I served a copy of the within pleading upon the following parties by electronic mail on May 4, 2012:

John D. Heffner
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Dated: May 4, 2012

EXHIBIT B
ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is dated as of _____, 2012, and is by and between WISCONSIN & SOUTHERN RAILROAD, LLC., a Wisconsin limited liability company ("Seller") and the WISCONSIN DEPARTMENT OF TRANSPORTATION, an administrative agency within the executive branch of Wisconsin state government ("Buyer").

RECITALS

A. Seller is a regional railroad operating railroad track throughout southern Wisconsin and northeastern Illinois (the "Business").

B. Seller desires to sell to Buyer and Buyer desires to buy from Seller the Purchased Assets (as defined below) on the terms and conditions set forth in this Agreement.

AGREEMENTS

In consideration of the promises and the mutual agreements herein contained, the parties agree as follows:

1. Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement, Seller shall sell to Buyer and Buyer shall buy from Seller, on an "as is, where is" basis, as of the Closing Date (as defined below), all right and title to and interest in the following assets (collectively, the "Purchased Assets"):

(a) the real property and appurtenant rail lines located in Milwaukee County, Wisconsin, commonly referred to as the Gibson rail line. Said rail lines are more particularly described on attached Exhibit A (the "Rail Lines"); and

(b) all fixtures and articles of personal property attached to or located on the real property that constitutes the Rail Lines, including without limitation rail and other track material, ties, wires, switches, turnouts, crossovers, pipes, conduits, electrical and mechanical signal devices and radio and other communication facilities.

2. Assets Excluded from Sale. Notwithstanding anything herein to the contrary, all assets of the Seller not specifically listed as a Purchased Asset shall be excluded from the purchase and sale referenced above (the "Excluded Assets"). The Excluded Assets shall include, without limitation: (i) all assets of Seller not located on the Rail Lines; (ii) the common carrier authority to provide rail service on the Rail Lines and the permanent exclusive operating easement referenced in Section 3 below, both of which shall be retained by Seller; (iii) cash, accounts receivable, prepaid expenses and other current assets of Seller; (iv) all personal property, rolling stock and motive power and all inventories of spare parts, fuel, tools, office supplies and equipment located on, in or pertaining to the Purchased Assets; and (v) the easement referenced in section 3 below.

3. Operating and Other Rights. Seller retains a permanent exclusive operating easement, for the benefit of itself, its successors and assigns, to use the Rail Lines for the operation of its trains, engines and cars for any and all purposes, which easement is set forth in the quit claim deed attached hereto as Exhibit B and made a part hereof by this reference (the "Deed") and which operation is further addressed in the Operating Agreement existing between Seller and East Wisconsin Counties Railroad Consortium (the "Operating Agreement").

Seller and its grantees also retain an easement for the benefit of itself and authorized third parties (including, without limitation, the SOO Line Railroad Company d/b/a Canadian Pacific Railway) for the construction, operation and maintenance of longitudinal pipelines, power lines, wireless communication towers, fiber optic cable and transmission lines, support structure and appurtenances, together with all reasonable rights of access, over, under and running lengthwise on the Rail Lines (the "Easement"). This Easement includes and incorporates the easement granted to the SOO Line Railroad Company by Seller pursuant to the terms of that certain Transmission Line Easement dated as of June 4, 2000 and recorded with the Milwaukee County Register of Deeds on June 13, 2000.

4. Purchase Price. The purchase price for the Purchased Assets shall be \$2,200,000 (the "Purchase Price"). The Purchase Price shall be paid in cash at Closing.

5. Closing. Unless otherwise agreed to by the parties, the transaction contemplated by this Agreement is to be closed (the "Closing") at the office of the Seller within 10 days from the effective date of the final order issued by the Surface Transportation Board ("STB") finding that Buyer will not become a railroad common carrier subject to the STB's jurisdiction by reason of Buyer's acquisition of the Rail Lines (the "STB Ruling"). The date on which the Closing occurs is referred to in this Agreement as the "Closing Date." If the Closing does not take place by August 30, 2012, this Agreement shall terminate and be of no further force and effect.

6. Conditions to Obligations of Buyer. The obligations of Buyer to purchase the Purchased Assets and take the other actions required to be taken by Buyer at the Closing shall be subject to the satisfaction, at or before the Closing, of each of the following conditions unless waived in writing by Buyer:

6.01 Performance. Seller shall have performed and complied with all of its covenants and other obligations under this Agreement that are to be performed or complied with by it prior to or at the Closing.

6.02 Representations and Warranties True and Correct. All representations and warranties of Seller contained herein shall be true and correct as of the date hereof and shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made or given on and as of the Closing Date, except for representations and warranties made by Seller as of a particular date, which shall be true and correct as of such date.

6.03 Notices and Consents. All licenses, permits, authorizations and approvals of, filings with and notifications to any United States, state, local or other governmental or regulatory body required to be made or obtained in order to consummate the transactions contemplated by this Agreement or operate the Business shall have been made or obtained.

6.04 Deliveries by Seller at or Prior to Closing. Seller shall have executed and delivered or caused to be delivered to Buyer the following items at or prior to Closing:

- (a) a duly executed General Bill of Sale substantially in the form of Exhibit C attached hereto;
- (b) the Deed;
- (c) a real estate transfer tax return;
- (d) the Operating Agreement duly executed by Seller and East Wisconsin Counties Railroad Consortium;
- (e) a certificate of Seller signed by an executive officer of Seller certifying that the conditions set forth in sections 6.01 and 6.02 above have been satisfied; and
- (f) such other documents, certificates and instruments as Buyer reasonably may request to consummate the transactions contemplated by this Agreement.

6.05 STB Ruling. Buyer shall have received a favorable STB ruling regarding this transaction.

7. Conditions to Obligations of Seller. The obligation of Seller to sell the Purchased Assets to Buyer and to take the other actions required to be taken by Seller at the Closing shall be subject to the satisfaction, at or before the Closing, of each of the following conditions, unless waived in writing by Seller:

7.01 Performance. Buyer shall have performed and complied with all of its covenants and other obligations under this Agreement that are to be performed or complied with by it prior to or at the Closing.

7.02 Representations and Warranties True and Correct. All representations and warranties of Buyer contained herein shall be true and correct as of the date hereof and shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made or given on and as of the Closing Date, except for representations and warranties made by Buyer as of a particular date, which shall be true and correct as of such date.

7.03 Notices and Consents. All permits, authorizations and approvals of, filings with and notifications to any United States, state, local or other governmental

or regulatory body required to be made or obtained in order to consummate the transactions contemplated by this Agreement or operate the Business shall have been made or obtained.

7.04 STB Approval. Buyer shall have provided Seller a copy of the STB Ruling.

7.05 Deliveries by Buyer at or Prior to Closing. Buyer shall have executed and delivered or caused to be delivered the following items at or prior to Closing:

- (a) the Purchase Price;
- (b) a certificate of Buyer signed by a member of Buyer certifying that the conditions set forth in sections 7.01 and 7.02 above have been satisfied;
- (c) a real estate transfer tax return;
- (d) the Grant Agreement duly executed by Buyer and the East Wisconsin Counties Railroad Consortium;
- (e) such other documents, certificates and instruments as Seller reasonably may request to consummate the transactions contemplated by this Agreement.

8. Additional Covenants and Agreements.

8.01 Tax Payments Relating to the Purchased Assets. Any income, taxes or expenses related to Purchased Assets through the day of Closing shall accrue to Seller. Any income, taxes or expenses related to the Purchased Assets subsequent to the day of Closing shall accrue to Buyer.

8.02 Post-Closing Access to Information. Buyer and Seller acknowledge that, subsequent to Closing, Buyer and Seller may each need access to information, documents or computer data in the control or possession of the other. Accordingly, Buyer agrees that, at the sole cost and expense of Seller, Buyer will make available to Seller and its agents, independent auditors and or governmental entities such documents and information as may be available relating to the Purchased Assets and Business operations in respect of periods prior to Closing and will permit Seller to make copies of such documents and information. Seller agrees that, at the sole cost and expense of Buyer, it will make available to Buyer and its agents, independent auditors and or governmental entities such documents and information as may be available relating to the Purchased Assets and the Business operations in respect of periods prior to Closing and will permit Buyer to make copies of such documents and information.

8.03 Material Changes to Purchased Assets. If the Purchased Assets are damaged prior to the Closing in an amount of not more than ten percent, in the aggregate, of the Purchase Price, Seller shall be obligated to repair the Purchased Assets and restore

it to the same condition that it was on the date of this Agreement. If such damage is greater than ten percent, in the aggregate, of the Purchase Price, Buyer shall be entitled to the insurance proceeds relating to the Purchased Assets (net of any proceeds used in commencing repairs).

9. Representations and Warranties of Seller. Seller represents and warrants to Buyer that:

9.01 Authority; Authorization. Seller has all necessary corporate power and authority to execute and deliver this Agreement and the other agreements contemplated, to consummate the transactions provided for herein and to own and lease its properties and assets. The execution and delivery of this Agreement by Seller and the performance by it of the obligations to be performed hereunder have been duly authorized by all necessary action of Seller.

9.02 Binding Effect. This Agreement is a valid and binding obligation of Seller and enforceable against Seller in accordance with its terms, except that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general equitable principles.

9.03 No Material Detrimental Effects to Rail Lines. Seller warrants and represents to Buyer that Seller has no notice or knowledge of any:

- (a) planned or commenced public improvements which may otherwise result in special assessments or otherwise materially affect the Rail Lines;
- (b) government agency or court order requiring repair, alteration, or correction of any existing condition affecting the Rail Lines;
- (c) underground storage tanks or any structural, mechanical, or other defects of material significance affecting the Rail Lines, including but not limited to inadequacy for normal use mechanical systems, waste disposal systems and well, unsafe well water according to state standards, and the presence of any dangerous or toxic materials or conditions affecting the Rail Lines;
- (d) wetland and shoreland regulations affecting the Rail Lines;
or
- (e) other conditions or occurrences which would in Seller's reasonable judgment materially detract from the value of the Rail Lines.

10. Representations and Warranties of Buyer. Buyer represents and warrants to Seller that:

10.01 Authority; Authorization. Buyer has all necessary organizational power and authority to execute and deliver this Agreement and the other agreements contemplated, to consummate the transactions provided for herein and to own and lease its properties and assets. The execution and delivery of this Agreement by Buyer and the performance by it of the obligations to be performed hereunder have been duly authorized by all necessary action of Buyer.

10.02 Binding Effect. This Agreement is a valid and binding obligation of Buyer and enforceable against Buyer in accordance with its terms, except that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general equitable principles.

11. Survival. The representations and warranties of Buyer and Seller made herein survive the Closing for the period of one year following the Closing Date.

12. Miscellaneous.

12.01 Amendment; Waiver. Any party to this Agreement may waive any of the terms or conditions of this Agreement or agree to an amendment or modification to this Agreement by an agreement in writing.

12.02 No Waiver. The failure of Seller or Buyer to insist, in any one or more instances, upon performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any term or condition.

12.03 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

12.04 Expenses. All expenses incurred by Seller or Buyer in connection with the transactions contemplated hereby, shall be the responsibility of and for the account of the party who ordered the particular service or incurred the particular expense, except as otherwise provided herein.

12.05 Notice. All notices and other communications among the parties shall be in writing and shall be deemed to have been duly given: (a) when delivered in person; (b) one day after delivery to a reputable overnight courier service; (c) five days after posting in the United States mail having been sent registered or certified mail return receipt requested; or (d) when delivered by facsimile, and promptly confirmed by delivery in person or post as aforesaid in each case, with postage prepaid, addressed as follows:

If to Seller, to:

Wisconsin & Southern Railroad, LLC.
Attn: William E. Gardner
5300 North 33rd Street
P.O. Box 90229
Milwaukee, WI 53209
Fax: 414-438-8826

with a copy (which shall not constitute notice) to:

Martin J. McLaughlin, Esq.
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
Fax: 414-298-8097

If to Buyer, to:

Wisconsin Department of Transportation
Attn: Ronald E. Adams, Chief
Railroads and Harbors Section
4802 Sheboygan Avenue
P.O. Box 7914
Madison, WI 53707-7914
Fax: 608-267-3567

or to such other address or addresses as the parties may from time to time designate in writing.

12.06 Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin without regard to conflicts of law principles.

12.07 Captions. The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

12.08 Entire Agreement. This Agreement (together with all exhibits and other documents referred to herein or delivered pursuant hereto), constitutes the entire agreement among the parties and supersedes any other agreements, whether written or oral, that may have been made or entered into by or among Seller and Buyer or by any director or directors or officer or officers of such parties relating to the transactions contemplated hereby, or incident hereto. No representations, warranties, covenants, understandings or agreements, oral or otherwise, relating to the transactions contemplated

by this Agreement, exist between the parties except as expressly set forth in this Agreement.

12.09 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

12.10 Severability. If any term or provision of this Agreement is held invalid or unenforceable, such holding shall not render any other term or provision of this Agreement invalid or unenforceable.

12.11 Counterparts; Facsimile Signatures. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Signatures delivered by facsimile or electronically in portable document format ("pdf") shall be binding for all purposes hereof.

[Remainder of page intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

SELLER:

BUYER:

WISCONSIN & SOUTHERN
RAILROAD, LLC

WISCONSIN DEPARTMENT OF
TRANSPORTATION

BY _____
Its _____

BY _____
Its _____

EXHIBIT A

LEGAL DESCRIPTION

In North Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

Commencing at a point of the centerline of the main track of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company approximately the North side of Hampton Avenue, Town of Granville now City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 93.20, and extending in a Northerly direction a distance of approximately 1.98 miles in and through the Cities of Milwaukee and Glendale, County of Milwaukee, and terminating at a point approximately at the center line of Mill Road, Town of Granville now the City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 95.18. ALSO commencing approximately the South side of Harrison Avenue now Lancaster Avenue, Town of Granville now City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 93.72 and extending in a Southeasterly direction a distance of approximately 0.52 miles in and through the Town of Granville now City of Milwaukee, County of Milwaukee, State of Wisconsin and terminating at a point at the North side of Hampton Avenue, Town of Granville now City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 93.20, being the point of connection with the line heretofore described, and extending in an Easterly direction a distance of approximately 3.04 miles and through the Town of Wauwatosa now Cities of Milwaukee and Glendale, County of Milwaukee, State of Wisconsin, through Gibson Yard, to the center line of Richards Street, Town of Wauwatosa now City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 96.76, all of which is more particularly described as right-of-way and track maps designated V.W.2 S/23; V.W.2 S/24; V.W.2 S/25; V.W.2 S/26; V.W.2 S/28; and V.W.5. S/1.

THE ABOVE DESCRIBED LANDS: Being part of the Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of Section Twenty-five (25), and the Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of Section Thirty-six (36), in Township Eight (8) North, Range Twenty-one (21) East, also the Northeast One-quarter (1/4) of Section One (1), in Township Seven (7) North, Range Twenty-one (21) East, also the Northwest One-quarter (1/4) and Northeast One-quarter (1/4) of Section Section Six (6) and the Southwest One-quarter (1/4) of Southeast One-quarter (1/4) of Section Five (5) and the Northeast One-quarter (1/4) of Section Eight (8), in Township Seven (7) North, Range Twenty-two (22) East, all in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Also being part of the Northeast One-quarter (1/4) of Section Twenty-five (25), in Township Eight (8) North, Range Twenty-one (21) East, and the Northwest One-quarter (1/4) and Southwest One-quarter (1/4) of Section Thirty (30), in Township Eight (8) North, Range Twenty-two (22) East, and the Northeast One-quarter (1/4) of Section Six (6), and the Northwest One-quarter (1/4), Southwest One-quarter (1/4) and Southeast One-quarter (1/4) of Section Five (5), in Township Seven (7) North, Range Twenty-two (22) East, in the City of Glendale, County of Milwaukee, State of Wisconsin.

AND EXCEPTING THE FOLLOWING PARCELS A & B:

Parcel A:

A tract of land located in the Northwest 1/4 and the Northeast 1/4 of Section 6, the Northwest 1/4, the Southwest 1/4 and the Southeast 1/4 of Section 5, and the Northeast 1/4 of Section 8, all in Town 7 North, Range 22 East, in the Cities of Milwaukee and Glendale, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Southeast corner of the Northeast 1/4 of said Section 8; thence North 00° 20' 34" West along the East line of the Northeast 1/4 of said Section 8, 112.07 feet to the intersection of said East line and the Southwesterly Right-of-Way line of the Wisconsin Southern Railroad and the point of beginning; thence North 36° 15' 00" West, 3111.16 feet to a point on the North line of the Northeast 1/4 of said Section 8; thence continuing North 36° 15' 00" West, 1406.88 feet to the West line of the Southeast 1/4 of the aforesaid Section 5; thence continuing North 36° 15' 00" West, 430.60 feet to a point of curvature; thence 1543.52 feet along the arc of a curve to the left, with a radius of 2801.63 feet, through a central angle of 31° 33' 59", and a chord bearing North 52° 02' 00" West, 1524.08 feet; thence North 67° 48' 59" West, 499.05 feet to the North line of the Southwest 1/4 of said Section 5; thence continuing North 67° 48' 59" West, 776.34 feet to the West line of the Northwest 1/4 of said Section 5; thence continuing North 67° 48' 59" West, 2895.66 feet to the West line of the Northeast 1/4 of the aforesaid Section 6; thence continuing North 67° 48' 59" West, 1819.90 feet to a point on the Westerly Right-of-Way of North 24th Place; thence North 00° 34' 09" West along said Westerly Right-of-Way, 108.44 feet; thence South 67° 48' 59" East, 1819.99 feet to the East line of the Northwest 1/4 of the aforesaid Section 6; thence continuing South 67° 48' 59" East, 2896.07 feet to the East line of the Northeast 1/4 of said Section 6; thence continuing South 67° 48' 59" East, 1053.49 feet to the South line of the Northwest 1/4 of the aforesaid Section 5; thence continuing South 67° 48' 59" East, 263.35 feet to a point of curvature; thence 1598.62 feet along the arc of a curve to the right, with a radius of 2901.63 feet, through a central angle of 31° 33' 59", and a chord bearing South 52° 02' 00" East, 1578.48 feet; thence South 36° 15' 00" East, 291.26 feet to the East line of Southwest 1/4 of said Section 5; thence continuing South 36° 15' 00" East, 1617.12 feet to the South line of the Southeast 1/4 of said Section 5; thence continuing South 36° 15' 00" East, 2902.15 feet to the East line of the Northeast 1/4 of the aforesaid Section 8; thence South 00° 20' 34" East along the East line of the Northeast 1/4 of said Section 8, 170.51 feet to the point of beginning.

Parcel B:

A tract of land being a part of Lot 1 of A. Holtz's Subdivision and other lands in the Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 and the Northwest 1/4 and the Northeast 1/4 of the Southwest 1/4 of Section 5, Town 7 North, Range 22 East, in the City of Glendale, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commence at the center 1/4 corner of said Section; thence South 00°35'02" East for a distance of 33.00 feet, along the East line of said Southwest 1/4, to a point; thence South 89°11'37" West for a distance of 1582.58 feet, parallel to the North line of said Southwest 1/4, to a point on the East line of existing railroad right of way; thence North 67°39'58" West for a distance of 167.95 feet, along said East line, to a point; thence North 89°11'37" East for a distance of 1737.38 feet, parallel to the South line of the Northwest 1/4, to a point; thence South 00°23'36" East for a distance of 33.00 feet, along the East line of the Northwest 1/4, to the point of commencement. Reserving the Easterly 33.00 feet for public road purposes.

EXHIBIT B

QUIT CLAIM DEED

This is a quit claim deed made this ____ day of _____, 2012 by

WISCONSIN & SOUTHERN RAILROAD, LLC, a Wisconsin limited liability company, located at 5300 North 33rd Street, Milwaukee, Wisconsin 53209, hereinafter referred to as "Grantor."

WISCONSIN DEPARTMENT OF TRANSPORTATION, located at 4802 Sheboygan Avenue, Madison, Wisconsin 53707, hereinafter referred to as "Grantee."

WITNESSETH

In consideration of the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration in hand paid to Grantor by Grantee, the receipt and sufficiency whereof is hereby acknowledged by Grantor, Grantor hereby CONVEYS AND QUIT CLAIMS unto Grantee, without any covenants or warranties of title whatsoever, AND WITHOUT RECOURSE TO Grantor, all of the Grantor's right, title, interest, estate, claim, and demand in and to the lines of railroad described in the attached Exhibit A (the "Rail Lines"), including the real property, estates, roadbeds, rights-of-way; together with all rail and other track material, ties, wires, switches, turnouts, crossovers, pipes, conduits, electrical and mechanical devices and other communication facilities; all of which is situated in the County of Milwaukee in the State of Wisconsin; TO HAVE AND TO HOLD all the estate, right, title, and interest whatsoever of Grantor in said property, whether in law or in equity, to the use and benefit of Grantee, and Grantee's, successors and assigns, forever.

Notwithstanding the foregoing conveyance, Grantor hereby retains a permanent exclusive operating easement, for the benefit of itself and authorized third parties to use the Rail Lines for the operation of its trains, engines and cars, including track inspection cars and work or wreck equipment, for any and all purposes, including, without limitation, the following: (i) interchanging traffic with any railroad company and any railroad now or in the future connecting to the Rail Lines; (ii) providing overhead service; (iii) using the Rail Lines to directly serve any existing or new customers or businesses located adjacent to or on trackage connecting to the Rail Lines; or (iv) providing common carrier and/or freight rail service on the Rail Lines.

Grantor and/or its grantees also retains an easement for the benefit of itself and authorized third parties (including, without limitation, the SOO Line Railroad Company d/b/a Canadian Pacific Railway) for the construction, operation and maintenance of longitudinal pipelines, power lines, wireless communication towers, fiber optic cable and transmission lines, support structure and appurtenances, together with all reasonable

rights of access, over, under and running lengthwise on the Rail Lines. This easement includes and incorporates the easement granted to the SOO Line Railroad Company by Grantor pursuant to the terms of that certain Transmission Line Easement dated as of June 4, 2000 and recorded with the Milwaukee County Register of Deeds on June 13, 2000.

This Quit Claim Deed is granted pursuant and subject to the terms of the Asset Purchase Agreement dated as of the date hereof between Grantor and Grantee.

IN WITNESS WHEREOF, this instrument is executed by Grantor as of the day and year first above written.

WISCONSIN & SOUTHERN RAILROAD
LLC, a Wisconsin limited liability company

BY _____
William E. Gardner, President

STATE OF WISCONSIN

COUNTY OF MILWAUKEE

On this, the ____ day of _____, 2012, before me, the undersigned officer, personally appeared William E. Gardner who acknowledged himself to be the President of Wisconsin & Southern Railroad Co., a Wisconsin limited liability company, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set me hand and official seal.

Notary Public: _____
My Commission Expires: _____

This document was drafted by,
and should be returned to:

Justin F. Oeth
Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street
P.O. Box 2018
Madison, WI 53701-2018

EXHIBIT A

In North Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

Commencing at a point of the centerline of the main track of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company approximately the North side of Hampton Avenue, Town of Granville now City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 93.20, and extending in a Northerly direction a distance of approximately 1.98 miles in and through the Cities of Milwaukee and Glendale, County of Milwaukee, and terminating at a point approximately at the center line of Mill Road, Town of Granville now the City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 95.18. ALSO commencing approximately the South side of Harrison Avenue now Lancaster Avenue, Town of Granville now City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 93.72 and extending in a Southeasterly direction a distance of approximately 0.52 miles in and through the Town of Granville now City of Milwaukee, County of Milwaukee, State of Wisconsin and terminating at a point at the North side of Hampton Avenue, Town of Granville now City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 93.20, being the point of connection with the line heretofore described, and extending in an Easterly direction a distance of approximately 3.04 miles and through the Town of Wauwatosa now Cities of Milwaukee and Glendale, County of Milwaukee, State of Wisconsin, through Gibson Yard, to the center line of Richards Street, Town of Wauwatosa now City of Milwaukee, County of Milwaukee, State of Wisconsin, also known as Milepost 96.76, all of which is more particularly described as right-of-way and track maps designated V.W.2 S/23; V.W.2 S/24; V.W.2 S/25; V.W.2 S/26; V.W.2 S/28; and V.W.5. S/1.

THE ABOVE DESCRIBED LANDS: Being part of the Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of Section Twenty-five (25), and the Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of Section Thirty-six (36), in Township Eight (8) North, Range Twenty-one (21) East, also the Northeast One-quarter (1/4) of Section One (1), in Township Seven (7) North, Range Twenty-one (21) East, also the Northwest One-quarter (1/4) and Northeast One-quarter (1/4) of Section Six (6) and the Southwest One-quarter (1/4) of Southeast One-quarter (1/4) of Section Five (5) and the Northeast One-quarter (1/4) of Section Eight (8), in Township Seven (7) North, Range Twenty-two (22) East, all in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Also being part of the Northeast One-quarter (1/4) of Section Twenty-five (25), in Township Eight (8) North, Range Twenty-one (21) East, and the Northwest One-quarter (1/4) and Southwest One-quarter (1/4) of Section Thirty (30), in Township Eight (8) North, Range Twenty-two (22) East, and the Northeast One-quarter (1/4) of Section Six (6), and the Northwest One-quarter (1/4), Southwest One-quarter (1/4) and Southeast One-quarter (1/4) of Section Five (5), in Township Seven (7) North, Range Twenty-two (22) East, in the City of Glendale, County of Milwaukee, State of Wisconsin.

AND EXCEPTING THE FOLLOWING PARCELS A & B:

Parcel A:

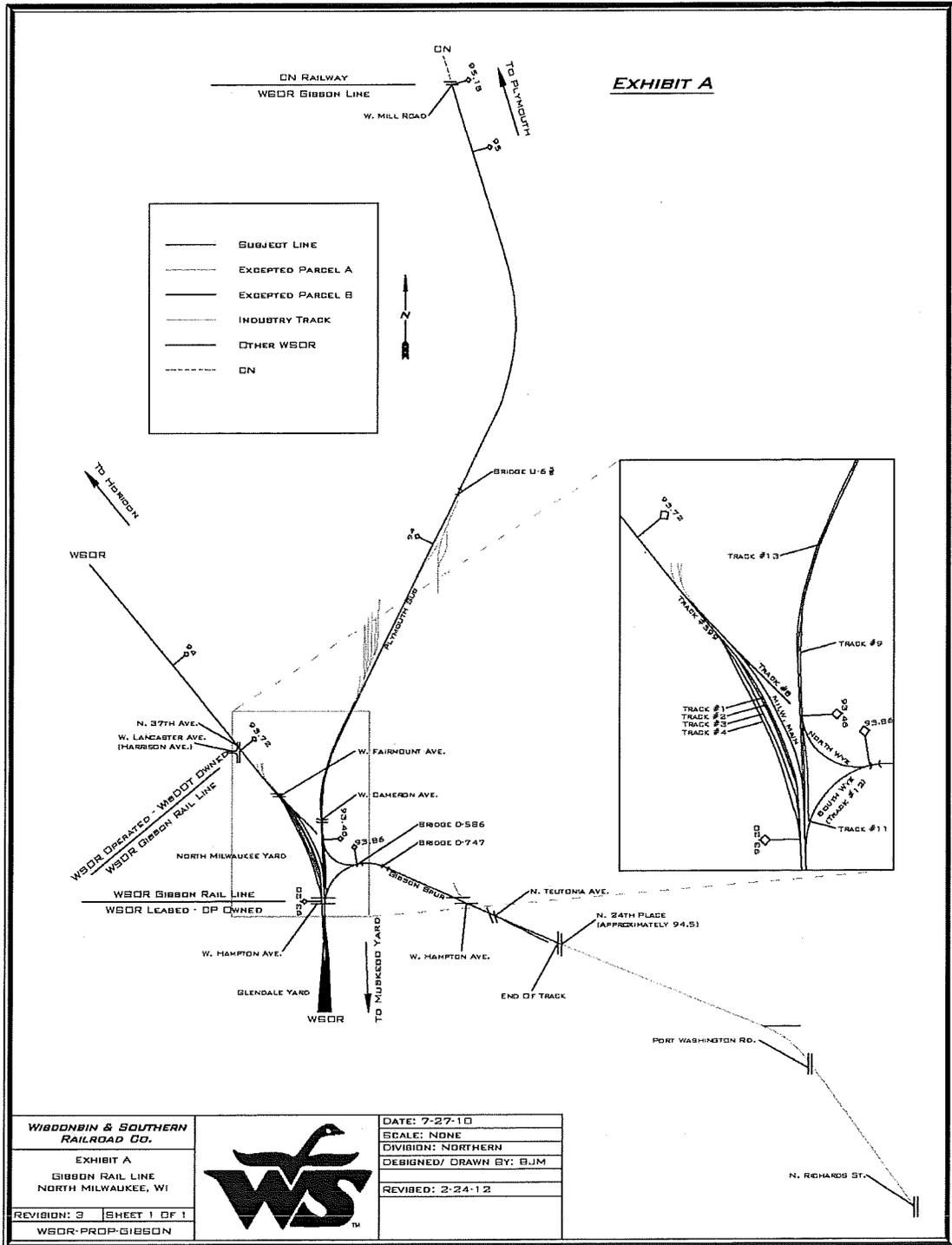
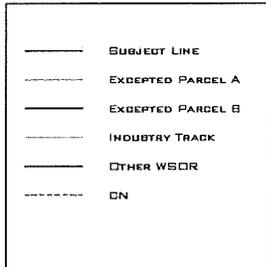
A tract of land located in the Northwest 1/4 and the Northeast 1/4 of Section 6, the Northwest 1/4, the Southwest 1/4 and the Southeast 1/4 of Section 5, and the Northeast 1/4 of Section 8, all in Town 7 North, Range 22 East, in the Cities of Milwaukee and Glendale, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Southeast corner of the Northeast 1/4 of said Section 8; thence North 00° 20' 34" West along the East line of the Northeast 1/4 of said Section 8, 112.07 feet to the intersection of said East line and the Southwesterly Right-of-Way line of the Wisconsin Southern Railroad and the point of beginning; thence North 36° 15' 00" West, 3111.16 feet to a point on the North line of the Northeast 1/4 of said Section 8; thence continuing North 36° 15' 00" West, 1406.88 feet to the West line of the Southeast 1/4 of the aforesaid Section 5; thence continuing North 36° 15' 00" West, 430.60 feet to a point of curvature; thence 1543.52 feet along the arc of a curve to the left, with a radius of 2801.63 feet, through a central angle of 31° 33' 59", and a chord bearing North 52° 02' 00" West, 1524.08 feet; thence North 67° 48' 59" West, 499.05 feet to the North line of the Southwest 1/4 of said Section 5; thence continuing North 67° 48' 59" West, 776.34 feet to the West line of the Northwest 1/4 of said Section 5; thence continuing North 67° 48' 59" West, 2895.66 feet to the West line of the Northeast 1/4 of the aforesaid Section 6; thence continuing North 67° 48' 59" West, 1819.90 feet to a point on the Westerly Right-of-Way of North 24th Place; thence North 00° 34' 09" West along said Westerly Right-of-Way, 108.44 feet; thence South 67° 48' 59" East, 1819.99 feet to the East line of the Northwest 1/4 of the aforesaid Section 6; thence continuing South 67° 48' 59" East, 2896.07 feet to the East line of the Northeast 1/4 of said Section 6; thence continuing South 67° 48' 59" East, 1053.49 feet to the South line of the Northwest 1/4 of the aforesaid Section 5; thence continuing South 67° 48' 59" East, 263.35 feet to a point of curvature; thence 1598.62 feet along the arc of a curve to the right, with a radius of 2901.63 feet, through a central angle of 31° 33' 59", and a chord bearing South 52° 02' 00" East, 1578.48 feet; thence South 36° 15' 00" East, 291.26 feet to the East line of Southwest 1/4 of said Section 5; thence continuing South 36° 15' 00" East, 1617.12 feet to the South line of the Southeast 1/4 of said Section 5; thence continuing South 36° 15' 00" East, 2902.15 feet to the East line of the Northeast 1/4 of the aforesaid Section 8; thence South 00° 20' 34" East along the East line of the Northeast 1/4 of said Section 8, 170.51 feet to the point of beginning.

Parcel B:

A tract of land being a part of Lot 1 of A. Holtz's Subdivision and other lands in the Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 and the Northwest 1/4 and the Northeast 1/4 of the Southwest 1/4 of Section 5, Town 7 North, Range 22 East, in the City of Glendale, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commence at the center 1/4 corner of said Section; thence South 00°35'02" East for a distance of 33.00 feet, along the East line of said Southwest 1/4, to a point; thence South 89°11'37" West for a distance of 1582.58 feet, parallel to the North line of said Southwest 1/4, to a point on the East line of existing railroad right of way; thence North 67°39'58" West for a distance of 167.95 feet, along said East line, to a point; thence North 89°11'37" East for a distance of 1737.38 feet, parallel to the South line of the Northwest 1/4, to a point; thence South 00°23'36" East for a distance of 33.00 feet, along the East line of the Northwest 1/4, to the point of commencement. Reserving the Easterly 33.00 feet for public road purposes.

EXHIBIT A



WISCONSIN & SOUTHERN RAILROAD CO. EXHIBIT A GIBBON RAIL LINE NORTH MILWAUKEE, WI			DATE: 7-27-10
REVISION: 3 SHEET 1 OF 1 WSDR-PROP-GIBBON			SCALE: NONE
			DIVISION: NORTHERN
			DESIGNED/ DRAWN BY: EJM
			REVISED: 2-24-12

EXHIBIT C

BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Wisconsin & Southern Railroad, LLC, a Wisconsin corporation ("Seller"), pursuant to the terms and provisions of that certain Asset Purchase Agreement dated as of _____, 2012 (the "Agreement") among Seller and the Wisconsin Department of Transportation, an administrative agency within the executive branch of the Wisconsin state government ("Buyer"), conveys, grants, bargains, sells, transfers, assigns and delivers unto Buyer and its successors and assigns, all of the right, title and interest of Seller in and to the Purchased Assets (as defined in the Agreement) in accordance with the terms of the Agreement, including without limitation, all warranties and representations contained therein.

TO HAVE AND TO HOLD all of the assets hereby assigned, transferred and conveyed unto Buyer, its successors and assigns, to its and their own use forever.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of this ____ day of _____, 2012.

WISCONSIN & SOUTHERN RAILROAD,
LLC

BY _____
Its _____

EXHIBIT C
LAND USE AGREEMENT

**LAND USE AGREEMENT
BY AND BETWEEN
EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM
AND
WISCONSIN DEPARTMENT OF TRANSPORTATION**

Agreement No. 0490-40-51(A-1)

This Agreement is made and entered into, by and between the East Wisconsin Counties Railroad Consortium, hereinafter referred to as Commission, and the Wisconsin Department of Transportation, hereinafter referred to as WisDOT.

WHEREAS, this Agreement is a new agreement covering additional line segments to Commission's system and in no way affects the status of Agreement No. 0490-40-50 (A-1), dated March 28, 2008; and

WHEREAS, the Wisconsin legislature finds that rail service continuation has widespread public interest and support, and is significant towards the preservation of a sound economic base and in the maintenance of a balanced transportation system, and that private capital and local government financial capabilities are insufficient to prevent further erosion of rail service, and that a broad public benefit is derived by state acquisition of abandoned private railroad property for continued or future railroad purposes; and

WHEREAS, WisDOT has the authority under Wis. Stat. §§ 84.09, 85.08 and 85.09, to acquire, improve, preserve and maintain land, improved property and interests necessary therein for transportation purposes such as restoration of railroad services; and

WHEREAS, Commission was established pursuant to Wis. Stat. §§ 59.58 (formerly 59.968) and 66.0301 (formerly 66.30) for the purpose of supporting continued rail service to its member counties, and with authority to acquire Rail Lines by purchase, lease or otherwise, and to provide for the operation of freight rail service thereon by contract or otherwise; and to establish, acquire, preserve and maintain and contract for the operation of a local freight rail transportation system; and

WHEREAS, WisDOT has acquired for railroad purposes certain railroad property in Columbia, Dodge, Fond du Lac, Green Lake, Manitowoc, Milwaukee, Ozaukee, Sheboygan, Washington, Waukesha and Winnebago counties formerly owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad, and the Union Pacific Railroad; and

WHEREAS, WisDOT has identified the property subject to this Agreement as being all those lands and improved property acquired as part of the Gibson Line, which includes: (a) beginning at WisDOT ownership at Milepost 93.72 on the Horicon Line to Milepost 93.20 in the vicinity of the Glendale Yard; (b) the Canco Line, from Milepost 93.20 extending in a northerly direction to Milepost 95.18, the beginning of CN ownership; (c) the Nut Line, from Milepost 93.20 extending to approximately Milepost 94.5; (d) the north leg of the wye extending from the switch on the Canco Line at Milepost 93.46 to the switch on the Nut Line at Milepost 93.86; and (e) the tracks that make up the North Milwaukee Yard, as more fully described in Attachment A, attached hereto.

NOW THEREFORE, Commission and WisDOT do hereby agree as follows:

1. Commission shall establish, construct, develop, and work with Operator for the maintenance and operation of railroad services on, over and across the property for railroad purposes, and shall have use and access to these properties subject to the conditions contained herein or in Grant Agreement, (Agreement number 0490-40-51(B-1)) by and between the East Wisconsin Counties Railroad Consortium and the Wisconsin Department of Transportation dated _____ (herein after called Grant Agreement) and any amendments thereto. Commission shall work with an Operator that holds the common carrier obligation for the Rail Line, pursuant to authority granted by the U.S. Surface Transportation Board (STB), and Operator shall possess a permanent exclusive Operating Easement to operate on the Rail Line, and the associated common carrier obligation.

2. Commission shall assume full responsibility for preserving public order upon the property and for resolving matters concerning trespass upon and from this property to adjacent private lands. Commission may adopt and enforce any necessary rule in order to protect the property. Commission shall have the right to post signs and erect barricades necessary to delineate the property as railroad property and to prevent the entrance upon the property of unauthorized vehicles and individuals.

3. Commission shall assume such responsibility as may exist for providing fencing as may be required by applicable state law.

4. Commission shall assume full responsibility for the eradication, control and removal of all noxious weeds as covered by applicable state law or local ordinance.

5. Commission shall assume full responsibility for the repair, maintenance, rehabilitation or replacement of all culverts, trestles and bridge structures, thereby insuring the unrestricted flow of applicable waters and the preservation of the necessary drainage systems. (The Commission shall be eligible for aid under existing state and federal financial assistance programs for the above purpose.)

6. Commission shall assume such responsibility as may exist for the maintenance of all state trunk highway, county highway and local highway crossings, including but not limited to surface, track and warning devices. (The Commission shall be eligible for aid under existing state and federal financial assistance programs for the above purpose.)

7. Commission may not sublet any or all of the above described property without prior approval by WisDOT, and subject to the permanent exclusive Operating Easement of Operator.

8. Full and final authority regarding sale or disposal of the described property shall remain vested in WisDOT, subject to the permanent exclusive Operating Easement of Operator.

9. Commission may, according to applicable statutory provisions, abrogate any private crossing established by agreement, which interferes substantially with operative aspects of the railroad services. Commission shall obtain authorization from WisDOT and, if necessary, the Office of the Commissioner of Railroads, prior to permitting any additional private crossings.

10. WisDOT shall retain complete authority for the issuance of permits allowing public and privately-owned utilities the right to construct, place, and operate, repair and replace any power or communications line, gas or other pipeline, water mains and sewers over, across, upon and within the

subject property. Such permits shall not be issued without prior notice to Commission and Operator; shall be subject to Operator's permanent and exclusive Operating Easement, and shall not unduly interrupt railroad operations, nor shall they cause any uninsured risk of injury to person or property on the railroad facilities.

11. WisDOT employees or its agents on safety or contract compliance inspection assignments shall have the right to enter upon the property at any time for the purpose of discharging their official duties.

12. WisDOT shall retain authority for approving all applications for new public street crossings or other public use of the corridor and shall coordinate with Commission and Operator on matters pertaining to said application.

13. Commission, through Operator, shall save and hold WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or railroad operation of Operator, or its agents, servants, subcontractors, officers or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about the place where such operation, act or omission is being performed or in the vicinity thereof (1) while Operator is performing its work, or (2) during the period of this Agreement between WisDOT and Commission is in effect, or (3) while any of the Operator's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of its Operator's operations: including, without limiting the generality of the foregoing, all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to any other persons, whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of Commission or WisDOT) under Federal or State statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the generality of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. The Operator shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

14. The Operator shall maintain, at the Operator's own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$20,000,000 per occurrence, or other form approved by WisDOT. WisDOT and its officers, employees, and agents, and Commission, and Commission's member counties and their officers, employees, and agents shall be named as additional insureds under such policies. Operator shall maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Further, Operator shall carry fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All such insurance shall cover

Commission, Commission's member counties and WisDOT to the extent of their ownership in any of said properties and to include under such coverage buildings, and trackage owned by WisDOT and Commission and leased to Operator, even though some of said buildings or structures might not be included in the property used by the Operator, except that coverage need not be maintained on improvements sold, leased, licensed or otherwise disposed of by WisDOT or Commission to any third-party. Upon initial purchase and each renewal of insurance coverage, the insurance carrier shall be subject to approval of WisDOT, such approval shall not be unreasonably withheld, and Operator shall provide to both WisDOT and Commission written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage and within 60 days thereafter a copy of the Comprehensive Railroad Liability Policy and the other policies of insurance aforesaid. In the event of suspended coverage or insurance cancellation by any insurance carrier, both the insurance carrier and the Operator shall provide WisDOT and Commission with notification of such suspension or cancellation no less than 10 days prior to such suspension or cancellation.

15. It is understood and agreed that both the Comprehensive Railroad Liability Policy and the Rolling Stock Policy to be obtained and kept in force by Operator may contain a self-insured retention. A Comprehensive Railroad Liability Policy provides coverage for liabilities resulting from railroad operations such as grade crossing incidents, injuries to third-parties while on railroad property and injuries to railroad employees under FELA. A Rolling Stock Policy provides coverage for damage to rail equipment, track structure, customer product loss and third-party property resulting from a derailment or collision between rail equipment. Operator shall maintain a self-insured retention of not more than \$250,000 per occurrence for railroad liability, employee injuries under FELA, and rolling stock equipment. If for whatever reason, Operator determines that maintaining such a level of self-insured retention is either impractical, unavailable or uneconomical, then Operator agrees to confer with Commission and WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer.

16. If for any reason the Commission is in default of an agreement with WisDOT, the Operator shall have thirty (30) days to remove the default on behalf of the Commission and shall have the right to quiet enjoyment of the property until the condition of default is resolved.

17. Any administrative rule promulgated to implement Section 85.08 and 85.09, Wis. Stats., subsequent to the date of this Agreement, which incorporates terms other than those herein contained, shall become effective immediately as a part of this Agreement upon approval and appropriate publication. (As a part of this implementation process for permanent rules, a formal hearing process is available.)

18. If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision (or remainder thereof) to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. This Agreement may be cancelled upon failure of the Commission or WisDOT to perform according to the terms and conditions set forth herein or in any other agreements between the parties hereto.

20. Statement of Parties' Intent. The Parties have intentionally structured this Agreement to comply with the principles enunciated in the State of Maine Decision, (State of Maine DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C. 2d 835 (1991)), issued by the former Interstate Commerce Commission, now the United States Surface Transportation Board, wherein a public entity was authorized to acquire a railroad line comprising part of the National Rail System threatened with abandonment, without commensurately acquiring the common carrier obligation. Any ambiguities in this agreement should be resolved and construed in favor of an outcome complying with the State of Maine requirements.

IN WITNESS WHEREOF, the East Wisconsin Counties Railroad Consortium, by its Board of Directors, has caused this Agreement to be signed by its duly authorized officers, this _____ day of _____, 2012.

WITNESS:

EAST WISCONSIN COUNTIES RAILROAD
CONSORTIUM

Jerald Holub, Chair

Jef Hall, Secretary

IN WITNESS WHEREOF, the Wisconsin Department of Transportation has caused this Agreement to be signed by its duly authorized officer, this _____ day of _____, 2012.

WITNESS:

WISCONSIN DEPARTMENT OF TRANSPORTATION

Ronald E. Adams, Chief
Railroads and Harbors Section

**ATTACHMENT A
PROPERTY DESCRIPTION OF
THE GIBSON LINE**

EXHIBIT D
GRANT AGREEMENT

GRANT AGREEMENT
BY AND BETWEEN
EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM
AND
WISCONSIN DEPARTMENT OF TRANSPORTATION.

AGREEMENT NO. 0490-40-51(B-1)

MAY 2012

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ATTACHMENT 1 -- LAND USE AGREEMENT

ATTACHMENT 2 -- OPERATING AGREEMENT

GRANT AGREEMENT

This Agreement made and entered into this _____, by and between the East Wisconsin Counties Railroad Consortium, established in accordance with Sec. 66.0301 (formerly Sec. 66.30) Wis. Stats., having its principal office at Dodge County Administration Building, 127 E. Oak Street, City of Juneau, County of Dodge, State of Wisconsin, 53039 ("Commission") and the Wisconsin Department of Transportation, P.O. Box 7914, Madison, Wisconsin 53707-7914 ("WisDOT").

WITNESSETH

WHEREAS, this Agreement is a new agreement covering additional line segments to Commission's system and in no way affects the status of Agreement No. 0490-40-50 (B-2), dated March 28, 2008; and

WHEREAS, certain rail facilities in Columbia, Dodge, Fond du Lac, Green Lake, Manitowoc, Milwaukee, Ozaukee, Sheboygan, Washington, Waukesha and Winnebago Counties, Wisconsin, have been abandoned, or have been threatened with abandonment, and have been purchased by WisDOT; and

WHEREAS, Commission is currently comprised of the counties of Columbia, Dodge, Fond du Lac, Green Lake, Milwaukee, Ozaukee, Sheboygan, Washington and Winnebago, and Commission may accept additional member counties in the future; and

WHEREAS, Commission was created for the purpose of supporting the continuance of rail service to its member counties with authority to acquire the use of the Rail Line by purchase, lease or otherwise and to provide for the operation of freight rail service thereon by contract or otherwise; and

WHEREAS, WisDOT has acquired ownership of the Principal Line Segments in the State of Wisconsin as defined under Section 1.0(r) of this Agreement; and

WHEREAS, WisDOT owns the Principal Line Segments in Wisconsin, and the Commission owns the Improved Property, or by this Agreement is granted the authority to use the Land and Improved Property to work with an Operator providing freight railroad service over the Improved Property of the Principal Line Segments in Wisconsin subject to all the conditions and limitations set forth in this Agreement and the Land Use Agreement identified in Section 1.0(m); and subject to the Operator's permanent, exclusive operating easement and the Surface Transportation Board authority to provide freight railroad service; and

WHEREAS, the parties hereto have negotiated and agreed to a long-term grant agreement which is this instrument; and

WHEREAS, Operator has been given copies of and reviewed the Land Use Agreement by and between Commission and WisDOT dated _____, and this Grant Agreement By and Between Commission and WisDOT dated _____; and

WHEREAS, Commission and Operator have inspected the Rail Line and are knowledgeable as to its needed repairs, maintenance and possible rehabilitation and are making certain financial commitments relating thereto, which are hereinafter set forth in this Agreement; and

WHEREAS, Commission and WisDOT desire to substantially revise their agreement for providing freight service on the Rail Line; and

WHEREAS, Wis. Stats. 66.0301 and 59.58 provide Commission the legal authority to enter into this Agreement; and

WHEREAS, Wis. Stats. 85.02, 85.08(2)(b), 85.08(4) and 20.395 provide WisDOT the legal authority to engage in and provide financial assistance for rail service preservation; and

NOW THEREFORE, the parties do hereby mutually agree and will be mutually benefited in that the Commission shall provide the Land and Improved Property to an Operator and shall be financially assisted by WisDOT in accordance with the following terms and conditions, and in consideration of the promises and the mutual covenants contained herein, the parties hereto covenant and agree as follows:

ARTICLE 1.0 - DEFINITIONS.

As used in this Agreement and also, unless otherwise more particularly defined, in other instruments referred to herein:

- a. "AREMA" means American Railway Engineering and Maintenance-of-Way Association.
- b. "Building" means any structure built to stand more or less permanently with columns or walls and designed to support a roof, and constructed as either an addition which increases the outside dimensions of another structure, or as a detached entity which is not physically connected to another structure and which was primarily intended and designed for human use, occupancy or the storage of goods and materials.
- c. "Commencement Date" means the date the Operating Agreement between Commission and Operator is approved in writing by WisDOT.
- d. "Commission" means the East Wisconsin Counties Railroad Consortium.
- e. "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.

- f. "CN" means Canadian National Railway Company, and its subsidiaries, assigns and successors, if any.
- g. "CPR" means the Canadian Pacific Railway D/B/A the Soo Line Railroad Company and its successors, if any.
- h. "EWCRC" means the East Wisconsin Counties Railroad Consortium.
- i. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.
- j. "Grant Agreement" or "Agreement" means this Agreement entitled Grant Agreement No. 0490-40-51(B-1) By And Between The East Wisconsin Counties Railroad Consortium And The Wisconsin Department of Transportation, dated _____, and any amendments thereto.
- k. "Gross Operating Revenues" means all income produced from operations on the rail line which shall include freight bill revenues from complete on-line hauls, freight bill revenues retained by Operator under a division of revenues with other rail lines, shipper contract charges, surcharges, net equipment per diem, demurrage, and equipment storage. Specifically excluded is income received from contract car repair, building of or scrapping of rail equipment, and excursion trains. Gross Operating Revenues shall be computed on an accrual basis.
- l. "Improved Property" means Buildings and Trackage located upon the Land of the Rail Line.
- m. "Land" means the real estate, generally 66 feet in width, the use of which is provided to Operator by Commission, upon which the trackage that is leased to Operator under this Agreement is located and which is the subject of the Land Use Agreement.
- n. "Land Use Agreement" means the Land Use Agreement No. 0490-40-51(A-1) by and between the East Wisconsin Counties Railroad Consortium and the Wisconsin Department of Transportation, dated _____, and any amendments thereto.
- o. "Operator" means the Wisconsin & Southern Railroad, LLC, and its successors, if any.
- p. "Operating Agreement" means the Operating Agreement No. 0490-40-51(F-1) By And Between The East Wisconsin Counties Railroad Consortium & Wisconsin & Southern Railroad, LLC., dated _____, and any amendments thereto.
- q. "PRTC" means Pecatonica Rail Transit Commission.
- r. "Person" means an individual, a partnership, an association, or bodies politic or corporate.

- s. "Principal Line Segment" means one of the following as defined by their beginning and end points:

Gibson Line, which includes: (a) beginning at WisDOT ownership at Milepost 93.72 on the Horicon Line to Milepost 93.2 in the vicinity of the Glendale Yard; (b) the Canco Line, from Milepost 93.2 extending in a northerly direction to Milepost 95.18, to the beginning of CN ownership; (c) the Nut Line, from Milepost 93.20 extending to approximately Milepost 94.5; (d) North leg of the wye extending from the switch on the Canco Line at Milepost 93.46 to the switch on the Nut Line at Milepost 93.86; and (e) the tracks that make up the North Milwaukee Yard.

- t. "Rail Line" means the Principal Line Segment(s) in aggregate.
- u. "RHS" means Railroads and Harbors Section of WisDOT.
- v. "South Central" means South Central Wisconsin Rail Transit Commission.
- w. "STB" means the Surface Transportation Board of the United States Department of Transportation, or its successors, if any.
- x. "Trackage" means the rails, ties, ballast, track material, bridges, switches, culverts, signals, and all other non-Land property acquired by WisDOT and provided under grant to the Commission subject to certain express conditions and limitations. This term does not include Land.
- y. "UP" means the Union Pacific Railroad and its successors, if any.
- z. "WisDOT" means the Wisconsin Department of Transportation.
- z. "WRRTC" means the Wisconsin River Transit Commission D/B/A the Wisconsin River Rail Transit Commission.

ARTICLE 2.0 - LEASE, LICENSE, TERM AND RESERVATION.

Section 2.1 - Lease, License and Term.

(a) WisDOT hereby grants to Commission the use of Improved Property, and the authority to work with Operator to manage the Improved Property and Land, subject to Operator's permanent exclusive Operating Easement, which Operating Easement was or shall be reserved or acquired by Operator, for the benefit of itself, its successors and assigns, to use the Rail Line for the purpose of providing freight rail service and for all other purposes incidental to the foregoing, subject, however, to the uses and reservations identified in Section 2.2 hereafter and further subject to the uses and reservations set forth in the governing Land Use Agreement.

(b) This Agreement is to be executed upon authorization of the Board of Directors of the Commission, and the authorization of the Chief of WisDOT RHS. This Agreement shall commence upon execution of this Agreement and shall be perpetual; provided, however, that either party may terminate this Agreement as provided in Article 7.0.

Section 2.2 - Reservation.

The Land and Improved Property involved in this Agreement are the Land and Improved Property defined in Section 1.0(k) and (l), herein. Future operations may show WisDOT that portions of the Land or Improved Property are not needed for railroad use or are of sufficient width to allow other uses as co-uses.

Land and Improved Property used predominantly in generating income not included within Gross Operating Revenues shall be deemed not used for railroad purposes. Partial use of the line by Commission and Operator for future Commuter Passenger Service is possible if first authorized under a separate operating agreement in the manner set forth in Section 2.2(g). During the term of this Agreement some consolidation of yards, interchanges and terminal facilities of the various railroads serving the particular area may require relocation of Improved Property and other facilities which could affect portions of the Rail Line. WisDOT may, upon request from Commission, Operator or others, determine that the use of the Rail Line for railroad purposes is such that the width of the Land at particular points also permits recreational or scenic uses. WisDOT hereby makes this grant of use subject to the following conditions:

(a) Subject to Section 2.2(b) below, the right is retained for WisDOT to sell or lease Land, Improved Property or both that WisDOT determines is not needed for the continuation of freight rail service. Such determination shall be made only upon approval by Operator and the Commission, and shall not affect Operator's permanent exclusive Operating Easement.

(b) In the event WisDOT determines with the concurrence of Commission and Operator that certain parcels of Land or Improved Property are not reasonably required for the preservation of railroad services, WisDOT may, upon its own initiative, sell, permit, or lease such Land or Improved Property located outside 33 feet of the center line of the main track to any party. Before a sale, WisDOT must first offer the Land or Improved Property to Commission and to Operator and to other state and local government units under the provisions of Section 85.09, Wis. Stats. Commission shall promptly notify Operator in writing whether it intends to exercise any right to purchase Land and Improved Property offered by WisDOT. If Commission does not elect to exercise such right, Operator may, within thirty (30) days following receipt of the foregoing notice, supply Commission with the purchase funds, and Commission shall purchase the Land and Improved Property to the extent that it may be accomplished under Section 85.09, Wis. Stats., and convey same to Operator; provided that Commission shall not be required to purchase such Land and Improved Property on behalf of Operator if in its reasonable judgment Commission determines that the Land and Improved Property will not be used for a public purpose, in which case the funds furnished by Operator to Commission shall be promptly returned.

(c) WisDOT retains the right to retake or retain possession of any of the Rail Line under lease to third parties for itself, subject to Operator's permanent exclusive Operating Easement to

provide service. In the Land Use Agreement, WisDOT retains the right to approve all leasing of Improved Property and to conduct all the leasing of Land subject to approval of Commission and Operator, subject to the permanent exclusive Operating Easement of Operator. If there are sidetracks on any of the Land leased to third parties, WisDOT shall provide Commission and Operator with the right of continued use of the sidetrack and Land 16.5 feet from the center line on each side of the side track.

(d) The right to lease Land, which is not under license and lease to Operator or not presently leased to third parties is retained for WisDOT.

(e) Any building or other structure presently on the Land being used for railroad purposes or previously built for railroad purposes, except as may be specifically excluded elsewhere herein or in an existing lease or by law, will be available for use by Commission and Operator. If any such building or buildings are not needed by Commission or Operator for their operation, WisDOT reserves the right to lease any such building or buildings to third parties for periods not to exceed two (2) years. In some instances, this might involve leasing a portion of the building with Operator using the other portion. WisDOT agrees to obtain the approval of Commission and Operator in making such leases.

(f) The transfer of use of the Land to Commission and Operator is subject to existing utility easements, street and highway easements, and other existing easements, permits or licenses of grant or use. WisDOT retains the right to grant future utility easements and public highway or road crossing authorizations. WisDOT retains to itself all easement and right-of-way rental, purchase price, or other easement, right-of-way or property transfer payments.

(g) Commission has the right to contract for the use of the Rail Line or portions thereof for Commuter Passenger Service. Such contract may be with Operator or a governmental unit or Commission may provide that service itself. Commission shall not allow Operator or any other operator to provide Commuter Passenger Service over any portion of the rail line without first entering into a separate agreement authorizing that service. Before Commuter Passenger Service may begin, Commission must sign the authorizing agreement, and WisDOT must approve it. Any plan or proposal for Commission itself to operate Commuter Passenger Service shall also be subject to WisDOT review and approval. Further, it is a condition of this reservation that Commission may contract with a third-party respecting the provision of Commuter Passenger Service only if reasonable advance notice is given to Operator and Operator is afforded the opportunity of participation in the negotiating and establishing of the conditions of the co-use of these facilities. The granting of such co-use is on the further condition that any upgrading or changing of the Rail Line or other facilities to accommodate the co-use shall be first approved by WisDOT in accordance with Commission's obligations under the Land Use Agreement and shall not involve any additional cost to Operator and that a reasonable division of costs for the servicing, maintaining and repairing of the trackage and other facilities for the co-use shall be established. It is a further condition that such a joint use shall not restrict the use of the particular facilities by Operator. This joint use may involve testing or trial operations, as well as permanent operations.

(h) As to the planning operations and the changes which might occur because of planning operations, in any agreement with Operator or any other operator, Commission shall reserve to WisDOT, itself and the governmental entities along the Rail Line the right to do such planning and to provide for relocation of facilities, including Improved Property and the elimination of certain

trackage, buildings and other facilities, in order to carry out the determinations arrived at from such planning. The Commission shall reserve to itself and WisDOT, the right to negotiate the contract as to such matters, but may do so on the condition that Operator be given notice and the opportunity to act as a participant or an observer at any such negotiations and that the following factors are controlling insofar as they affect Operator; Commission shall require Operator to agree that it will cooperate in implementing any agreements made by WisDOT or Commission as to the matters set forth in this subsection providing that the alternate facilities made available to Operator are approximately equal to those released by Operator; and, that the costs of these changes shall not be imposed on Operator. No change shall interfere with Operator's duty or ability to provide service unless Operator and Commission agree to such change.

(i) It is understood that no lease money or sale receipts are to accrue to Operator in the event of any sales or leases of Land or Improved Property.

(j) Commission shall require Operator to receive a written permit from WisDOT before Operator itself provides passenger rail service. This section does not limit Operator's ability to provide freight services. If Operator proposes to operate or allow the operation of any train over any portion of the Rail Line which is to carry any person paying a fee for carriage, Operator shall first apply for and receive a written permit from WisDOT for the passenger operation on the Rail Line. WisDOT, in consultation with Commission, may grant or deny a permit based solely upon any of the following: adequacy of liability insurance coverage, terms and amount as set forth in Section 6.2 below; trackage condition; proposed speed of operation; preparations for crowd control, parking and clean-up; and sufficiency of consumer protection assurances associated with each use by Operator of any portion of the Rail Line subject to this Agreement to be operated over by Operator or by an affiliate, subcontractor or lessee of Operator. The permit may be denied if not requested in writing a minimum of ten days prior to the proposed use date, or if a fully executed copy of an acceptable certificate of binding insurance is not submitted for Commission and WisDOT review ten days prior to the proposed use date, or if insurance coverage is inadequate or flawed in the reasonable judgment of Commission or WisDOT, or if a prior fee remains unpaid in whole or in part.

ARTICLE 3.0 - RENT.

Commission shall be permitted to charge Operator a lease or rental fee for use of the Land and Improved Property.

ARTICLE 4.0 - REVENUE DIVISIONS, TRACKAGE RIGHTS, INTERCHANGES AND COORDINATION WITH OTHER LINES.

Section 4.1 - Division of Revenues.

Commission shall receive assurances from Operator that Operator has made necessary and satisfactory arrangements for divisions of revenues with all connecting railroads. Such assurances shall show that Operator has obligated itself to make arrangements for division of revenues, as are needed, if there are other interchange points needed for proper operation of the Rail Line, and

Commission shall require Operator to furnish Commission and WisDOT documented evidence of such divisions after being obtained.

Section 4.2 - Trackage Rights.

(a) Commission and Operator have the responsibility for obtaining the necessary trackage rights required to permit the operation over the Rail Line that is required to perform the necessary freight rail service for shippers along the Rail Line. Commission and Operator shall use their best efforts to obtain such rights or to purchase such additional trackage and land or both as are necessary to provide access by Operator to the Improved Property. This section shall not be construed to require Commission to expend funds, or acquire property or rights. Commission shall require Operator to file all trackage rights agreements with the STB as may be required by law.

(b) Commission shall require Operator to furnish Commission and WisDOT copies of trackage rights or lease agreement(s) allowing Operator to operate over:

- (i) CN property from Rugby Jct. to Waukesha.
- (ii) CN property from Saukville to Canco.
- (iii) UP property from Kohler to Sheboygan.
- (iv) Such other railroad property as is or as may become necessary to operate the Rail Line.

Section 4.3 - Interchange Agreements.

It is recognized that Operator may enter into interchange agreements with the CN, CPR and UP in various locations to facilitate the service to the Rail Line. Commission shall require Operator to supply WisDOT and Commission with documented evidence of the interchange agreements and any amendments thereto after obtaining the same.

Section 4.4 - Interline Divisions.

(a) Commission shall require Operator to adhere to and comply with the interline accounting rules of the Association of American Railroads in dividing revenues, under through rates, among participating carriers. Commission shall require Operator to covenant and agree to make such divisions at the time and in the manner provided herein.

(b) Commission shall require Operator to remain current on its financial obligations to connecting railroad companies. In the event that any or all connecting railroad companies place Operator on a "junction settlement" basis, or any modification thereto, except by voluntary written agreement between Operator and connecting railroad, Commission may, at its option, declare Operator in default of this Agreement.

ARTICLE 5.0 - RAILROAD OPERATIONS.

Section 5.1 - Authority to Operate.

(a) Commission shall verify that Operator obtains or maintains the requisite common carrier obligation from the STB for the railroad operations and to keep such authority in full force and effect throughout the term of their Agreement. Commission shall require Operator to make all required filings and reports to the STB and the Wisconsin Office of the Commissioner of Railroads.

(b) Commission shall verify that Operator has or shall acquire and maintain a permanent exclusive Operating Easement for freight railroad service and the associated STB common carrier obligation to fully exercise its Operating Easement over the Principal Line Segments and provide shippers with common carrier freight railroad service. Commission will work with Operator for Operator to exclusively control, manage, staff and plan for the provision of freight rail service on the Principal Line Segments. Commission will work with Operator for Operator to provide exclusive originating and terminating freight rail service on the Principal Line Segments, including line-haul and switching services to shippers, pursuant to Operator's permanent exclusive Operating Easement. As a part of its operation, Operator shall have power to effect such additions, changes, betterments, and repairs to the Improved Property as Operator may, in its judgment, deem necessary, expedient or proper to assist or improve rail service over the Principal Line Segments. Operator shall coordinate with Commission regarding any such additions, changes, betterments, and repairs. Commission shall grant Operator the authority to adopt and promulgate rules governing access to, use of, and operation of the Land and Improved Property.

Section 5.2 - Requirements.

The Commission agrees to require Operator to obtain and/or common carrier obligation from STB to operate and provide freight railroad service on the Rail Line. Provision of rail service shall include but not be limited to:

(a) Service. Commission shall require Operator to provide revenue freight rail service to current and future shippers and receivers connected to or on the Rail Line including provision of rail cars, switching, line haul and other related services and including bridge traffic. Current and future shippers and receivers connected to or on the Rail Line shall be provided freight rail services upon the same terms and conditions as such service is provided to other shippers and receivers served by Operator, or as otherwise agreed between Operator and any shipper or receiver. Failure to provide minimum service required or agreed to hereunder or required under Section 7.10 shall at WisDOT's option, require Commission to initiate the process to find Operator in default of the Operating Agreement between Commission and Operator.

(b) Maintenance. Commission shall perform or cause Operator to perform all maintenance of the Rail Line including trackage, crossings at-grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the Land or Improved Property reasonably necessary for the safe operation of freight rail service or any other service provided by Operator. Tracks shall be maintained to FRA Class II standards, or to a standard determined by WisDOT after consultation with Operator, as of an inspection date prior to sixty (60) days

following the Commencement Date. Upon its completion, a list of line segments that shall be maintained to FRA Class II standards and a list of line segments that shall be maintained to FRA Class I standards shall be included as Attachment 3 to this Agreement. Any Principal Line Segment that has been rehabilitated as part of a WisDOT assisted project after the date of this Agreement shall be maintained to the WisDOT maintenance specifications specified as part of the contract covering WisDOT assistance to that rehabilitation project. In the event of a dispute between Operator and WisDOT as to the condition of the trackage following the inspection referred to above, Operator and WisDOT shall jointly request FRA to determine the FRA track safety classification. Bridges shall be maintained in compliance with Chapter 7, Part 3 of the Manual for Railway Engineering, as amended, published by AREMA. Operator may be declared in default, as hereinafter provided, or in the case of buildings, may lose the right of possession and occupancy, if a deviation from the applicable maintenance standards or local and state building codes remains uncorrected for more than ninety (90) days after notification of the deviation as hereinafter provided or if Operator has not diligently commenced to correct such deviation within the 90-day period. Operator is prohibited from using trackage located in sidetracks, sidings or other location as maintenance material unless prior written permission to do so is requested from and first granted by WisDOT. Compensation to WisDOT or Commission from Operator for materials used with or without permission may be required by WisDOT. Any costs of trackage installed on or funds expended for maintenance of any portion or component of the Rail Line under the jurisdiction of Commission or Operator by grant from WisDOT that is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by WisDOT upon sale of the Rail Line or transfer of operating rights over the trackage to another operator.

(c) Safety and Other Inspections. Operator shall facilitate the inspection of the Rail Line facilities as required by governmental agencies. Operator shall inform WisDOT and Commission of the time and place of any inspection requested by a federal or insurance inspector. Operator shall permit representatives of WisDOT authorized by the Secretary of WisDOT or Chief of the Railroads and Harbors Section of WisDOT and representatives of Commission authorized by Commission chairman to accompany the inspector. Operator shall provide WisDOT access to all documents related to any inspection by any governmental or insurance agency. Operator shall upon reasonable notice during normal business hours permit inspection of the Rail Line, the rolling stock and maintenance equipment, and the operating and maintenance practices of Operator and Operator's affiliates performing work on the Rail Line, by WisDOT or its agents or Commission. Operator shall furnish Commission and WisDOT with copies of all inspection reports from federal agencies or insurance agencies and safety orders from federal agencies or insurance agencies and shall furnish WisDOT and Commission any like reports and orders from the Wisconsin Office of the Commissioner of Railroads.

(d) Equipment. Operator shall provide and maintain at its own expense all suitable locomotives, cars and other rail equipment as are necessary in the operation of this freight rail service. Operator shall be solely responsible for and shall provide all tools and other equipment necessary to properly maintain the operating equipment, Improved Property, and Land on the Rail Line.

(e) Operating Personnel. Operator shall obtain and maintain the necessary personnel for operation and management of its operations over the Rail Line. Said personnel shall be under the sole control and direction of Operator. It is understood and agreed that no personnel of Operator are agents, employees, servants or subcontractors of WisDOT or Commission. All such personnel

shall be qualified and properly trained for such service, but this shall be the sole responsibility of Operator.

(f) Accounting Services. Operator shall establish and perform all necessary accounting services appropriate to conducting business as a railroad and to comply with this Agreement. Operator shall permit access by WisDOT and Commission and their agents to all documents related to the business operation of Operator including, but not limited to, agreements for leases, loans, revenue divisions and records of rail traffic, receipts and expenditures.

(g) Use of Property. Operator shall have use of all the Land and Improved Property under the ownership or control of Commission, including buildings, which are reasonably required for the operation of the Rail Line. This shall not, however, negate any reservations held or any actions taken by Commission or WisDOT under the reservations set forth in Section 2.2 of this Agreement. Operator shall provide maintenance and upkeep for any such buildings. In the event it becomes desirable to construct buildings or other structures on the Land, the same may be constructed by Operator at its expense, subject to WisDOT's approval. Operator shall have no authority to enter into easements, permits, licenses or leases affecting the Land whether under the use of Operator or outside the use of Operator. Commission understands that any agreement for leasing Land is subject to the Land Use Agreement as to securing authority and approval from WisDOT and as to the division of rents.

(h) Promotion of Business. Operator shall use its best efforts to promote the use of freight rail services by customers located along the Rail Line and in the immediate vicinity and agrees to diligently seek new freight rail business and customers for such services.

(i) Use of Land or Trackage as Collateral. Neither the Land for which a license to use is granted nor the Improved Property the use of which is granted under this Agreement shall be used by Commission or Operator in any form or amount as equity, security, or collateral for any borrowing or other means of raising capital by Commission or Operator or as collateral for any other purpose.

(j) Public Order. Operator shall assume full responsibility for preserving public order upon the subject property and for resolving matters concerning trespass upon or from the Land and Improved Property adjacent to private lands. Operator may adopt and enforce any necessary rules in accordance with Section 5.1(b) in order to protect the Rail Line. Operator shall have the right to post signs and erect barricades necessary to delineate the Rail Line as railroad property and to prevent entrance upon the subject Rail Line by unauthorized vehicles or individuals.

(k) Fencing. Operator shall assume such responsibility as may exist to third parties for providing fencing required under Chapter 90, Wis. Stats., local ordinance or contract.

(l) Vegetation Control. Operator shall assume such responsibility as may exist for the eradication, control and removal of vegetation as required by applicable state law or local ordinance.

(m) Crossing over Waters and Drainage Systems. Operator shall assume full responsibility for the ordinary repair and maintenance of all culverts, trestles and bridge structures on the Rail Line.

(n) Highways and Streets. Operator shall assume full responsibility on the Rail Line for the maintenance of trackage, warning devices, and railroad highway crossings whenever crossing maintenance is required by law from Commission or Operator.

(o) Private Crossings. Operator may, according to applicable statutory provisions, abrogate any private crossing established by agreement, which interferes substantially with Operator's performance of freight rail services. Operator shall obtain authorization from WisDOT and, if necessary, the Wisconsin Office of the Commissioner of Railroads, prior to permitting any additional private crossings.

(p) Maintenance Plan.

(i) Commission shall prepare or cause to be prepared an annual maintenance plan for the Rail Line. This plan shall be combined with like plans for any and all other Rail Lines provided to Operator by any other rail transit commission existing in Wisconsin. The plan shall be prepared in consultation with WisDOT and shall be fully completed and delivered by Operator to WisDOT for WisDOT review and reasonable approval not later than February 1 of each year. The plan required to be submitted shall include the quantities of materials to be installed during the year in which the plan is submitted, the numbers and types of personnel to be employed for the proposed maintenance, the numbers and types of machines to be utilized for performing the proposed maintenance, the location of the proposed maintenance and the schedule for performing the proposed maintenance. Estimated prices for materials, labor and machines shall be included, as well as the projected rates of production.

(ii) A maintenance plan shall not be eligible for WisDOT approval unless the sum of expenses and the capitalized maintenance expenditures called for in the plan during each calendar year are a minimum of 10 percent of Gross Operating Revenues. Notwithstanding the above, in the event maintenance is required to meet the track classification levels required under Section 5.2(b), sufficient funds to achieve the classification level required shall be expended. The Plan or modification shall be revised and resubmitted within 30 days following a WisDOT request so as to overcome the deficiencies, if any, identified by WisDOT.

(iii) Commission or Operator shall respond to inquiries from WisDOT concerning Operator's implementation of the approved Maintenance Plan. Operator shall provide WisDOT with a revised Maintenance Plan within 10 days following WisDOT's request for revisions following a review in accordance with Section 5.2(b).

(q) Liens Against Rail Line. Neither Commission nor Operator shall directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Land or Improved Property or any interest therein, except as expressly approved in writing by WisDOT. Operator will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

(r) Rail Banked Lines. The obligation of Operator under this and other sections of this Agreement shall not apply to Principal Line Segments classified as rail banked lines.

ARTICLE 6.0 - LIABILITY AND INSURANCE.

Section 6.1 - Hold Harmless.

Except to the extent that the same arises from or is related to co-uses permitted by WisDOT pursuant to Section 2.2(g) above, Commission shall save and hold WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or railroad operation of Operator, or its agents, servants, subcontractors, officers or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about the place where such operation, act or omission is being performed or in the vicinity thereof (1) while Operator is performing its work, or (2) during the period this Agreement between WisDOT and Commission is in effect, or (3) while any of the Operator's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of Operator's operations: including, without limiting the generality of the foregoing, all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to any other persons, whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of WisDOT) under Federal or State statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the generality of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. Commission shall cause Operator, at Operator's own expense to investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

Section 6.2 - Insurance.

(a) Required Coverage. During the term of this Agreement, Operator shall maintain, at Operator's own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$20,000,000 per occurrence, or other form approved by WisDOT. WisDOT and its officers, employees, and agents shall be named as additional insureds under such policy. Operator shall maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act (FELA) to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal

Employer's Liability Act. Further, Operator shall carry fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All such insurance shall cover Commission, Commission's member counties and WisDOT to the extent of their ownership in any of said properties and to include under such coverage buildings, and trackage owned by WisDOT and Commission and leased to Operator, even though some of said buildings or structures might not be included in the property used by the Operator, except that coverage need not be maintained on improvements sold, leased, licensed or otherwise disposed of by WisDOT or Commission to any third party. Items of coverage for WisDOT may be waived by a letter from WisDOT to the Commission and Operator.

(b) Validation of Coverage and Notice of Cancellation. Upon initial purchase and each renewal of insurance coverage, the insurance carrier shall be subject to approval of WisDOT, such approval shall not be unreasonably withheld, and Operator shall provide to both WisDOT and Commission written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage and within 60 days thereafter a copy of the Comprehensive Railroad Liability Policy and the other policies of insurance aforesaid. In the event of suspended coverage or insurance cancellation by any insurance carrier, both the insurance carrier and the Operator shall provide WisDOT and Commission with notification of such suspension or cancellation no less than 10 days prior to such suspension or cancellation.

(c) Self-Insured Retention. It is understood and agreed that both the Comprehensive Railroad Liability Policy and the Rolling Stock Policy to be obtained and kept in force by Operator may contain a self-insured retention. A Comprehensive Railroad Liability Policy provides coverage for liabilities resulting from railroad operations such as grade crossing incidents, injuries to third parties while on railroad property and injuries to railroad employees under FELA. A Rolling Stock Policy provides coverage for damage to rail equipment, track structure, customer product loss and third party property resulting from a derailment or collision between rail equipment. The Operator shall maintain a self-insured retention of not more than \$250,000 per occurrence for railroad liability, employee injuries under FELA, and rolling stock equipment. If for whatever reason, the Operator determines that maintaining such a level of self-insured retention is either impractical, unavailable or uneconomical, then Operator agrees to confer with Commission and WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer. It is a condition of this Agreement that Operator shall annually provide WisDOT with an independently audited financial statement showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention. It is a condition of this Agreement that, upon the request of Commission, which request shall be set forth in a resolution adopted by the Board of Directors of the Commission, at a meeting of the Board of Directors of the Commission, by an affirmative vote of not less than two-thirds of the fixed membership of the Board of Directors of the Commission (notwithstanding whether all members are present at a meeting to vote on such resolution), Operator shall provide Commission with an independently audited financial statement showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention.

(d) Reporting of Incidents and Claims. During the term of this Agreement and any extension thereof, any damage or injury to person or property occurring on the Rail Line or from the operation of the equipment of Operator or by the employees of Operator (herein referred to as an "incident") shall be immediately reported to Commission and WisDOT. Operator shall, within 5 days, provide a written report, which shall also include a brief resume of the facts of the incident

and an estimate by the Operator as to the approximate potential claim which might arise thereunder. If a notice of injury or claim of damage is made to Operator, then Operator shall forthwith furnish Commission and WisDOT with copies thereof. Thereafter, Operator shall provide Commission and WisDOT copies of any further instruments, reports, or records involving such matter and shall periodically, but not less frequently than semi-annually, report to Commission and WisDOT as to further happenings regarding the incident including the final disposition of the matter.

(e) Self-Insured Retention Set Aside. Operator shall, within 30 days after receiving a claim or notice of claim alleging an incident or after being notified of a claim or notice of claim being received by Commission, a member county of Commission, or a WisDOT employee alleging an incident, set aside a separate, segregated reserve for each claim, including claim defense. The reserve fund set aside for each claim and for its defense shall be determined by Commission's counsel, Operator's counsel and WisDOT's counsel. If the counsels are unable to agree, they shall select a fourth party to make the determination. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to claims, Operator shall provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position. In the event that the ratio of Operator's current assets to current liabilities, including claim reserves, as determined from General Ledger Trial Balance sheets filed with Commission and WisDOT within 45 days after the end of each quarter is less than 1.1 to 1 as determined by WisDOT, Commission shall reserve the right in its Operating Agreement with Operator to find the Operator in default in accordance with Section 7.1, below. Upon receipt of such notice of default, Operator shall have the right to cure said default by (i) purchasing, at its own cost and expense, such insurance as WisDOT and Commission shall deem necessary in their reasonable judgment or by (ii) causing the equity owners of Operator to contribute such additional amounts to the capital of Operator as are required to increase such ratio to 1.1 to 1.

(f) Review and Modification of Liability Insurance. The coverage limits of Operator's Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review by Commission and WisDOT no more than once every twelve months. Modifications to self-insured retention amounts shall be governed by Section 6.2(c) herein. Modifications increasing coverage limits shall be effective upon notice by WisDOT to Commission and Operator. Any modifications decreasing coverage limits may not, in any event, reduce the requisite insurance coverage below that required under Section 6.2(a) herein and shall be effective only upon WisDOT approval and upon amendment to this Agreement. Review of liability insurance shall be conducted by Commission, Operator, and WisDOT no less than 30 days prior to the expiration date of the policy then in force, except that a special review may be conducted in the event Operator experiences a cancellation of or a modification or a refusal to renew its liability insurance. Such special review shall be governed solely by Section 6.2(f), (iv), (v), and (vi) herein. The following conditions shall apply to the review and modification of Operator's Comprehensive Railroad Liability Insurance:

- (i) WisDOT may require Operator to expend up to a fixed percentage of Operator's Gross Revenue, as determined under Sections 6.2(f)(ii) and 6.2(f)(iii) herein, to purchase comprehensive railroad liability insurance covering the liability as is required and naming the additional insureds as is required under Section 6.2(a) herein. Operator's decision to obtain insurance beyond that which is required under Section 6.2(a) herein for any aspect of coverage shall not result in Operator

purchasing any less insurance coverage for any other aspect of coverage required under Section 6.2(a) herein.

- (ii) A base percentage of Gross Operating Revenue expended for the purchase of comprehensive railroad liability insurance is established for the duration of this Agreement at 4% of Operator's Gross Operating Revenue for the Operator's most recent fiscal year, as determined by independent audit. Commission or WisDOT may require Operator to expend up to an amount equal to 150% of the base percentage, which amount is 6% of Gross Operating Revenues, for comprehensive railroad liability insurance. The amount of liability insurance coverage purchased by this sum shall be maintained in force by Operator until next modified under the terms of this section.

At no time, however, may this base percentage or the review and modification procedure established under Section 6.2(f) herein be used to reduce the requisite insurance amounts and coverages below that required under Section 6.2(a) herein. Those insurance requirements stated in Section 6.2(a) herein are minimal requirements and shall be met regardless of the base percentage of Gross Operating Revenue calculation or of the review and modification procedures described in this section.

- (iii) The amount of the increase, if any, in the Operator's expenditure for liability insurance required by Commission or WisDOT may be used to adjust coverage limits or self-insured retention limits or both and shall only be required upon the approval of the increase by two of the following three entities: Commission, Operator, and WisDOT. In the event one of these three entities takes a position on the approval of the required increase contrary to the other two, the entity holding the minority position may require the required increase to be subject to arbitration through the use of the American Arbitration Association and its procedures. The arbitrator shall determine what liability insurance coverage is sufficient for (1) the reasonable and full compensation of the public and persons who may be injured or damaged, (2) the protection of the interests of the Commission, WisDOT, and Operator, and their officers, employees, and agents, including their interests as indemnities and for contribution, in the event of property damage, personal injury, or other loss that may occur, and (3) the availability of that coverage to the Operator in the insurance market place pursuant to the limitations established under Section 6.2(f)(ii). The arbitrator shall then determine the amount of expenditure increase that is reasonably necessary to acquire the liability insurance coverage the arbitrator has so determined to be sufficient. In determining the amount of expenditure increase, the arbitrator is limited to the expenditure level increase required by the majority of the three entities, or the one proposed by the minority entity, neither of which shall exceed the increase allowed under Section 6.2(f)(ii). The arbitrator's determination shall be final and binding on Commission, WisDOT, and Operator as to the amount of the expenditure increase required. The arbitrator shall render a decision within 30 days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than 50 days prior to the expiration of the insurance coverage then in effect. The cost of arbitration shall be paid equally by Commission, Operator, and WisDOT.

- (iv) Operator shall at a minimum expend such amounts as may be required to maintain liability insurance coverage limits no less than that in force at the time of review.
- (v) Commission, WisDOT, and Operator shall establish the coverage level to be obtained by Operator and shall amend this and companion agreements in accordance thereto in the event insurance coverage limits in effect at the time of the review cannot be maintained due to the refusal by insurance carriers to issue a policy of insurance at that coverage limit to Operator.
- (vi) In the event the three entities are unable to reach a common position on the amount of insurance coverage to be obtained, under Section 6.2(f)(v) above, any one of them may require arbitration in accordance with Section 6.2(f)(iii) of this section to determine the required amount of insurance coverage.
- (vii) Notwithstanding any other provision regarding insurance contained herein, Operator shall, at a minimum, obtain and maintain liability insurance coverage and limits no less than that required now or in the future by the laws of the State of Wisconsin and no less than that required now or in the future by the laws or regulations of the federal government or its agencies, naming WisDOT and Commission and their officers, employees, and agents as additional insureds.

Modification to the comprehensive railroad liability insurance limits for excursion operations shall be established by Commission, Operator and WisDOT under the process set forth in Section 6.2(f)(iii) of this section, but in no event shall the coverage limit be less than \$20,000,000 per occurrence, or other form approved by WisDOT, or the coverage limit then in effect for freight operations, whichever is greater.

ARTICLE 7.0 - TERMINATION OR SUSPENSION.

Section 7.1 - Declaration of Default.

(a) Default. A condition of default exists (1) when either party to this Agreement fails to abide by or perform in a material respect any one or more of its terms and conditions, (2) when Operator's insurance coverage lapses, is suspended, is canceled, or fails to satisfy all the terms and conditions of Section 6.2 of this Agreement or any amendment thereto, or (3) when Operator files for protection under any bankruptcy statute. In the event of default on the part of the Commission, the right of recovery against the Commission or against any of the municipal bodies (counties) that are a part of the Commission shall be limited to the right of WisDOT to re-enter and to take possession and reclaim title to the Improved Property that is the subject of this Agreement. It is further agreed by the parties that in no event shall the Commission or the municipal bodies that make up the Commission be liable for any damages should the liquidation of the property as a result of such re-entry and reclaiming of title result in a loss to WisDOT. A delinquency in payment shall not be considered a default if the party responsible is making a diligent effort to perform its obligations hereunder. Notwithstanding this provision, Operator may not terminate

service until it obtains authority from the STB to discontinue service or WisDOT or the Commission obtains authority from the STB for the adverse discontinuance of Operator's service.

(b) Notice of Default. A declaration of default shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 13.2 below. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice of default or the date required insurance coverage ceased or the date of filing for bankruptcy protection, whichever occurs first.

Section 7.2 - Termination for Default.

In the event of any default described in Section 7.1 above, the non-defaulting party shall have the right to and at its option may, after first giving the required notice to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof or concurrent breach, terminate this Agreement, unless the breach is cured within the period set forth in Section 7.3 below, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages whether arising under this Agreement or otherwise.

Section 7.3 - Ability to Cure Default.

(a) Removal of Commission or Operator Default. Commission shall have thirty (30) calendar days from written notification by WisDOT of default by Commission or Operator or from the date required insurance coverage ceased or from the date Operator filed for bankruptcy, whichever occurs first, to remove the cause of the default. Such correction shall be completed and available for WisDOT review within the thirty (30) day period. Upon written petition by Commission or Operator, WisDOT may extend the period for removal of a default condition. Such extension shall only be given in writing and may not be unreasonably withheld. If the remedial action is satisfactory, WisDOT shall provide appropriate written notice to Commission and Operator.

(b) Removal by Operator of Commission Default. If for any reason Commission is in default of an agreement with WisDOT, Commission shall so notify Operator, and Operator shall have such time as WisDOT allows in writing from the date of notification of Commission to remove the default on behalf of Commission and shall have the right to quiet enjoyment of the Land and Improved Property within the allowed time period until the condition of default is resolved.

Section 7.4 - Contractual Obligations Upon Termination.

Except as otherwise agreed to by the parties in writing, the obligations of Commission to WisDOT to require Operator to obtain and maintain STB common carrier obligation and provide freight railroad service, and to maintain the Land and Improved Property under this Agreement shall cease as provided for in Section 7.9, but all other obligations of the parties shall remain in full

force and effect until all operations of Commission and Operator hereunder have been terminated in accordance with this Agreement. Both parties agree to make reasonable efforts to satisfy their surviving obligations promptly after termination. Upon termination, however, Commission's rights as grantee and Operator's rights as a lessee of the Improved Property and its lease and license to use the Land and Improved Property shall cease in accordance with Sections 7.8 and 7.9.

Section 7.5 - Termination Approvals.

Both parties recognize that the termination of Operator's lease and common carrier obligation will require STB approval before termination is effective. Operator and Commission shall both agree to cooperate in necessary efforts associated with obtaining such approvals and, if action is required by WisDOT, to cooperate with WisDOT in all necessary efforts associated with obtaining such approvals.

Section 7.6 - Bankruptcy of Operator.

If any proceeding is commenced by or against Operator for any relief which includes, or might result in, any modification of the obligations of Commission or its Operator hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), it may be declared cause for default upon 30 days notice by WisDOT to Commission. If all the obligations of Operator hereunder shall not have been and shall not continue to be duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Operator, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within thirty (30) days after proceedings shall have been commenced, it may be declared cause for default. Arrangements may be made in such event by Commission with the trustee or bankruptcy court for continuation under such terms as agreed to by Commission and WisDOT.

Section 7.7 - Return of Property Upon Bankruptcy Default.

If this Agreement terminates pursuant to Section 7.6, Commission shall require Operator to forthwith deliver possession of the Land and Improved Property to Commission at such time as STB discontinuance authority is effective. Land and Improved Property so delivered shall be in the same or better operating order, repair, and condition as when originally delivered to Operator, reasonable wear and tear in service excepted, shall meet the standards of all applicable laws and shall have removed therefrom at Operator's expense any addition, modification, or improvement owned by Operator and for which Commission or WisDOT has not made a specific request for it to remain with the property.

Section 7.8 - Vacating the Rail Property; Discontinuance of Service.

(a) Upon determination by WisDOT that Commission is in default of its obligations under this Agreement and that Commission's remedial actions, if any, have not removed or cured said default, WisDOT may provide written notice to the Commission terminating Commission's rights under this Agreement and directing Commission to vacate the Principal Line Segment(s). Commission shall be required to vacate the Principal Line Segment(s) within 20 days of receiving written Notice to Vacate from WisDOT. Default by the Commission shall not affect Operator's permanent exclusive Operating Easement or common carrier obligation without requisite STB discontinuance authority.

(b) Upon determination by WisDOT or Commission that Operator is in default of its obligations under this Agreement and that Operator's remedial actions, if any, have not removed or cured said default, WisDOT and/or Commission may immediately notify Operator to seek authorization from the STB to discontinue service over the Principal Line Segment(s). If the Operator does not initiate discontinuance proceedings within 30 days of receiving said notice, WisDOT and/or Commission may initiate an STB proceeding seeking adverse discontinuance of Operator's authority to operate over the Rail Line. Operator shall vacate the Principal Line Segment(s) within 20 days of the effective date of a final, non-appealable STB decision authorizing discontinuance of service, or in the event of an appeal, a final non-appealable court decision.

Section 7.9 - Obligations of Commission in the Event of Termination.

Commission shall secure Operator's agreement that in the event of termination, Operator will mitigate the expenses of termination to the greatest extent possible. If there is any unused material in the hands of Commission or Operator at the time of termination belonging to WisDOT or in which WisDOT has an interest arising out of a rehabilitation program where funds of WisDOT have been expended to pay for materials or materials otherwise have been paid for by WisDOT or partially paid for by WisDOT, Commission and Operator shall set such material aside on property belonging to WisDOT. In addition to all other obligations in the event of termination, Operator shall remove all cars from the Rail Line within 10 days following its receipt of a final non-appealable STB decision authorizing discontinuance of service, or in the event of an appeal, a final non-appealable court decision and shall vacate and deliver all cars to or from shippers on the Rail Line, which are in transit to, or from any source.

Section 7.10 - Service Failure.

Failure to provide freight rail service to any station on a Principal Line Segment of the Rail Line is defined as:

(a) The unavailability of freight rail service for 30 consecutive days to any station on such Principal Line Segment, or

(b) The availability of an average of less than one train per week for a consecutive 12 week period to any station on such Principal Line Segment, or

(c) The failure to move any revenue freight car loads for 12 consecutive months over such Principal Line Segment.

In the event Operator fails to provide freight rail service, as defined above, (except to the extent contemplated by Section 5.2(a)), on any Principal Line Segment(s), Commission shall at WisDOT's option pay to WisDOT an amount computed according to the terms of Section 8.3 of this Agreement or return ownership of the project property to WisDOT. Operator may not discontinue service on portion of the Rail Line without STB authorization. Notwithstanding the foregoing, in the event that Operator, Commission, and WisDOT agree in writing that a Principal Line Segment or Principal Line Segments need not be operated over, or if service is temporarily suspended on a Principal Line Segment or Principal Line Segments pursuant to Sections 7.11 or 7.12 below, lack of service on such Principal Line Segment(s) shall not constitute a failure by Commission or Operator to provide freight rail service as defined in this section.

Section 7.11 - Immediate Suspension of Rail Operations.

Commission shall cause Operator to agree that upon emergency notice from Commission, RHS, or Division of State Patrol (by telephone and later confirmed in writing), Operator shall cooperate in using its discretion to immediately suspend the movement of trains or motive power when, in the reasonable judgment of Commission or WisDOT, after consulting with Operator if possible, operation of trains or motive power would be unsafe or if the liability insurance coverage of Operator lapses, is suspended, or is canceled for any reason, or is less comprehensive than is required under Section 6.2 of this Agreement. Operation of trains and motive power by Operator shall at its discretion remain suspended until the president or general manager of Operator is contacted by Commission and WisDOT and until the safety hazard is ameliorated and the required insurance coverage is reinstated. Suspension of operations for safety reasons shall be ordered when operations are not or would not be in compliance with FRA safety regulations. At the option of Operator, safety officials of FRA may be called upon to determine the existence or non-existence of any safety hazard cited by WisDOT or Commission as a sufficient reason for suspending operations. When the FRA is called upon, operations shall be suspended until such determination is made by FRA. In the event of any service suspension having an expected duration of at least 24 consecutive hours, Operator shall be required to file an embargo notice with the Association of American Railroads.

Section 7.12 - Force Majeure.

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation, except the unavailability of insurance coverage in full accordance with Section 6.2 of this Agreement or any amendment thereto: acts of God; strikes or other labor troubles; other causes beyond the reasonable control of the parties; interruption of service caused by explosion, fires, vandalism, or malicious mischief; or unavoidable interruption or cessation of service for a period of less than 120 days caused by a connecting railroad. Operator shall not be required to operate with liability insurance

coverage levels less than those set forth in Section 6.2, but may be declared in default for non-compliance with Section 6.2.

ARTICLE 8.0 - DISPOSITION OF PROPERTY AND PROCEEDS.

Section 8.1 - Option to Purchase.

(a) Operator shall have the right to exercise an option to purchase the Land and Improved Property at any time after the start-up of operations under the provisions of s. 85.09(4), Wis. Stats. This right shall exist throughout the term of the Operating Agreement and any renewals thereto, so long as Operator is not in default at the time of exercise of said option, or at the time of closing of the intended purchase.

(b) If the option is exercised, it shall be for the entire Rail Line (unless the parties hereto agree otherwise) and the purchase price for the Rail Line shall be at fair market value, which shall be determined by appraisal.

(c) The terms of payment shall be as follows:

(i) At the time of exercise of the option, Operator shall forward to WisDOT a cashier's check in the amount of \$10,000, which shall be considered a good faith deposit and shall be placed in an interest bearing escrow account in favor of the buyer. In the event the Operator defaults in its purchase, the said \$10,000 amount shall be retained as liquidated damages by WisDOT since it would be extremely difficult, if not impossible, to ascertain the actual damages.

(ii) At closing, WisDOT shall be paid in cash or in such other manner as WisDOT shall agree an amount equal to the remainder of the purchase price less any credit allowed under Section 8.3.

(d) Closing shall be held within 120 days after exercise of option at Madison, Wisconsin or at such other mutually agreed time or place.

(e) All appropriate STB or other governmental approvals must be obtained as a condition precedent to closing.

(f) If the parties cannot agree on one appraiser, then each party shall elect one appraiser and the two selected appraisers shall select a third appraiser within 15 days of their selections. The three appraisers shall then, by majority vote, determine the fair market value of the properties being purchased according to proper appraisal methods then current and approved. If option to purchase is not exercised, the cost of such appraisals shall accrue to the Operator. If option to purchase is exercised, the cost of the third appraisal is shared equally with each party also paying its respective appraiser.

(g) It is understood that title to the Land and Improved Property on certain Principal Line Segments shall be held by WisDOT, and WisDOT shall relinquish said title upon settlement

herein. It is further understood that title to the track and other improved facilities on certain Principal Line Segments are with the Commission, and therefore, the Commission shall have the authority to relinquish its property rights upon settlement herein subject to Commission's compliance with its obligation to compensate WisDOT upon sale of the property.

Section 8.2 - Right of First Refusal.

(a) Should WisDOT or Commission as the case may be, propose to sell or otherwise transfer all or any part of the Rail Line to any other person or entity, Operator shall to the extent permitted by law have a right of first refusal for a period of sixty (60) days after written notification of such proposed sale, to substitute itself in place of such proposed bona fide purchaser, subject to all of the terms and conditions of such sale. An exact copy of the agreement under which the bona fide purchaser is intending to purchase, shall be submitted to Operator with the written notification of such proposed sale so that Operator may have an opportunity to review the terms and conditions therein.

(b) Written notice of election to exercise this right of first refusal shall be delivered to the Commission or WisDOT as the case may be, within such 60 day period. Should Operator intend to purchase, it shall purchase under the same terms and conditions as set forth in the agreement executed by the bona fide purchaser, which the WisDOT intends to accept. The bona fide purchaser shall, prior to its executing any agreement, be advised that there exists a prior right of first refusal in the Operator. Should the Operator, in writing fail to respond within such 60 day period with notification of Operator's intent to purchase, under the same terms and conditions, such failure to respond shall be considered as the Operator's desire not to purchase. Thereafter, should the sale be consummated with a third party, other than the Operator, the Operator in that event shall nevertheless have the right to receive from the proceeds of such sale, the proportionate amount of proceeds by which the Operator's contribution of money bears to the entire contribution made by Commission, WisDOT, and Operator.

Section 8.3 - Apportionment of Proceeds.

(a) Conceptual Basis. WisDOT, Commission and Operator have invested in the acquisition of the Improved Property. Furthermore, Operator accepts the obligation to physically maintain the Land and Improved Property so as to maintain its value. Over time, three results are possible: (1) Operator invests in maintenance sufficiently to retain the value of the Land and Improved Property, or (2) Operator, in violation of the terms of this Agreement, under-invests in maintenance thereby reducing the value of the Land and Improved Property, or (3) Operator, on its own initiative, over-invests in maintenance, thereby either maintaining, reducing or enhancing the value of the Land and Improved Property. In the event of liquidation of the Land and Improved Property, WisDOT, Commission and Operator have a claim on the net proceeds of the liquidation in the same proportion as the original acquisition and subsequent, if any, rehabilitation of the Improved Property.

(b) Computation. The Investment Basis of WisDOT, Commission and Operator shall be defined as the total financial contributions of each to the cost of acquisition, and rehabilitation of

the Improved Property, and the cost of construction of new Improved Property for which grant funds are expended. For the purposes of computing the Investment Basis of the Improved Property, the initial investment of each party is as follows: (1) WisDOT - \$240,000; (2) Commission - \$0.00; and, (3) Operator - \$60,000. Upon termination of the Grant Agreement, the basis of WisDOT, Commission and Operator shall be calculated as follows:

(i) No more than 60 days following the closing of a sale of any Improved Property by Commission or the failure by Commission or Operator to remove a condition of default, the gross salvage value of the Improved Property on the Rail Line or any portion thereof subject to the default shall be determined in accordance with Section 8.1(f) of this Agreement.

(ii) The estimated costs of liquidation, which include both direct salvage operation costs and WisDOT administrative costs, shall be deducted from the appraised value.

(iii) WisDOT's, Commission's and Operator's percentage share of the Improved Property shall be determined by dividing each party's respective Investment Basis in the Improved Property by the total Investment Basis.

(iv) Each party's share of any proceeds from the sale of any Improved Property shall be determined by multiplying that party's percentage share of the Improved Property by the net liquidation value of the Improved Property. WisDOT shall receive 100% of the net liquidation value of the Land. Neither Commission nor Operator shall receive funds from the liquidation of the Land inasmuch as neither has invested its own funds in the acquisition.

(v) In the event the property is liquidated, the net proceeds of the liquidation are used in place of appraised value in steps (i) through (iv) except that the estimated costs of liquidation, which include both direct salvage operation costs and WisDOT's administrative costs, shall not be deducted from the net proceeds of the liquidation under step (ii).

(c) Any property installed or funds expended for maintenance of any portion or aspect of Rail Line under the jurisdiction of Commission by permit or grant from WisDOT which is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by WisDOT upon sale of the Improved Property or transfer of operating rights on the property to another agency or operator.

Section 8.4 - New Improved Property.

Commission or Operator, or their designees (collectively "Owner"), may acquire or install, at its own expense, additional facilities deemed necessary for railroad service. Installation shall be permitted only after prior receipt of written approval of the installation proposal and plan by Commission and by WisDOT, which approval shall not be unreasonably withheld. In the event of liquidation or transfer of ownership to anyone other than Operator, WisDOT shall first determine, within 180 days, if any of these additional facilities are needed for the provision of freight rail

service on this or any other line in the State. If WisDOT determines that they are not needed for such purpose, the owner of the additional facilities may dispose of the facilities in any manner it sees fit at its own expense and shall restore any trackage and Land to the condition it was in prior to the installation of the additional facilities. If WisDOT determines that any of the additional facilities are needed, Commission shall arrange for WisDOT, or the subsequent user of the facilities, to pay, or assume the obligation to pay, if assignable, the fair market value of the needed additional facilities to the owner prior to taking possession of the facility. Should owner produce an executed agreement for such facility from a bona fide purchaser, it shall notify WisDOT, and WisDOT or its nominee shall have the right of first refusal to purchase under the same terms and conditions, but such right must be exercised within forty-five (45) days, and such purchase must be completed within six (6) months of notice by Owner. Property covered under this section does not include property used in maintenance or betterment or replacement of property granted to Commission to be installed by government order or regulation. Property covered under this Section shall include, but not be limited to, new buildings, new sidings, spurs, or passing tracks. Commission and Operator are required to obtain approval from WisDOT before improvements are made to the Land or Improved Property. Such approval shall be obtained before Commission or Operator erects or constructs a building or buildings or other improvements.

ARTICLE 9.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.

Section 9.1 – WisDOT.

WisDOT represents and warrants to and covenants with Commission as follows:

(a) WisDOT has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(b) To the best of its knowledge, the execution of this Agreement will not violate any statute, rule, regulation, order, writ, injunction or other decree of any court, administrative agency or governmental body.

Section 9.2 - Commission.

Commission represents and warrants to and covenants with WisDOT as follows:

(a) Commission was created pursuant to Section 66.0301 (formerly 66.30), Wis. Stats., for the purpose of establishing, acquiring, maintaining, and operating a local transportation system. As a Section 66.0301, Wis. Stats. Commission, it has full power and authority to enter into an agreement such as this Agreement and to carry out the functions, which it has obligated itself to undertake in this Agreement. This Agreement has been authorized and approved by the Board of Directors of Commission.

(b) To the best knowledge of Commission and its Board of Directors, the entering into and performance of this Agreement on the part of Commission does not violate any statute, rule,

regulation, order, writ, injunction or decree of any court, administrative agency, governmental body, or any other agreement.

ARTICLE 10.0 - REPORTS AND ACCOUNTS.

Section 10.1 - Reports.

(a) Commission shall cause Operator, upon the request of Commission, which request shall be set forth in a resolution adopted by the Board of Directors of the Commission, at a meeting of the Board of Directors of the Commission, by an affirmative vote of not less than two-thirds of the fixed membership of the Board of Directors of the Commission (notwithstanding whether all members are present at a meeting to vote on such resolution), to submit the following information to Commission within 45 days after receipt by Operator of such request and for the period of time requested by the Commission:

(i) An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance;

(ii) A summary of originating and terminating traffic by commodity, by Principal Line Segment, and by month;

(iii) A statement of major traffic gains or losses and a summary of operating and maintenance activity by Principal Line Segment; and

(iv) A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight, including, but not limited to, rail car storage fees, building rent, excursion trains, and car repair revenues. The report shall describe the amounts received and the duration of the period for which the income is received.

(b) Commission shall cause Operator to submit the following information to WisDOT within 45 days after the end of each quarter year for its operations:

(i) An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance;

(ii) A summary of originating and terminating traffic by commodity, by Principal Line Segment, and by month;

(iii) A statement of major traffic gains or losses and a summary of operating and maintenance activity by Principal Line Segment; and

(iv) A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight, including but not limited to rail car storage fees, building rent, excursion trains, car repair revenues, and the like. The report shall describe the amounts received, the duration of the period for which the income is received and the payer.

(c) Commission shall cause Operator to submit the following reports to WisDOT:

- (i) Independently audited financial statements for each year ending December 31, to be submitted on or before June 30 each year;
- (ii) A certificate of insurance submitted on or before each insurance coverage renewal date appropriately showing that all the terms and conditions of Section 6.2 of this Agreement are fully met;
- (iii) Appropriate documentation showing any changes in operating status or authority 30 days prior to its effective date; and
- (iv) Immediate notice of damage or injury to persons or property as required under Section 6.2 of this Agreement.

Section 10.2 - Accounts.

(a) Commission shall cause Operator to establish and maintain a system of accounts as prescribed by the STB or as determined by WisDOT if the STB no longer prescribes a system of accounts.

(b) Commission shall cause Operator to make available to WisDOT's auditors or agents, or auditors of any other governmental agency having jurisdiction over Operator, the records related to the accounts and reports identified under this Article.

Section 10.3 – Program Income.

(a) Revenue received by the Commission may be retained to meet Commission's operating expenses, repay WisDOT's investments in the Improved Property or purchase the Land from WISDOT. Appropriate accounting records shall be kept of all receipts and disbursements of Commission revenue and these accounts shall be open to inspection and audit by WisDOT.

(b) Revenue received by the Commission may be retained to meet the matching requirements for state or federal assistance, for repayment of loans it has secured to provide railroad service on the lines, and for capital improvements to the property. Commission revenue may not be used for any purpose not permitted under Chapter 49 Code of Federal Regulations Part 266.

(c) This section is subordinated to any requirements concerning Commission revenue set forth in a financial assistance agreement using federal funds.

(d) The Commission shall establish an annual financial report date of December 31, and on each anniversary thereafter shall prepare and review an independent, written financial report of the revenue account. Accumulated revenue in the account, which is not obligated by

agreement for purposes set out under Section 10.3(a), Section 10.3(b), and Section 10.3(c) herein shall be declared surplus as of the audit date. Such surplus may remain undistributed and be used for purposes set forth under Section 10.3(a), Section 10.3(b), and Section 10.3(c) herein. No Commission revenue may be used for any purpose other than those set out under Section 10.3(a), Section 10.3(b), and Section 10.3(c) herein unless prior written approval is granted by WisDOT.

ARTICLE 11.0 - TAXES.

Commission shall require Operator to be responsible for and pay when due, all taxes due as a result of its possession and use of the Rail Line or its assets including possession of real and personal property, as well as for all taxes due on property owned by Operator together with taxes, if any, levied or assessed on Commission for Land owned by or in the possession of Commission. Operator shall be required to hold Commission and WisDOT harmless from, indemnify against and defend all claims and liabilities with regard thereto.

ARTICLE 12.0 - OTHER COMMITMENTS.

Section 12.1 - Handicapped.

Commission agrees that no otherwise qualified handicapped individual in the United States, as defined in Section 706(7)(a) of Title 29 USC and in subchapter II of Chapter 111, Wis. Stats., shall, solely by reason of handicap, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 12.2 - Environmental Protection.

(a) Commission agrees and shall cause Operator to agree that facilities or equipment shall not be acquired, constructed or improved as a part of its operations unless such facilities or equipment are designed and equipped to comply with all applicable environmental requirements, and that all operations conducted under this Agreement will be done in compliance with all applicable environmental requirements.

(b) Commission hereby certifies and shall cause Operator to certify that no facilities, which will be utilized or improved as a part of its operations, are listed on any state or federal list of violating facilities.

(c) Commission stipulates and shall cause Operator to stipulate that it will notify WisDOT as soon as it or any subcontractor receives any communication from a state or federal agency indicating that any facility, which will be utilized or improved as a part of its operations, is under consideration to be included on any state or federal contaminated property list.

(d) It is understood and agreed by Commission that no publicly-owned land from a public park, recreation area, or wildlife or water fowl refuge, as determined by the Federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state or local

significance, as so determined by such officials, may be used for operations without the prior concurrence of the administrator of the EPA and the State Historical Preservation Officer.

Section 12.3 - Prohibited Interest in the Proceeds of Operations.

(a) Neither Commission nor any of its subcontractors shall enter into any contract, subcontract, or agreement in connection with a project or operation of any property included or planned to be included in Commission's or Operator's operations, that constitutes a violation of Section 946.13, Wis. Stats.

(b) The Commission shall insert in all agreements entered into by it in connection with approved projects, or in connection with any property included or planned to be included in any project for which federal assistance may be sought, and shall require its contractors to insert in each of their subcontracts the following provision: "No director, officer, or employee of the East Wisconsin Counties Railroad Consortium and Columbia, Dodge, Fond du Lac, Green Lake, Milwaukee, Ozaukee, Sheboygan, Washington, and Winnebago Counties during their tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

(c) The provisions of this subsection shall not be applicable to any agreement between the Commission and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

(d) No member of or delegate to Congress or the Wisconsin Legislature shall be admitted to any share of any benefit that may arise from this Agreement, but this provision shall not restrict the making of any contract with a corporation for the general benefit of such corporation.

Section 12.4 - Nondiscrimination.

(a) In connection with the performance of activities under this contract, Commission agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. Commission agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(b) Commission agrees to comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require its subcontractors by contractual agreement to similarly comply:

(i) Title VI of the Civil Rights Act of 1964, 42 USC 2000d, et seq.

- (ii) Subchapter II of Chapter 111, Wis. Stats.
- (iii) Section 16.765, Wis. Stats.

(c) Commission in its procurement process shall not discriminate against minority owned or operated firms qualified to bid and perform on contracts or subcontracts, or to supply materials for procurement connected with the operations provided under this Agreement.

ARTICLE 13.0 - GENERAL PROVISIONS.

Section 13.1 - Choice of Law.

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of any of the counties, which are a part of Commission. When applicable, this Agreement or portions thereof may be enforced through mandamus.

Section 13.2 – Statement of Parties’ Intent.

The Parties have intentionally structured this Agreement to comply with the principles enunciated in the State of Maine Decision, (State of Maine DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C. 2d 835 (1991)), issued by the former Interstate Commerce Commission, now the United States Surface Transportation Board, wherein a public entity was authorized to acquire a railroad line comprising part of the National Rail System threatened with abandonment, without commensurately acquiring the common carrier obligation. Any ambiguities in this agreement should be resolved and construed in favor of an outcome complying with the State of Maine requirements.

Section 13.3 - Notice.

Any notice required or permitted under this Agreement shall be personally served on or mailed by certified United States mail, return receipt requested, postage prepaid, to the following addressed persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

Chief, Railroads and Harbors Section
Wisconsin Department of Transportation
4802 Sheboygan Ave.
P.O. Box 7914
Madison, Wisconsin 53707-7914

Chairman
East Wisconsin Counties Railroad Consortium
Dodge County Administration Building
127 E. Oak Street
Juneau, Wisconsin 53039-1329

President
Wisconsin & Southern Railroad, LLC
5300 N. 33rd St.
P.O. Box 9229
Milwaukee, Wisconsin 53209

Section 13.4 - Status of Operator.

Operator (including officers, directors, employees, agents or representatives thereof) is an independent contractor, and in no way shall it be deemed an affiliate, partner, joint venturer, or associated in any manner whatsoever with WisDOT or Commission.

Section 13.5 – Successor to Commission.

The Commission intends to be in existence for the entire period of this Agreement, and any extensions thereto. However, should the Commission cease to exist for any reason, any successor Commission or other entity will be obligated under the same terms and conditions.

Section 13.6 – Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Commission's and Operator's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without WisDOT's prior written consent.

Section 13.7 - Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 13.8 - Amendments, Consents, and Approvals.

No term or provision of this Agreement, or any of its attachments to which Commission is a party, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties to this Agreement. Consents and approvals required under this instrument and interpretations of this instrument may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

Section 13.9 - Captions.

The captions used in this Agreement are used for convenience and identification purposes only and do not form a part of this Agreement.

Section 13.10 - Additions, Remodeling or Replacement of Buildings.

In the event additions, remodeling, replacements or new construction for buildings or other structures except for trackage are desired by Operator, Operator may construct the same at its cost except that any improvement of existing buildings or structures requires the prior written approval of WisDOT and Commission. Permits for and disposition of such additions, remodeling, or replacements of buildings shall be in compliance with Section 8.4.

Section 13.11 - Rehabilitation.

All rehabilitation and improvements and substitute service facilities, installed or accomplished using state or federal financial assistance regardless of the ownership of the property on which they are located, when any such property is no longer used for its original approved project purpose, shall be subject to disposition as described by State and Federal regulations. In connection with any rehabilitation or improvement, the Operator shall file on behalf of the owner of such property, in the appropriate land records, a notice reciting that property was improved or installed with Federal assistance and that its use and disposition are subject to the terms of this Agreement. If the Operator's chief legal counsel advises that such notice cannot be filed, the Operator shall so advise the Commission and WisDOT, and shall recommend alternate procedures whereby compliance with the provisions of this Agreement can be achieved.

Section 13.12 – Arbitration.

(a) General. In the event of any unresolved disagreements between the parties concerning the construction of this Agreement or performance by each of the parties hereunder, the parties shall submit such disagreement to arbitration.

(b) Procedure. The party desiring arbitration shall give notice in writing to the other party identifying the matters in issue and designating an individual as their arbitrator. Within ten (10) days thereafter, the other party shall, by written notice to the original party, agree to said arbitrator or appoint a second arbitrator. The two arbitrators so appointed shall, within ten (10) days thereafter, appoint a third arbitrator as mutually agreed, and the three arbitrators shall hold the hearing and commence to determine the matter within thirty (30) days of the appointment of the third arbitrator. If the second arbitrator shall not have been appointed, the first arbitrator shall proceed to commence to determine the matter within thirty (30) days of the failure to so appoint a second arbitrator. If the two arbitrators selected by the parties are unable to agree upon the third arbitrator, the third arbitrator shall be appointed by the American Arbitration Association. Except as otherwise provided herein, the arbitrators shall arbitrate the issues in accordance with the rules and procedures of the American Arbitration Association, and a determination of the majority of the arbitrators, or of the sole arbitrator as the case may be, shall be final and conclusive between and upon the parties, and judgment upon same may be entered in any court having jurisdiction thereof. The arbitrator(s) shall give written notice of their findings to each party.

Section 13.13 - Specific Performance.

WisDOT and Commission shall have the right, as provided by law, to require specific performance by the other party of the other party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days from the time WisDOT or Commission has first notified the other party of the other party's obligation to perform.

Section 13.14 - Execution.

This instrument shall be fully executed in triplicate with a copy being delivered to each party and to Operator and in such further counterparts as may be desired by the parties.

Section 13.15 - Entire Agreement.

This Agreement together with those documents referred to herein contain the entire agreement of the parties and supersedes any and all prior agreements and draft agreements, or oral understandings between the parties.

Signatures.

IN WITNESS WHEREOF, the East Wisconsin Counties Railroad Consortium, by its Board of Directors, has caused this Agreement to be signed by its duly authorized officers, this ____ day of _____, 2012.

WITNESS:

EAST WISCONSIN COUNTIES RAILROAD
CONSORTIUM

Jerald Holub, Chair

Jef Hall, Secretary

IN WITNESS WHEREOF, the Wisconsin Department of Transportation has caused this Agreement to be signed by its duly authorized officer, this _____ day of _____ 2012.

WITNESS:

WISCONSIN DEPARTMENT OF TRANSPORTATION

Ronald E. Adams, Chief
Railroads and Harbors Section

ATTACHMENT 1

LAND USE AGREEMENT

#0490-40-51(A-1)

BY AND BETWEEN THE

EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

AND THE

WISCONSIN DEPARTMENT OF TRANSPORTATION

DATED _____

ATTACHMENT 2

OPERATING AGREEMENT

#0490-40-51(F-1)

BY AND BETWEEN THE

EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

AND THE

WISCONSIN DEPARTMENT OF TRANSPORTATION

DATED _____

EXHIBIT E
OPERATING AGREEMENT

OPERATING AGREEMENT

BY AND BETWEEN

EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

AND

WISCONSIN & SOUTHERN RAILROAD, LLC.

AGREEMENT NO. 0490-40-51(F-1)

MAY 2012

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OPERATING AGREEMENT

This Agreement made and entered into this _____, by and between East Wisconsin Counties Railroad Consortium, established in accordance with Sec. 66.0301 (formerly Sec. 66.30) Wis. Stats., having its principal office at Dodge County Administration Building, 127 E. Oak Street, City of Juneau, County of Dodge, State of Wisconsin, ("Commission") and Wisconsin & Southern Railroad, LLC, a railroad company organized and existing under the laws of the State of Wisconsin and fully empowered to act as a railroad company in Wisconsin, having its principal office at 5300 N. 33rd Street, City of Milwaukee, County of Milwaukee, State of Wisconsin ("Operator").

WITNESSETH

WHEREAS, this Agreement is a new agreement covering additional line segments to Commission's system and in no way affects the status of Agreement No. 0490-40-50 (F-1), dated March 28, 2008; and

WHEREAS, certain rail facilities in Columbia, Dodge, Fond du Lac, Green Lake, Manitowoc, Milwaukee, Ozaukee, Sheboygan, Washington, Waukesha and Winnebago Counties, Wisconsin, have been abandoned, or have been threatened with abandonment, and have been purchased by the Wisconsin Department of Transportation (hereinafter referred to as WisDOT); and

WHEREAS, Commission is currently comprised of the counties of Columbia, Dodge, Fond du Lac, Green Lake, Milwaukee, Ozaukee, Sheboygan, Washington and Winnebago, and Commission may accept additional member counties in the future; and

WHEREAS, Commission was created for the purpose of supporting the continuance of rail service to its member counties with authority to acquire the use of the Rail Line(s) by purchase, lease or otherwise and to support freight rail service thereon by contract or otherwise; and

WHEREAS, WisDOT has acquired ownership of the Principal Line Segment(s) in the State of Wisconsin as defined under Section 1.0(q) of this Agreement; and

WHEREAS, WisDOT owns the Principal Line Segment(s) in Wisconsin, and the Commission owns or has been granted the use of the Land and the Improved Property to work with the Operator providing railroad freight service over of the Improved Property of the Principal Line Segments in Wisconsin subject to all the conditions and limitations set forth in the Grant Agreement and Land Use Agreement identified in Section 1.0(i) and (m) respectively, and, subject to the Operator's permanent, exclusive operating easement and the Surface Transportation board authority to provide freight railroad service; and

WHEREAS, Operator is also operating over the tracks of the Wisconsin River Transit Commission d/b/a Wisconsin River Rail Transit Commission and Pecatonica Rail Transit Commission under similar Operating Agreements; and

WHEREAS, the parties hereto have negotiated and agreed to a long-term operating agreement which is this instrument; and

WHEREAS, Operator has been furnished copies of and reviewed the Land Use Agreement by and between Commission and WisDOT dated _____, and the Grant Agreement By and Between the Commission and WisDOT dated _____; and

WHEREAS, Operator has inspected the Rail Line and is knowledgeable as to its needed repairs, maintenance and possible rehabilitation and is making certain financial commitments relating thereto which are hereinafter set forth in this Agreement; and

NOW THEREFORE, in consideration of the promises and the mutual covenants contained herein, the parties hereto covenant and agree as follows:

ARTICLE 1.0 - DEFINITIONS.

As used in this Agreement and also, unless otherwise more particularly defined, in other instruments referred to herein:

- a. "AREMA" means American Railway Engineering and Maintenance-of-Way Association.
- b. "Building" means any structure built to stand more or less permanently with columns or walls and designed to support a roof, and constructed as either an addition which increases the outside dimensions of another structure, or as a detached entity which is not physically connected to another structure and which was primarily intended and designed for human use, occupancy or the storage of goods and materials.
- c. "Commencement Date" means the date this Agreement is approved in writing by WisDOT on the Signature Page of this Agreement.
- d. "Commission" means the East Wisconsin Counties Railroad Consortium.
- e. "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.
- f. "CN" means Canadian National Railway Company, and its subsidiaries, assigns and successors, if any.
- g. "CPR" means the Canadian Pacific Railway D/B/A the Soo Line Railroad Company and its successors, if any.
- h. "EWCRC" means the East Wisconsin Counties Railroad Consortium.

- i. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.
- j. "Grant Agreement" means the Grant Agreement No. 0490-40-51(B-1) By And Between The East Wisconsin Counties Railroad Consortium And Wisconsin Department Of Transportation, dated _____, and any amendments thereto.
- k. "Gross Operating Revenues" means all income produced from operations on the rail line which shall include freight bill revenues from complete on-line hauls, freight bill revenues retained by Operator under a division of revenues with other rail lines, shipper contract charges, surcharges, net equipment per diem, demurrage, and equipment storage. Specifically excluded is income received from contract car repair, building of or scrapping of rail equipment, and excursion trains. Gross Operating Revenues shall be computed on an accrual basis.
- l. "Improved Property" means Buildings and Trackage located upon the Land of the Rail Line.
- m. "Land" means the real estate, generally 66 feet in width, the use of which is provided to Operator by Commission, upon which the trackage that is leased to Operator under this Agreement is located and which is the subject of the Land Use Agreement.
- n. "Land Use Agreement" means the Land Use Agreement No. 0490-40-51(A-1) by and between the East Wisconsin Counties Railroad Consortium and the Wisconsin Department of Transportation, dated _____ and any amendments thereto.
- o. "Operator" means the Wisconsin & Southern Railroad, LLC, and its successors, if any.
- p. "PRTC" means Peconic Rail Transit Commission.
- q. "Person" means an individual, a partnership, an association, or bodies politic or corporate.
- r. "Principal Line Segment" means one of the following as defined by their beginning and end points:

Gibson Line, which includes: (a) beginning at WisDOT ownership at Milepost 93.72 on the Horicon Line to Milepost 93.2 in the vicinity of the Glendale Yard; (b) the Canco Line, from Milepost 93.2 extending in a northerly direction to Milepost 95.18, to the beginning of CN ownership; (c) the Nut Line, from Milepost 93.20 extending to approximately Milepost 94.5; (d) North leg of the wye extending from the switch on the Canco Line at Milepost 93.46 to the switch on the Nut Line at Milepost 93.86; and (e) the tracks that make up the North Milwaukee Yard.

- s. "Rail Line" means the Principal Line Segments in aggregate.
- t. "RHS" means Railroads and Harbors Section of the WisDOT.
- u. "South Central" means South Central Wisconsin Rail Transit Commission.
- v. "STB" means the Surface Transportation Board of the United States Department of Transportation, or its successors, if any.
- w. "Trackage" means the rails, ties, ballast, track material, bridges, switches, culverts, signals, and all other non-Land property acquired by WisDOT and provided under grant to the Commission subject to certain express conditions and limitations. This term does not include Land.
- x. "UP" means the Union Pacific Railroad and its successors, if any.
- y. "WisDOT" means the Wisconsin Department of Transportation.
- z. "WRRTC" means the Wisconsin River Transit Commission D/B/A the Wisconsin River Rail Transit Commission.

ARTICLE 2.0 - LEASE, LICENSE, TERM AND RESERVATION.

Section 2.1 - Lease, License and Term.

(a) Commission hereby leases to Operator the Land and the Improved Property for Operator to manage the Land and Improved Property, and operate rail service thereon, subject to Operator's permanent exclusive Operating Easement, which Operating Easement was or shall be reserved or acquired by Operator, for the benefit of itself, its successors and assigns, to use the Land for the purpose of providing freight rail service and for all other purposes incidental to the foregoing, subject, however, to the uses and reservations identified in Section 2.2 hereafter and further subject to the uses and reservations set forth in the governing Land Use and Grant Agreements.

(b) This Agreement is to be executed upon authorization of the Board of Directors of the Commission, and the Board of Managers of Operator. This Agreement shall be effective upon the "Commencement Date", and shall end at 12:01 A.M. December 31, 2047; provided, however, that either party may terminate this Agreement under Article 7.0.

(c) Operator shall have the right to renew this Agreement for successive additional ten (10) year periods. Each option to renew shall be for a period of ten (10) years and shall be exercised at least one (1) year but no more than two (2) years prior to the expiration of the then current term, said renewal notice to be exercised in writing to the Commission with a copy of the notice to

WisDOT. All terms and conditions of this Agreement shall apply to the renewal periods unless amended by mutual agreement.

Section 2.2 - Reservation.

The Land and Improved Property involved in this Agreement are the Land and Improved Property obtained by Commission from WisDOT through the agreements defined in Section 1.0(i) and (m) herein. Future operations may show WisDOT that portions of the Land or Improved Property are not needed for railroad use or are of sufficient width to allow other uses as co-uses.

Land and Improved Property used predominantly in generating income not included within Gross Operating Revenues shall be deemed not used for railroad purposes. Partial use of the line by Operator for future Commuter Passenger Service is possible if first authorized under a separate operating agreement in the manner set forth in Section 2.2(g). During the term of this Agreement some consolidation of yards, interchanges and terminal facilities of the various railroads serving the particular area may require relocation of Improved Property and other facilities which could affect portions of the Rail Line. WisDOT may, upon request from Commission, Operator or others, determine that the use of the Rail Line for railroad purposes is such that the width of the Land at particular points also permits recreational or scenic uses. Commission hereby makes this lease subject to the following conditions:

(a) Subject to Section 2.2(b) below, the right is retained for WisDOT to sell or lease Land, Improved Property or both that WisDOT determines is not needed for the continuation of freight rail service. Such determination shall be made only upon approval by Operator and the Commission.

(b) In the event WisDOT determines with the concurrence of Operator and the Commission that certain parcels of Land or Improved Property are not reasonably required for the preservation of railroad services, WisDOT may, upon its own initiative, sell, permit, or lease such Land or Improved Property located outside 33 feet of the center line of the main track to any party. Before a sale, WisDOT must first offer the Land or Improved Property to Operator and the Commission and to other state and local government units under the provisions of Section 85.09, Wis. Stats. Commission shall promptly notify Operator in writing whether it intends to exercise any right to purchase Land and Improved Property offered by WisDOT. If Commission does not elect to exercise such right, Operator may, within thirty (30) days following receipt of the foregoing notice, supply Commission with the purchase funds, and Commission shall purchase the Land and Improved Property to the extent that it may be accomplished under Section 85.09, Wis. Stats., and convey same to Operator; provided that Commission shall not be required to purchase such Land and Improved Property on behalf of Operator if in its reasonable judgment Commission determines that the Land and Improved Property will not be used for a public purpose, in which case the funds furnished by Operator to Commission shall be promptly returned. Commission shall not consent to WisDOT sale or lease of any Land and Improved Property within 33 feet of the center line of the main track without Operator approval if the parcel to be sold is unoccupied by permanent structures, or is to be sold to an owner of property abutting the main track. Operator approval is not required for Commission's consent to a WisDOT sale or lease of Land and Improved Property within 33 feet of the center line of the main track when the Land and Improved Property are subject

to a lease and are occupied by a permanent structure legally existing on the date of the Grant Agreement, or if the sale or lease is for utility or communication use provided that the lessee or purchaser agrees in writing to indemnify Operator against loss or disruption to Operator's business caused by such lessee's or purchaser's use of the Land or Improved Property so acquired.

(c) Commission retains the right to retake or retain possession of any of the Rail Line under lease to third parties for itself or for WisDOT, subject to the right of the Operator to provide service. In the Land Use Agreement, WisDOT retains the right to approve all leasing of Improved Property and to conduct all the leasing of Land subject to the permanent exclusive Operating Easement and common carrier obligation of Operator. If there are sidetracks on any of the Land leased to third parties, Commission shall provide Operator with the right of continued use of the sidetrack and Land 16.5 feet from the center line on each side of the side track.

(d) The right to lease Land, which is not under license and lease to Operator or not presently leased to third parties, is retained for WisDOT. If requested by Operator, Commission will attempt to exercise such rights as it may have to obtain a lease or sale of the property to a party or parties who will use the property or improve the property for a use that will involve freight rail transportation.

(e) Any building or other structure presently on the Land being used for railroad purposes or previously built for railroad purposes, except as may be specifically excluded elsewhere herein or in an existing lease or by law, will be available for use by Operator. If any such building or buildings are not needed by Operator for its operation, Commission reserves the right to lease any such building or buildings to third parties for periods not to exceed two (2) years. In some instances, this might involve leasing a portion of the building with Operator using the other portion. Commission agrees to seek approval of Operator in making such leases.

(f) The transfer of use of the Land to Operator is subject to existing utility easements, street and highway easements, and other existing easements, permits or licenses of grant or use. Commission retains the right of WisDOT or Commission to grant future utility easements and public or private highway or road crossing authorizations. Commission retains to itself or WisDOT all easement and right-of-way rental, purchase price, or other easement, right-of-way or property transfer payments.

(g) Commission reserves the right to contract for the use of the Rail Line or portions thereof for Commuter Passenger Service. Such contract may be with Operator or a governmental unit or Commission may provide that service itself; provided, however, that Commission may alternatively contract, directly or indirectly, with an entity other than Operator or a governmental unit if it notifies Operator, in writing, of its intention to do so and offers Operator an option to provide the same service on the rail line portion proposed to be operated over by such other entity, upon the same terms and conditions, which option may be exercised by Operator within thirty (30) days following receipt of the foregoing notice. Neither Operator nor any other operator may provide Commuter Passenger Service over any portion of the rail line without first entering into a separate agreement authorizing that service. Before Commuter Passenger Service may begin, Commission must sign the authorizing agreement, and WisDOT must approve it. Further, it is a condition of this reservation that Commission may contract with a third party respecting the provision of Commuter Passenger Service only if reasonable advance notice is given to Operator and Operator is afforded the opportunity of participation in the negotiating and establishing of the conditions of the

co-use of these facilities. The granting of such co-use is on the further condition that any upgrading or changing of the Rail Line or other facilities to accommodate the co-use shall be first approved by WisDOT in accordance with Commission's obligations under the Land Use Agreement and shall not involve any additional cost to Operator and that a reasonable division of costs for the servicing, maintaining and repairing of the trackage and other facilities for the co-use shall be established. It is a further condition that such a joint use shall not restrict the use of the particular facilities by Operator. This joint use may involve testing or trial operations, as well as permanent operations.

(h) As to the planning operations and the changes which might occur because of planning operations, Commission reserves to WisDOT, itself and the governmental entities along the Rail Line the right to do such planning and to provide for relocation of facilities, including Improved Property and the elimination of certain trackage, buildings and other facilities, in order to carry out the determinations arrived at from such planning. It is a condition of this Agreement that Commission reserves the right to negotiate the contract as to such matters to itself and WisDOT on the condition that Operator be given notice and the opportunity to act as a participant or an observer at any such negotiations and that the following factors are controlling insofar as they affect Operator: Operator agrees that it will cooperate in implementing any agreements made by Commission as to the matters set forth in this subsection providing that the alternate facilities made available to Operator are approximately equal to those released by Operator; and, that the costs of these changes shall not be imposed on Operator. No change shall interfere with Operator's duty to provide service unless Operator and Commission agree to such change.

(i) It is understood that no lease money or sale receipts are to accrue to Operator in the event of any sales or leases of Land or Improved Property.

(j) The purpose of this section is to merely require Operator to receive a written permit from WisDOT before Operator itself provides passenger rail service. This section does not limit Operator's ability to provide freight services. If Operator proposes to operate or allow the operation of any train over any portion of the Rail Line which is to carry any person paying a fee for carriage, Operator shall first apply for and receive a written permit from WisDOT for the passenger operation on the Rail Line. WisDOT in consultation with Commission may grant or deny a permit based solely upon any of the following: adequacy of liability insurance coverage, terms and amount as set forth in Section 6.2 below, trackage condition, proposed speed of operation, preparations for crowd control, parking and clean-up, and sufficiency of consumer protection assurances associated with each use by Operator of any portion of the Rail Line subject to this Agreement to be operated over by Operator or by an affiliate, subcontractor or lessee of Operator. The permit may be denied if not requested in writing a minimum of ten days prior to the proposed use date, or if a fully executed copy of an acceptable certificate of binding insurance is not submitted for Commission and WisDOT review ten days prior to the proposed use date, or if insurance coverage is inadequate or flawed in the reasonable judgment of Commission or WisDOT, or if a prior fee remains unpaid in whole or in part.

ARTICLE 3.0 - RENT.

(a) Each year Operator shall pay rent to Commission for use of the Land and Improved Property, and all other rights and privileges under this Agreement, due and payable quarterly. The amount of rent which Operator shall pay to Commission each year shall be an amount equal

to the amount calculated by multiplying the Rate Per Mile (hereinafter denoted the "RPM") by the number of miles of track operated, excluding yard, passing and side tracks.

(b) The RPM is hereby established as follows:

(i) The RPM in effect during the calendar years of 2012 through 2013, both inclusive, shall be \$100.00 (One hundred dollars).

(ii) The RPMs in effect during the calendar years after 2013 shall be RPMs which shall have been adjusted according to the provisions of this Article 3.0 which are set forth below.

(iii) The RPM shall be adjusted beginning in January of the year 2014 and shall be adjusted again every fifth year thereafter.

(c) When an adjustment to the RPM is to be made, it shall be made in the month of January, the adjustment to the RPM shall be calculated by increasing or decreasing the RPM which was in effect during the previous calendar year in proportion to the change in the CPI-U over the five year period ending on December 31 of the previous calendar year.

(d) CPI-U means the US Department of Labor, Bureau of Statistics, Consumer Price Index for the United States, All Urban Consumers, All Items, unadjusted index.

(e) Adjustments to the RPM shall be calculated by the following process:

(i) Subtract the CPI-U for the month of December of the year which is six years prior to the current year from the CPI-U for the month of December of the immediately preceding calendar year. The difference between these two CPI-U numbers is the Index Point Change over the preceding five year period.

(ii) Divide the Index Point Change by the CPI-U for the month of December of the year which is six years prior to the current year, and add one to the quotient, and round the sum to the third decimal place, to establish the RPM Adjustment Multiplier.

(iii) Determine the adjusted RPM by multiplying the RPM in effect during the previous calendar year by the RPM Adjustment Multiplier to establish the new RPM.

(f) In addition to any rental due under Section 3.0(a) of this Agreement, Operator shall pay Commission 10% of its gross receipts in excess of \$100,000 per year from excursion trains permitted by WisDOT and operated on the Land and Improved Property.

(g) For calendar year 2012, Operator shall pay rent on a pro rata basis based on an annual rent of \$405.00, to Commission for use of the Land and Improved Property, and all other rights and privileges under this Agreement, due and payable in one lump sum within 30 days of execution of this Agreement.

**ARTICLE 4.0 - REVENUE DIVISIONS, TRACKAGE RIGHTS,
INTERCHANGES AND COORDINATION WITH OTHER LINES.**

Section 4.1 - Division of Revenues.

Operator has represented to Commission that it has made necessary and satisfactory arrangements for divisions of revenues with all connecting railroads. Operator obligates itself to make arrangements for division of revenues, as are needed, if there are other interchange points needed for proper operation of the Rail Line and to furnish Commission documented evidence of such divisions after being obtained.

Section 4.2 - Trackage Rights.

(a) Operator and Commission have the responsibility for obtaining the necessary trackage rights required to permit the operation over the Rail Line that is required to perform the necessary freight rail service for shippers along the Rail Line. Operator and Commission shall use their best efforts to obtain such rights or to purchase such additional trackage and land or both as are necessary to provide access by Operator to the Improved Property. This section shall not be construed to require Commission to expend funds, or acquire property or rights. Operator shall file all trackage rights agreements with the STB as may be required by law.

(b) Operator shall furnish Commission and WisDOT copies of trackage rights or lease agreement(s) allowing Operator to operate over:

- (i) CN property from Rugby Jct. to Waukesha.
- (ii) CN property from Saukville to Canco.
- (iii) UP property from Kohler to Sheboygan.
- (iv) Such other railroad property as is or as may become necessary to operate the Rail Line.

Section 4.3 - Interchange Agreements.

It is recognized that Operator may enter into interchange agreements with the CN, CPR and UP in various locations to facilitate the service to the Rail Line. Operator agrees to supply Commission and WisDOT with documented evidence of the interchange agreements and any amendments thereto after obtaining the same.

Section 4.4 - Interline Divisions.

(a) Operator shall adhere to and comply with the interline accounting rules of the Association of American Railroads in dividing revenues, under through rates, among participating carriers. Operator covenants and agrees to make such divisions at the time and in the manner provided herein.

(b) Operator shall remain current on its financial obligations to connecting railroad companies. In the event that any or all connecting railroad companies place Operator on a "junction settlement" basis, or any modification thereto, except by voluntary written agreement between Operator and connecting railroad, Commission may, at its option, declare Operator in default of this Agreement.

ARTICLE 5.0 - RAILROAD OPERATIONS.

Section 5.1 - Generally.

(a) Operator has or shall acquire and shall maintain the requisite common carrier obligation from the STB for the railroad operations described under this Agreement and shall keep such authority in full force and effect throughout the term of this Agreement. Operator shall make all required filings and reports to the STB and the Wisconsin Office of the Commissioner of Railroads.

(b) Operator has or shall acquire and shall maintain a permanent exclusive Operating Easement for freight railroad service and the associated STB common carrier obligation to fully exercise its Operating Easement over the Principal Line Segments and provide shippers with common carrier freight railroad service. Operator shall exclusively control, manage, staff and plan for the provision of freight rail service on the Principal Line Segments over which it operates as a freight rail carrier and to use the Principal Line Segments pursuant to its common carrier obligation and permanent exclusive Operating Easement to provide exclusive originating and terminating freight rail service on the Principal Line Segments, including line-haul and switching services to shippers. Operator shall have the power and authority to exclusively control, manage staff and plan for the provision of freight rail service on the Principal Line Segments over which it is operating as a freight rail carrier. As a part of its operation, Operator shall have power to effect such additions, changes, betterments, and repairs to the Improved Property as Operator may, in its judgment, deem necessary, expedient or proper to assist or improve rail service over the Principal Line Segments. Operator shall coordinate with Commission regarding any such additions, changes, betterments, and repairs. Operator has the authority to adopt and promulgate rules governing access to, use of, and operation of the Land and Improved Property.

Section 5.2 - Requirements.

Operator hereby agrees to operate a railroad on the Rail Line licensed and leased to it as set forth above. As part of this Agreement, Operator hereby covenants and agrees to do the following things and to perform in the following manner:

(a) Service. Operator is required to provide revenue freight rail service to current and future shippers and receivers connected to or on the Rail Line. This is freight rail service including provision of rail cars, switching, line haul and other related services and includes bridge traffic. Operator is required and hereby agrees to provide the current and future shippers and receivers connected to or on the Rail Line freight rail services upon the same terms and conditions as such service is provided to other shippers and receivers served by Operator, or as otherwise agreed

between Operator and any shipper or receiver. Failure to provide minimum service required or agreed to hereunder or required under Section 7.10 shall at Commission's option initiate the process to find Operator in default of this Agreement.

(b) Maintenance. Operator shall perform or cause to be performed all maintenance of the Rail Line including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the Land or Improved Property reasonably necessary for the safe operation of freight rail service or any other service provided by Operator. Tracks shall be maintained to FRA Class II standards, or to a standard determined by WisDOT after consultation with Operator, as of an inspection date prior to sixty (60) days following the Commencement Date. Upon its completion, a list of line segments that shall be maintained to FRA Class II standards and a list of line segments that shall be maintained to FRA Class I standards shall be included as Attachment 3 to this Agreement. Any Principal Line Segment that has been rehabilitated as part of a WisDOT assisted project after the date of this Agreement shall be maintained to the WisDOT maintenance specifications specified as part of the contract covering WisDOT assistance to that rehabilitation project. In the event of a dispute between Operator and WisDOT as to the condition of the trackage following the inspection referred to above, Operator and WisDOT shall jointly request FRA to determine the FRA track safety classification. Bridges shall be maintained in compliance with Chapter 7, Part 3 of the Manual for Railway Engineering, as amended, published by AREMA. Operator may be declared in default, as hereinafter provided, or in the case of buildings, may lose the right of possession and occupancy, if a deviation from the applicable maintenance standards or local and state building codes remains uncorrected for more than ninety (90) days after notification of the deviation as hereinafter provided or if Operator has not diligently commenced to correct such deviation within the 90 day period. Operator is prohibited from using trackage located in sidetracks, sidings or other locations as maintenance material unless prior written permission to do so is requested from and first granted by WisDOT. Compensation to WisDOT from Operator for materials used with or without permission may be required by Commission and WisDOT. Any costs of trackage installed on or funds expended for maintenance of any portion or component of the Rail Line under the jurisdiction of Commission by grant from WisDOT that is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by Commission or WisDOT upon sale of the Rail Line or transfer of operating rights over the trackage to another agency or operator.

(c) Safety and Other Inspections. Operator agrees to facilitate the inspection of the Rail Line facilities as required by governmental agencies. Operator agrees to inform WisDOT and Commission of the time and place of any inspection requested by a federal or insurance inspector. Operator shall permit representatives of WisDOT authorized by the Secretary of WisDOT or Chief of the Railroads and Harbors Section of WisDOT and representatives of Commission authorized by Commission chairman to accompany the inspector. Operator is required and hereby agrees to provide access to all documents related to any inspection by any governmental or insurance agency. Operator agrees upon reasonable notice during normal business hours to permit inspection of the Rail Line, the rolling stock and maintenance equipment, and the operating and maintenance practices of Operator and Operator's affiliates performing work on the Rail Line, by Commission or WisDOT or their agents. Operator covenants and agrees to furnish Commission and WisDOT with copies of all inspection reports from federal agencies or insurance agencies and safety orders from federal agencies or insurance agencies and to furnish Commission any like reports and orders from WisDOT or the Wisconsin Office of the Commissioner of Railroads.

(d) Equipment. Operator agrees to provide and maintain at its own expense all suitable locomotives, cars and other rail equipment as are necessary in the operation of this freight rail service. Operator shall be solely responsible for and agrees to provide all tools and other equipment necessary to properly maintain the operating equipment, Improved Property, and Land on the Rail Line.

(e) Operating Personnel. Operator agrees to obtain and maintain the necessary personnel for operation and management of its operations over the Rail Line. Said personnel shall be under the sole control and direction of Operator. It is understood and agreed that no personnel of Operator are agents, employees, servants or subcontractors of Commission or WisDOT. All such personnel shall be qualified and properly trained for such service, but this shall be the sole responsibility of Operator.

(f) Accounting Services. Operator agrees to establish and perform all necessary accounting services appropriate to conducting business as a railroad and to comply with this Agreement. Operator is required and hereby agrees to permit access by WisDOT and Commission and their agents to all documents related to the business operation of Operator including, but not limited to, agreements for leases, loans, revenue divisions and records of rail traffic, receipts and expenditures.

(g) Use of Property. Operator shall have use of all the Land and Improved Property under the ownership or control of Commission, including buildings, which are reasonably required for the operation of the Rail Line. This shall not, however, negate any reservations held or any actions taken by Commission or WisDOT under the reservations set forth in Section 2.2 of this Agreement. Operator covenants and agrees to provide maintenance and upkeep for any such buildings. In the event it becomes desirable to construct buildings or other structures on the Land, the same may be constructed by Operator at its expense, subject to Commission's and WisDOT's approval. Operator has no authority to enter into easements, permits, licenses or leases affecting the Land whether under the use of Operator or outside the use of Operator. Commission is under contract with WisDOT as to leases of Land and Improved Property, and any such lease income shall be income to WisDOT or Commission. Commission agrees, however, to cooperate with Operator in providing leases to businesses or users who would benefit the rail business through operation of any such leases. Operator understands that any agreement for leasing Land is subject to the Grant Agreement or Land Use Agreement as to securing authority and approval from WisDOT and as to the division of rents.

(h) Promotion of Business. Operator covenants and agrees to use its best efforts to promote the use of freight rail services by customers located along the Rail Line and in the immediate vicinity and agrees to diligently seek new freight rail business and customers for such services.

(i) Use of Land or Trackage as Collateral. Neither the Land for which a lease and license to use is granted nor the Improved Property leased under this Agreement shall be used by Operator in any form or amount as equity, security, or collateral for any borrowing or other means of raising capital by Operator or as collateral for any other purpose.

(j) Public Order. Operator hereby assumes full responsibility for preserving public order upon the subject property and for resolving matters concerning trespass upon or from the Land and Improved Property adjacent to private lands. Operator may adopt and enforce any necessary rules in accordance with Section 5.1(b) in order to protect the Rail Line. Operator shall have the right to

post signs and erect barricades necessary to delineate the Rail Line as railroad property and to prevent entrance upon the subject Rail Line by unauthorized vehicles or individuals.

(k) Fencing. Operator assumes such responsibility as may exist to third parties for providing fencing required under Chapter 90, Wis. Stats., local ordinance or contract.

(l) Vegetation Control. Operator assumes such responsibility as may exist for the eradication, control and removal of vegetation as required by applicable state law or local ordinance.

(m) Crossing over Waters and Drainage Systems. Operator assumes full responsibility for the ordinary repair and maintenance of all culverts, trestles and bridge structures on the Rail Line.

(n) Highways and Streets. Operator assumes full responsibility on the Rail Line for the maintenance of trackage, warning devices, and railroad highway crossings whenever crossing maintenance is required by law from Operator.

(o) Private Crossings. Operator may, according to applicable statutory provisions, abrogate any private crossing established by agreement, which interferes substantially with Operator's performance of freight rail services. Operator shall obtain authorization from WisDOT and, if necessary, the Wisconsin Office of the Commissioner of Railroads, prior to permitting any additional private crossings.

(p) Maintenance Plan.

(i) Operator agrees to prepare an annual maintenance plan for the Rail Line. This plan shall be combined with like plans for any and all other Rail Lines provided to Operator by any other rail transit commission existing in Wisconsin. The plan shall be prepared in consultation with WisDOT and shall be fully completed and delivered by Operator to WisDOT for WisDOT review and reasonable approval not later than February 1 of each year. The plan required to be submitted shall include the quantities of materials to be installed during the year in which the plan is submitted, the numbers and types of personnel to be employed for the proposed maintenance, the numbers and types of machines to be utilized for performing the proposed maintenance, the location of the proposed maintenance and the schedule for performing the proposed maintenance. Estimated prices for materials, labor and machines shall be included as well as the projected rates of production.

(ii) A maintenance plan shall not be eligible for WisDOT approval unless the sum of expenses and the capitalized maintenance expenditures called for in the plan during each calendar year are a minimum of 10 percent of Gross Operating Revenues. Notwithstanding the above, in the event maintenance is required to meet the track classification levels required under Section 5.2(b), sufficient funds to achieve the classification level required shall be expended. The Plan or modification shall be revised and resubmitted within 30 days following a WisDOT request so as to overcome the deficiencies, if any, identified by WisDOT.

(iii) Operator shall respond to inquiries from WisDOT concerning Operator's implementation of the approved Maintenance Plan. Operator shall provide WisDOT with a revised Maintenance Plan within 10 days following WisDOT's request for revisions following a review in accordance with Section 5.2(b).

(q) Liens Against Rail Line. Operator shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Land or Improved Property or any interest therein. Operator will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

(r) Rail Banked Lines. The obligation of Operator under this and other sections of this Agreement shall not apply to Principal Line Segments classified as rail banked lines.

ARTICLE 6.0 - LIABILITY AND INSURANCE.

Section 6.1 - Hold Harmless.

Except to the extent that the same arises from or is related to co-uses permitted by Commission or WisDOT pursuant to Section 2.2(g) above, Operator shall save and hold Commission, Commission's member counties and WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of Operator, or its agents, servants, subcontractors, officers or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about the place where such operation, act or omission is being performed or in the vicinity thereof (1) while Operator is performing its work, or (2) during the period this Agreement between Commission and Operator is in effect, or (3) while any of the Operator's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of Operator's operations: including, without limiting the generality of the foregoing, all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to Commission, its officers, employees, agents, subcontractors or frequenters, or to any other person whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of Commission or WisDOT) under Federal or state statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the generality of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. Operator shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

Section 6.2 - Insurance.

(a) Required Coverage. During the term of this Agreement, Operator shall maintain, at its own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$20,000,000 per occurrence, or other form approved by WisDOT. WisDOT and Commission, and Commission's member counties, and their officers, employees, and agents shall be named as additional insureds under such policies. Operator agrees to maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act (FELA) to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Operator further agrees to carry fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All such insurance shall cover Commission, Commission's member counties and WisDOT to the extent of their ownership in any of said properties and to include under such coverage buildings, and trackage owned by Commission and leased to Operator hereunder, even though some of said buildings or structures might not be included in the property used by the Operator, except that coverage need not be maintained on improvements sold, leased, licensed or otherwise disposed of by WisDOT or Commission to any third party. Items of coverage for Commission may be waived by letter from Commission to the Operator.

(b) Validation of Coverage and Notice of Cancellation. Upon initial purchase and each renewal of insurance coverage, the insurance carrier shall be subject to approval of WisDOT, such approval shall not be unreasonably withheld, and Operator shall provide to both WisDOT and Commission written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage and within 60 days thereafter a copy of the Comprehensive Railroad Liability Policy and the other policies of insurance aforesaid. In the event of suspended coverage or insurance cancellation by any insurance carrier, both the insurance carrier and the Operator shall provide WisDOT and Commission with notification of such suspension or cancellation no less than 10 days prior to such suspension or cancellation.

(c) Self-Insured Retention. It is understood and agreed that both the Comprehensive Railroad Liability Policy and the Rolling Stock Policy to be obtained and kept in force by Operator may contain a self-insured retention. A Comprehensive Railroad Liability Policy provides coverage for liabilities resulting from railroad operations such as grade crossing incidents, injuries to third parties while on railroad property and injuries to railroad employees under FELA. A Rolling Stock Policy provides coverage for damage to rail equipment, track structure, customer product loss and third party property resulting from a derailment or collision between rail equipment. The Operator shall maintain a self-insured retention of not more than \$250,000 per occurrence for railroad liability, employee injuries under FELA, and rolling stock equipment. If for whatever reason, the Operator determines that maintaining such a level of self-insured retention is either impractical, unavailable or uneconomical, then Operator agrees to confer with Commission and WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer. It is a condition of this Agreement that Operator shall annually provide WisDOT with an independently audited financial statement showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention. It is a condition of

this Agreement that, upon the request of Commission, which request shall be set forth in a resolution adopted by the Board of Directors of the Commission, at a meeting of the Board of Directors of the Commission, by an affirmative vote of not less than two-thirds of the fixed membership of the Board of Directors of the Commission (notwithstanding whether all members are present at a meeting to vote on such resolution), Operator shall provide Commission with an independently audited financial statement showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention.

(d) Reporting of Incidents and Claims. During the term of this Agreement and any extension thereof, any damage or injury to person or property occurring on the Rail Line or from the operation of the equipment of Operator or by the employees of Operator (herein referred to as an "incident") shall be immediately reported to Commission and WisDOT. Operator shall, within 5 days, provide a written report, which shall also include a brief resume of the facts of the incident and an estimate by the Operator as to the approximate potential claim, which might arise there under. If a notice of injury or claim of damage is made to Operator, then Operator shall forthwith furnish Commission and WisDOT with copies thereof. Thereafter, Operator shall provide Commission and WisDOT copies of any further instruments, reports, or records involving such matter and shall periodically, but not less frequently than semi-annually, report to Commission and WisDOT as to further happenings regarding the incident including the final disposition of the matter.

(e) Self-Insured Retention Set Aside. Operator shall, within 30 days after receiving a claim or notice of claim alleging an incident or after being notified of a claim or notice of claim being received by Commission, a member county of Commission, or a WisDOT employee alleging an incident, set aside a separate, segregated reserve for each claim, including claim defense. The reserve fund set aside for each claim and for its defense shall be determined by Commission's counsel, Operator's counsel and WisDOT's counsel. If the counsels are unable to agree, they shall select a fourth party to make the determination. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to claims, Operator agrees to provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position. In the event that the ratio of Operator's current assets to current liabilities, including claim reserves, as determined from General Ledger Trial Balance sheets filed with Commission and WisDOT within 45 days after the end of each quarter, is less than 1.1 to 1, as determined by WisDOT, Commission shall have the right to find the Operator in default in accordance with Section 7.1, below. Upon receipt of such notice of Default, Operator shall have the right to cure said default by (i) purchasing, at its own cost and expense, such insurance as WisDOT and Commission shall deem necessary in their reasonable judgment or by (ii) causing the equity owners of Operator to contribute such additional amounts to the capital of Operator as are required to increase such ratio to 1.1 to 1.

(f) Review and Modification of Liability Insurance. The coverage limits of Operator's Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review by Commission and WisDOT no more than once every twelve months. Modifications to self-insured retention amounts shall be governed by Section 6.2(c) herein. Modifications increasing coverage limits shall be effective upon notice by Commission or WisDOT to Operator. Any modifications decreasing coverage limits may not in any event reduce the requisite insurance coverage below that required under Section 6.2(a) herein and shall be effective only upon WisDOT

approval and upon amendment to this Agreement. Review of liability insurance shall be conducted by Commission, Operator, and WisDOT no less than 30 days prior to the expiration date of the policy then in force, except that a special review may be conducted in the event Operator experiences a cancellation of or a modification or a refusal to renew its liability insurance. Such special review shall be governed solely by Section 6.2(f)(iv), (v), and (vi) herein. The following conditions shall apply to the review and modification of Comprehensive Railroad Liability Insurance:

- (i) Commission or WisDOT may require Operator to expend up to a fixed percentage of Operator's Gross Revenue, as determined under Sections 6.2(f)(ii) and 6.2(f)(iii) herein, to purchase comprehensive railroad liability insurance covering the liability as is required and naming the additional insureds as is required under Section 6.2(a) herein. Operator's decision to obtain insurance beyond that which is required under Section 6.2(a) herein for any aspect of coverage shall not result in Operator purchasing any less insurance coverage for any other aspect of coverage required under Section 6.2(a) herein.
- (ii) A base percentage of Gross Operating Revenue expended for the purchase of comprehensive railroad liability insurance is established for the duration of this Agreement at 4% of Operator's Gross Operating Revenue for the Operator's most recent fiscal year, as determined by independent audit. Commission or WisDOT may require Operator to expend up to an amount equal to 150% of the base percentage, which amount is 6% of Gross Operating Revenues, for comprehensive railroad liability insurance. The amount of liability insurance coverage purchased by this sum shall be maintained in force by Operator until next modified under the terms of this section.

At no time, however, may this base percentage or the review and modification procedure established under this Section 6.2(f) herein be used to reduce the requisite insurance amounts and coverages below that required under Section 6.2(a) herein. Those insurance requirements stated in Section 6.2(a) herein are minimal requirements and shall be met regardless of the base percentage of Gross Operating Revenue calculation or of the review and modification procedures described in this section.

- (iii) The amount of the increase, if any, in the Operator's expenditure for liability insurance required by Commission or WisDOT may be used to adjust coverage limits or self-insured retention limits or both and shall only be required upon the approval of the increase by two of the following three entities: Commission, Operator, and WisDOT. In the event one of these three entities takes a position on the approval of the required increase contrary to the other two, the entity holding the minority position may require the required increase to be subject to arbitration through the use of the American Arbitration Association and its procedures. The arbitrator shall determine what liability insurance coverage is sufficient for (1) the reasonable and full compensation of the public and persons who may be injured or damaged, (2) the protection of the interests of the Commission, WisDOT, and Operator, and their officers, employees, and agents, including their interests as indemnities and for contribution, in the event of property damage, personal injury,

or other loss that may occur, and (3) the availability of that coverage to the Operator in the insurance market place pursuant to the limitations established under Section 6.2(f)(ii). The arbitrator shall then determine the amount of expenditure increase that is reasonably necessary to acquire the liability insurance coverage the arbitrator has so determined to be sufficient. In determining the amount of expenditure increase, the arbitrator is limited to the expenditure level increase required by the majority of the three entities, or the one proposed by the minority entity, neither of which shall exceed the increase allowed under Section 6.2(f)(ii). The arbitrator's determination shall be final and binding on Commission, WisDOT, and Operator as to the amount of the expenditure increase required. The arbitrator shall render a decision within 30 days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than 50 days prior to the expiration of the insurance coverage then in effect. The cost of arbitration shall be paid equally by Commission, Operator, and WisDOT.

- (iv) Operator shall at a minimum expend such amounts as may be required to maintain liability insurance coverage limits no less than that in force at the time of review.
- (v) Commission, WisDOT, and Operator shall establish the coverage level to be obtained by Operator and shall amend this and companion agreements in accordance thereto in the event insurance coverage limits in effect at the time of the review cannot be maintained due to the refusal by insurance carriers to issue a policy of insurance at that coverage limit to Operator.
- (vi) In the event the three entities are unable to reach a common position on the amount of insurance coverage to be obtained, under Section 6.2(f)(v) herein, any one of them may require arbitration in accordance with Section 6.2(f)(iii) herein to determine the required amount of insurance coverage.
- (vii) Notwithstanding any other provision regarding insurance contained herein, Operator shall at a minimum obtain and maintain liability insurance coverage and limits no less than that required now or in the future by the laws of the State of Wisconsin and no less than that required now or in the future by the laws or regulations of the federal government or its agencies, naming WisDOT and Commission and their officers, employees, and agents as additional insureds.

Modification to the comprehensive railroad liability insurance limits for excursion operations shall be established by Commission, Operator and WisDOT under the process set forth in Section 6.2(f)(iii) herein, but in no event shall the coverage limit be less than \$20,000,000 per occurrence, or other form approved by WisDOT, or the coverage limit then in effect for freight operations, whichever is greater.

ARTICLE 7.0 - TERMINATION OR SUSPENSION.

Section 7.1 - Declaration of Default.

(a) Default. A condition of default exists (1) when either party to this Agreement fails to abide by or perform in a material respect any one or more of its terms and conditions, (2) when Operator's insurance coverage lapses, is suspended, is canceled, or fails to satisfy all the terms and conditions of Section 6.2 of this Agreement or any amendment thereto, (3) when Operator files for protection under any bankruptcy statute, or (4) at the option of Operator, when the Land Use Agreement or the Grant Agreement between Commission and WisDOT expires, or is terminated, amended, or revoked without Operator approval. Notwithstanding this provision, Operator may not terminate service until it obtains authority from the STB to discontinue service or WisDOT or the Commission obtains authority from the STB for the adverse discontinuance of Operator's service.

(b) Notice of Default. A declaration of default shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 13.2 below. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice of default or the date required insurance coverage ceased or the date of filing for bankruptcy protection, whichever occurs first.

Section 7.2 - Termination for Default.

In the event of any default described in Section 7.1 above, the non-defaulting party shall have the right to and at its option may, after first giving the required notice to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof or concurrent breach, terminate this Agreement, unless the breach is cured within the period set forth in Section 7.3 below, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages whether arising under this Agreement or otherwise.

Section 7.3 - Ability to Cure Default.

(a) Removal of Operator Default. Operator shall have ten (10) calendar days from written notification by Commission of default by Operator or from the date required insurance coverage ceased or from the date Operator filed for bankruptcy, whichever occurs first, to remove the cause of the default. Such correction shall be completed and available for Commission review within the ten (10) day period. Upon written petition by Operator, Commission may extend the period for removal of a default condition. Such extension shall only be given in writing and may not be unreasonably withheld. If the remedial action is satisfactory, Commission shall provide appropriate written notice to Operator.

(b) Removal by Operator of Commission Default. If for any reason Commission is in default of an agreement with WisDOT, Commission shall so notify Operator, and Operator shall have such time as WisDOT allows in writing from the date of notification of Commission to

remove the default on behalf of Commission and shall have the right to quiet enjoyment of the Land and Improved Property within the allowed time period until the condition of default is resolved.

Section 7.4 - Contractual Obligations Upon Termination.

Except as otherwise agreed to by the parties in writing, the obligations of Operator to provide freight rail service and obligations of Operator and Commission to maintain the Land and Improved Property under this Agreement shall cease as provided for in Section 7.9, but all other obligations of the parties shall remain in full force and effect until all operations of Operator hereunder have been terminated in accordance with this Agreement. Both parties agree to make reasonable efforts to satisfy their surviving obligations promptly after termination. Upon termination, however, Operator's rights as a lessee of the Improved Property and its lease and license to use the Land and Improved Property shall cease in accordance with Sections 7.8 and 7.9.

Section 7.5 - Termination Approvals.

Both parties recognize that the termination of Operator's lease and license will require STB approval before termination is effective. Operator and Commission both agree to cooperate in necessary efforts associated with obtaining such approvals and, if action is required by WisDOT, to cooperate with WisDOT in all necessary efforts associated with obtaining such approvals.

Section 7.6 - Bankruptcy of Operator.

If any proceeding is commenced by or against Operator for any relief which includes, or might result in, any modification of the obligations of Commission or Operator hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), it may be declared cause for default upon 10 days notice by Commission to Operator. If all the obligations of Operator hereunder shall not have been and shall not continue to be duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Operator, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within ten (10) days after proceedings shall have been commenced, it may be declared cause for default. Arrangements may be made in such event by Commission with the trustee or bankruptcy court for continuation under such terms as agreed to by Commission.

Section 7.7 - Return of Property Upon Bankruptcy Default.

If this Agreement terminates pursuant to Section 7.6, Operator shall forthwith deliver possession of the Land and Improved Property to Commission at such time as the STB

discontinuance authority is effective. Land and Improved Property so delivered shall be in the same or better operating order, repair, and condition as when originally delivered to Operator, reasonable wear and tear in service excepted, shall meet the standards of all applicable laws and shall have removed there from at Operator's expense any addition, modification, or improvement owned by Operator and for which Commission or WisDOT has not made a specific request for it to remain with the property.

Section 7.8 - Vacating the Rail Property; Discontinuance of Service.

Upon determination by Commission that the remedial action has not removed the default condition, it may provide written notice to Operator to vacate the Rail Line. Upon receiving said notice, Operator shall immediately seek authorization from the STB to discontinue service over the Rail Line. If Operator does not initiate discontinuance proceedings within 30 days of receiving said notice, WisDOT and/or the Commission may seek to terminate such service by prosecuting an application with the STB for the adverse discontinuance of service by Operator. Operator shall vacate the Principal Line Segment(s) within 20 days of the effective date of a final, non-appealable STB decision authorizing discontinuance of service, or in the event of an appeal, a final non-appealable court decision. Commission shall arrange with Operator for an inventory of the Principal Line Segment(s) to be conducted within this 20 day period. If Operator does not remove any of its equipment within the 20 day period, Commission shall have the option to remove it at Operator's expense.

Section 7.9 - Obligations of Operator in the Event of Termination.

Operator hereby agrees in the event of termination, that it will mitigate the expenses of termination to the greatest extent possible. If there is any unused material in the hands of Operator at the time of termination belonging to Commission or in which Commission has an interest arising out of a rehabilitation program where funds of Commission or WisDOT have been expended to pay for materials or materials otherwise have been paid for by Commission or partially paid for by Commission from its funds or from funds secured from WisDOT, Operator shall set such material aside on property belonging to Commission. In addition to all other obligations in the event of termination, Operator is obligated to remove all cars from the Rail Line of Commission within 10 days following its receipt of a final nonappealable STB decision authorizing discontinuance of service, or in the event of an appeal, a final non-appealable court decision, and to deliver all cars to or from shippers on the Rail Line, which are in transit to, or from any source.

Section 7.10 - Service Failure.

Failure to provide freight rail service to any station on a Principal Line Segment of the Rail Line is defined as:

(a) The unavailability of freight rail service for 30 consecutive days to any station on such Principal Line Segment, or

(b) The availability of an average of less than one train per week for a consecutive 12 week period to any station on such Principal Line Segment, or

(c) The failure to move any revenue freight car loads for 12 consecutive months over such Principal Line Segment.

In the event Operator fails to provide freight rail service, as defined above, (except to the extent contemplated by Section 5.2(a)), on any Principal Line Segment(s), Commission shall at WisDOT's option pay to WisDOT an amount computed according to the terms of Section 8.3 of this Agreement or return ownership of the project property to WisDOT. Operator may not discontinue service on portion of the Rail Line without STB authorization. Notwithstanding the foregoing, in the event that Operator, Commission, and WisDOT agree in writing that a Principal Line Segment or Principal Line Segments need not be operated over, or if service is temporarily suspended on a Principal Line Segment or Principal Line Segments pursuant to Sections 7.11 or 7.12 below, lack of service on such Principal Line Segment(s) shall not constitute a failure by Commission or Operator to provide freight rail service as defined in this section.

Section 7.11 - Immediate Suspension of Rail Operations.

Upon emergency notice from Commission, RHS, or Division of State Patrol (by telephone and later confirmed in writing), Operator shall cooperate in using its discretion to immediately suspend the movement of trains or motive power when, in the reasonable judgment of Commission or WisDOT, after consulting with Operator if possible, operation of trains or motive power would be unsafe or if the liability insurance coverage of Operator lapses, is suspended, or is canceled for any reason, or is less comprehensive than is required under Section 6.2 of this Agreement. Operation of trains and motive power by Operator shall at its discretion remain suspended until the president or general manager of Operator is contacted by Commission and WisDOT and until the safety hazard is ameliorated and the required insurance coverage is reinstated. Suspension of operations for safety reasons shall be ordered when operations are not or would not be in compliance with FRA safety regulations. At the option of Operator, safety officials of FRA may be called upon to determine the existence or non-existence of any safety hazard cited by WisDOT or Commission as a sufficient reason for suspending operations. When the FRA is called upon, operations shall be suspended until such determination is made by FRA. In the event of any service suspension having an expected duration of at least 24 consecutive hours, Operator shall file an embargo notice with the Association of American Railroads.

Section 7.12 - Force Majeure.

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation, except the unavailability of insurance coverage in full accordance with Section 6.2 of this Agreement or any amendment thereto: acts of God; strikes or other labor troubles; other causes beyond the reasonable control of the parties; interruption of service caused by explosion, fires, vandalism, or malicious mischief; or unavoidable interruption or cessation of service for a period of less than 120 days caused by a connecting railroad. Operator shall not be required to operate with liability insurance

coverage levels less than those set forth in Section 6.2, but may be declared in default for non-compliance with Section 6.2.

ARTICLE 8.0- DISPOSITION OF PROPERTY AND PROCEEDS.

Section 8.1 - Option to Purchase.

(a) Operator shall have the right to exercise an option to purchase the Land and Improved Property at any time after the start-up of operations under the provisions of s. 85.09(4), Wis. Stats. This right shall exist throughout the term of this Agreement and any renewals thereto, so long as Operator is not in default at the time of exercise of said option, or at the time of closing of the intended purchase.

(b) If the option is exercised, it shall be for the entire Rail Line (unless the parties hereto agree otherwise) and the purchase price for the Rail Line shall be at fair market value, which shall be determined by appraisal.

(c) The terms of payment shall be as follows:

(i) At the time of exercise of the option, Operator shall forward to WisDOT a cashier's check in the amount of \$10,000, which shall be considered a good faith deposit and shall be placed in an interest bearing escrow account in favor of the buyer. In the event the Operator defaults in its purchase, the said \$10,000 amount shall be retained as liquidated damages by WisDOT since it would be extremely difficult, if not impossible, to ascertain the actual damages.

(ii) At closing, WisDOT shall be paid in cash or in such other manner as WisDOT shall agree, an amount equal to the remainder of the purchase price less any credit allowed under Section 8.3.

(d) Closing shall be held within 120 days after exercise of option at Madison, Wisconsin or at such other mutually agreed time or place.

(e) All appropriate STB or other governmental approvals must be obtained as a condition precedent to closing.

(f) If the parties cannot agree on one appraiser, then each party shall elect one appraiser and the two selected appraisers shall select a third appraiser within 15 days of their selections. The three appraisers shall then, by majority vote, determine the fair market value of the properties being purchased according to proper appraisal methods then current and approved. If option to purchase is not exercised, the cost of such appraisals shall accrue to the Operator. If option to purchase is exercised, the cost of the third appraisal is shared equally with each party also paying its respective appraiser.

(g) It is understood that title to the Land and Improved Property on certain Principal Line Segments shall be held by WisDOT, and WisDOT shall relinquish said title upon settlement herein. It is further understood that title to the track and other improved facilities on certain Principal Line Segments are with the Commission, and therefore, the Commission shall have the authority to relinquish its property rights upon settlement herein subject to Commission's compliance with its obligation to compensate WisDOT upon sale of the property.

Section 8.2 - Right of First Refusal.

(a) Should WisDOT or Commission as the case may be, propose to sell or otherwise transfer all or any part of the Rail Line to any other person or entity, Operator shall to the extent permitted by law have a right of first refusal for a period of sixty (60) days after written notification of such proposed sale, to substitute itself in place of such proposed bona fide purchaser, subject to all of the terms and conditions of such sale. An exact copy of the agreement under which the bona fide purchaser is intending to purchase, shall be submitted to Operator with the written notification of such proposed sale so that Operator may have an opportunity to review the terms and conditions therein.

(b) Written notice of election to exercise this right of first refusal shall be delivered to the Commission or WisDOT as the case may be, within such 60 day period. Should Operator intend to purchase, it shall purchase under the same terms and conditions as set forth in the agreement executed by the bona fide purchaser, which the WisDOT intends to accept. The bona fide purchaser shall, prior to its executing any agreement, be advised that there exists a prior right of first refusal in the Operator. Should the Operator, in writing fail to respond within such 60 day period with notification of Operator's intent to purchase, under the same terms and conditions, such failure to respond shall be considered as the Operator's desire not to purchase. Thereafter, should the sale be consummated with a third party, other than the Operator, the Operator in that event shall nevertheless have the right to receive from the proceeds of such sale, the proportionate amount of proceeds by which the Operator's contribution of money bears to the entire contribution made by Commission, WisDOT and Operator.

Section 8.3 - Apportionment of Proceeds.

(a) Conceptual Basis. WisDOT, Commission and Operator have invested in the acquisition of the Improved Property. Furthermore, Operator accepts the obligation to physically maintain the Land and Improved Property so as to maintain its value. Over time, three results are possible: (1) Operator invests in maintenance sufficiently to retain the value of the Land and Improved Property, or (2) Operator, in violation of the terms of this Agreement, under-invests in maintenance thereby reducing the value of the Land and Improved Property, or (3) Operator, on their own initiative, over-invests in maintenance, thereby either maintaining, reducing or enhancing the value of the Land and Improved Property. In the event of liquidation of the Land and Improved Property, WisDOT, Commission and Operator have a claim on the net proceeds of the liquidation in the same proportion as the original acquisition and subsequent, if any, rehabilitation of the Improved Property.

(b) Computation. The Investment Basis of WisDOT, Commission and Operator shall be defined as the total financial contributions of each to the cost of acquisition, and rehabilitation of the Improved Property, and the cost of construction of new Improved Property for which grant funds are expended. For the purposes of computing the Investment Basis of the Improved Property, the initial investment of each party is as follows: (1) WisDOT - \$240,000; (2) Commission - \$0.00; and, (3) Operator - \$60,000. Upon termination of the Grant Agreement, the basis of WisDOT, Commission and Operator shall be calculated as follows:

(i) No more than 60 days following the closing of a sale of any Improved Property by Commission or the failure by Commission or Operator to remove a condition of default, the gross salvage value of the Improved Property on the Rail Line or any portion thereof subject to the default shall be determined in accordance with Section 8.1(f) of this Agreement.

(ii) The estimated costs of liquidation, which include both direct salvage operation costs and WisDOT administrative costs, shall be deducted from the appraised value.

(iii) WisDOT's, Commission's and Operator's percentage share of the Improved Property shall be determined by dividing each party's respective Investment Basis in the Improved Property by the total Investment Basis.

(iv) Each party's share of any proceeds from the sale of any Improved Property shall be determined by multiplying that party's percentage share of the Improved Property by the net liquidation value of the Improved Property. WisDOT shall receive 100% of the net liquidation value of the Land. Neither Commission nor Operator shall receive funds from the liquidation of the Land inasmuch as neither has invested its own funds in the acquisition.

(v) In the event the property is liquidated, the net proceeds of the liquidation are used in place of appraised value in steps (i) through (iv) except that the estimated costs of liquidation, which include both direct salvage operation costs and WisDOT's administrative costs, shall not be deducted from the net proceeds of the liquidation under step (ii).

(c) Any property installed or funds expended for maintenance of any portion or aspect of Rail Line under the jurisdiction of Commission by permit or grant from WisDOT which is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by WisDOT upon sale of the Improved Property or transfer of operating rights on the property to another agency or operator.

Section 8.4 - New Improved Property.

Commission or Operator, or their designees (collectively "Owner"), may acquire or install, at its own expense, additional facilities deemed necessary for railroad service. Installation shall be permitted only after prior receipt of written approval of the installation proposal and plan by

Commission and by WisDOT, which approval shall not be unreasonably withheld. In the event of liquidation or transfer of ownership to anyone other than Operator, WisDOT shall first determine, within 180 days, if any of these additional facilities are needed for the provision of freight rail service on this or any other line in the State. If WisDOT determines that they are not needed for such purpose, the owner of the additional facilities may dispose of the facilities in any manner it sees fit at its own expense and shall restore any trackage and Land to the condition it was in prior to the installation of the additional facilities. If WisDOT determines that any of the additional facilities are needed, Commission shall arrange for WisDOT, or the subsequent user of the facilities, to pay, or assume the obligation to pay, if assignable, the fair market value of the needed additional facilities to the owner prior to taking possession of the facility. Should owner produce an executed agreement for such facility from a bona fide purchaser, it shall notify WisDOT, and WisDOT or its nominee shall have the right of first refusal to purchase under the same terms and conditions, but such right must be exercised within forty-five (45) days, and such purchase must be completed within six (6) months of notice by Owner. Property covered under this section does not include property used in maintenance or betterment or replacement of property granted to Commission to be installed by government order or regulation. Property covered under this Section shall include but not be limited to new buildings, new sidings, spurs, or passing tracks. The powers above given to WisDOT are made a part of this Agreement as conditions imposed by WisDOT in its agreement with Commission. Any obligation imposed by WisDOT on Commission relating to performance or to the handling of property or relating to additions to property by Commission or Operator are to be performed and adhered to by Operator, and evidence of such obligations is supplied by incorporation of said agreement herein by reference or by attachment. If the agreements between Commission and WisDOT require approval from WisDOT before improvements are made thereon or extended thereto, then such approval shall be obtained before Operator erects or constructs a building or buildings or other improvements, and Commission hereby agrees to use its best efforts to obtain such approval.

ARTICLE 9.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.

Section 9.1 - Operator.

Operator represents and warrants to and covenants with Commission as follows:

- (a) Operator has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.
- (b) To the best of its knowledge, the execution of this Agreement and the providing of the freight rail service it is obligated to provide will not violate any statute, rule, regulation, order, writ, injunction or other decree of any court, administrative agency or governmental body.
- (c) In the event that termination occurs and Commission requires Operator to do so, Operator will support Commission efforts to provide a replacement freight rail service, without obligation by Operator to expend additional funds to do so.

(d) That all non-federal funding required for completion of the objectives of this Agreement and/or required under the terms of the grant agreement, by and between WisDOT and FRA (rail service continuation subsidy, routine maintenance, accelerated maintenance, rehabilitation or improvement, substitute service and/or construction on these rail facilities) will be provided by the Operator from sources other than federal programs prohibited from use as match for other federal program funds.

Section 9.2 - Commission.

Commission represents and warrants to and covenants with Operator as follows:

(a) Commission was created pursuant to Section 66.0301 (formerly 66.30), Wis. Stats., for the purpose of establishing, acquiring, maintaining, and operating a local transportation system. As a Section 66.0301, Wis. Stats. Commission, it has full power and authority to enter into an agreement such as this Agreement and to carry out the functions, which it has obligated itself to undertake in this Agreement. This Agreement has been authorized and approved by the Board of Directors of Commission.

(b) To the best knowledge of Commission and its Board of Directors, the entering into and performance of this Agreement on the part of Commission does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency, governmental body, or any other agreement.

(c) In possession of Operator, and hereby made a part of this Agreement by reference, are true and correct copies of the Land Use Agreement and the Grant Agreement, in effect on the date of this Agreement, and the same have not been further amended, terminated or revoked. It is the intention of Commission not to provide for or to agree to any act or procedure or extend any right not permitted to Commission in any of the agreements with WisDOT. To the best knowledge of Commission after due inquiry, nothing in this Agreement conflicts with or is prohibited by the Land Use Agreement or Grant Agreement between Commission and WisDOT as of the date of the execution of this Agreement.

(d) Commission represents and warrants to and covenants with Operator that WisDOT will, during the term of this Agreement, comply with all of the provisions of the Land Use Agreement and the Grant Agreement and will abide by the provisions of this Agreement which refer to or contemplate action by WisDOT, and Commission shall take actions to attempt to ensure WisDOT's performance as aforesaid.

ARTICLE 10.0 - REPORTS AND ACCOUNTS.

Section 10.1 - Reports.

(a) Upon the request of Commission, which request shall be set forth in a resolution adopted by the Board of Directors of the Commission, at a meeting of the Board of Directors of the Commission, by an affirmative vote of not less than two-thirds of the fixed membership of the

Board of Directors of the Commission (notwithstanding whether all members are present at a meeting to vote on such resolution), Operator shall submit the following information to Commission within 45 days after receipt by Operator of such request and for the period of time requested by the Commission:

- (i) An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance;
- (ii) A summary of originating and terminating traffic by commodity, by Principal Line Segment, and by month;
- (iii) A statement of major traffic gains or losses and a summary of operating and maintenance activity by Principal Line Segment; and
- (iv) A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight, including, but not limited to, rail car storage fees, building rent, excursion trains, and car repair revenues. The report shall describe the amounts received and the duration of the period for which the income is received.

(b) Operator shall submit the following information to WisDOT within 45 days after the end of each quarter year for its operations:

- (i) An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance;
- (ii) A summary of originating and terminating traffic by commodity, by Principal Line Segment, and by month;
- (iii) A statement of major traffic gains or losses and a summary of operating and maintenance activity by Principal Line Segment; and
- (iv) A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight, including but not limited to rail car storage fees, building rent, excursion trains, car repair revenues, and the like. The report shall describe the amounts received, the duration of the period for which the income is received and the payer.

(c) Operator shall submit the following reports to WisDOT:

- (i) Independently audited financial statements for each year ending December 31, to be submitted on or before June 30 each year;
- (ii) A certificate of insurance submitted on or before each insurance coverage renewal date appropriately showing that all the terms and conditions of Section 6.2 of this Agreement are fully met;

(iii) Appropriate documentation showing any changes in operating status or authority 30 days prior to its effective date; and

(iv) Immediate notice of damage or injury to persons or property as required under Section 6.2 of this Agreement.

Section 10.2 - Accounts.

(a) Operator shall establish and maintain a system of accounts as prescribed by the STB or as determined by WisDOT if the STB no longer prescribes a system of accounts.

(b) Operator shall make available to WisDOT's auditors or agents, or auditors of any other governmental agency having jurisdiction over Operator, the records related to the accounts and reports identified under this Article and shall likewise make those accounts and reports available to Commission.

ARTICLE 11.0 - TAXES.

As of the date of this Agreement, unless waived or abated, Operator shall be responsible for and pay when due, all taxes due as a result of its possession and use of the Rail Line or its assets including possession of real and personal property as well as for all taxes due on property owned by Operator together with taxes, if any, levied or assessed on Commission for Land owned by or in the possession of Commission. Operator agrees to hold Commission and WisDOT harmless from, indemnify against and defend all claims and liabilities with regard thereto.

ARTICLE 12.0 - OTHER COMMITMENTS.

Section 12.1 - Handicapped.

Operator agrees that no otherwise qualified handicapped individual in the United States, as defined in Section 706(7)(a) of Title 29 USC and in subchapter II of Chapter 111, Wis. Stats., shall, solely by reason of handicap, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 12.2 - Environmental Protection.

(a) Operator agrees that facilities or equipment shall not be acquired, constructed or improved as a part of its operations unless such facilities or equipment are designed and equipped to comply with all applicable environmental requirements, and that all operations conducted under this Agreement will be done in compliance with all applicable environmental requirements.

(b) Operator hereby certifies that no facilities, which will be utilized or improved as a part of its operations, are listed on any state or federal list of violating facilities.

(c) Operator stipulates that it will notify WisDOT as soon as it or any subcontractor receives any communication from a state or federal agency indicating that any facility, which will be utilized or improved as a part of its operations, is under consideration to be included on any state or federal contaminated property list.

(d) It is understood and agreed by Operator that no publicly-owned land from a public park, recreation area, or wildlife or water fowl refuge, as determined by the Federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state or local significance, as so determined by such officials, may be used for operations without the prior concurrence of the administrator of the EPA and the State Historical Preservation Officer.

Section 12.3 - Prohibited Interest in the Proceeds of Operations.

(a) Neither Operator nor any of its subcontractors shall enter into any contract, subcontract, or agreement in connection with a project or operation of any property included or planned to be included in Operator's operations, that constitutes a violation of Section 946.13, Wis. Stats.

(b) The Operator shall insert in all agreements entered into by it in connection with approved projects, or in connection with any property included or planned to be included in any project for which federal assistance may be sought, and shall require its contractors to insert in each of their subcontracts the following provision: "No director, officer, or employee of the East Wisconsin Counties Railroad Consortium and Columbia, Dodge, Fond du Lac, Green Lake, Milwaukee, Ozaukee, Sheboygan, Washington, and Winnebago Counties during their tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

(c) The provisions of this subsection shall not be applicable to any agreement between the Commission and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

(d) No member of or delegate to Congress or the Wisconsin Legislature shall be admitted to any share of any benefit that may arise from this Agreement, but this provision shall not restrict the making of any contract with a corporation for the general benefit of such corporation.

Section 12.4 - Nondiscrimination.

(a) In connection with the performance of activities under this contract, Operator agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further

agrees to take affirmative action to ensure equal employment opportunities. Operator agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(b) Operator agrees to comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require its subcontractors by contractual agreement to similarly comply:

- (i) Title VI of the Civil Rights Act of 1964, 42 USC 2000d, et seq.
- (ii) Subchapter II of Chapter 111, Wis. Stats.
- (iii) Section 16.765, Wis. Stats.

(c) Operator in its procurement process shall not discriminate against minority owned or operated firms qualified to bid and perform on contracts or subcontracts, or to supply materials for procurement connected with the operations provided under this Agreement.

ARTICLE 13.0 - GENERAL PROVISIONS.

Section 13.1 - Choice of Law.

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of any of the counties, which are a part of Commission. When applicable, this Agreement or portions thereof may be enforced through mandamus.

Section 13.2 - Statement of Parties' Intent.

The Parties have intentionally structured this Agreement to comply with the principles enunciated in the State of Maine Decision, (State of Maine DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C. 2d 835 (1991)), issued by the former Interstate Commerce Commission, now the United States Surface Transportation Board, wherein a public entity was authorized to acquire a railroad line comprising part of the National Rail System threatened with abandonment, without commensurately acquiring the common carrier obligation. Any ambiguities in this agreement should be resolved and construed in favor of an outcome complying with the State of Maine requirements.

Section 13.3 - Notice.

Any notice required or permitted under this Agreement shall be personally served on or mailed by certified United States mail, return receipt requested, postage prepaid, to the following addressed persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

Chief, Railroads and Harbors Section
Wisconsin Department of Transportation
P.O. Box 7914
Madison, Wisconsin 53707-7914

Chairman
East Wisconsin Counties Railroad Consortium
Dodge County Administration Building
127 E. Oak Street
Juneau, Wisconsin 53039-1329

President
Wisconsin & Southern Railroad, LLC
5300 N. 33rd St.
P.O. Box 9229
Milwaukee, Wisconsin 53209

Section 13.4 - Status of Operator.

Operator (including officers, directors, employees, agents or representatives thereof) is an independent contractor, and in no way shall it be deemed an affiliate, partner, joint venturer, or associated in any manner whatsoever with WisDOT or Commission.

Section 13.5 - Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Operator's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without Commission's prior written consent and without WisDOT's prior written consent. This Agreement shall not create rights of any sort in Operator to assign, sublease or transfer, in any fashion whatsoever, its rights under this Agreement to any other person, firm or corporation, including any affiliated corporation, firm or person.

Section 13.6 - Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 13.7 - Amendments, Consents, and Approvals.

No term or provision of this Agreement, or any of its attachments to which Commission is a party, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties to this Agreement and with WisDOT's approval. Consents and approvals required under this instrument and interpretations of this instrument may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

Section 13.8 - Captions.

The captions used in this Agreement are used for convenience and identification purposes only and do not form a part of this Agreement.

Section 13.9 - Compliance by Operator with Agreement.

Operator acknowledges it has reviewed the Land Use Agreement and the Grant Agreement by and between Commission and WisDOT, and will meet any of the covenants and conditions required of Commission therein insofar as the same would be the responsibility of Operator. In the event of additional agreements arising in grant or other aid instruments hereinafter made between Commission and WisDOT, Operator shall review the same and shall comply with the same insofar as it pertains to Operator. Notwithstanding the foregoing, Commission shall not terminate, alter, amend, revoke or modify the Land Use Agreement or the Grant Agreement without the prior written consent of Operator. It is the intent of Commission not to enter into any other agreement without Operator consent, which would adversely affect the rights of Operator hereunder or impose additional expense or obligations on Operator.

Section 13.10 - Additions or Extensions to Present Track.

Additions or extensions to the present Improved Property may be desired by either of the parties hereto or by a user. In that event, such extension or addition shall be constructed at the option and cost of Operator. However, if Commission desires such an extension or addition and this is not concurred in by Operator, then Operator agrees to make such addition or extension but at the cost of Commission. Permits for and disposition of such extensions shall be in compliance with Section 8.4.

Section 13.11 - Additions, Remodeling or Replacement of Buildings.

In the event additions, remodeling, replacements or new construction for buildings or other structures except for trackage are desired by Operator, Operator may construct the same at its cost except that any improvement of existing buildings or structures requires the prior written approval of WisDOT and Commission. Permits for and disposition of such additions, remodeling, or replacements of buildings shall be in compliance with Section 8.4.

Section 13.12 - Failure of Commission to Obtain and Retain Right of Possession and Limitations on Commission and Operator.

(a) The title of the Land located in Wisconsin hereby leased to Operator is held by WisDOT for the State of Wisconsin. The Improved Property is conditionally owned by or granted to Commission but is subject to certain liens and controls by WisDOT, all as set forth in agreements between WisDOT and Commission referred to in Section 13.9 above. The right of Commission to the continued use of the Land and Improved Property is subject to termination in the event of default or certain happenings with a final termination at the end of the term of the Land Use Agreement and Grant Agreement between WisDOT and Commission. It is a condition of this Agreement, that in the event Commission loses its right to possession or use of any of the Land or Improved Property because of conditions imposed by WisDOT or because of future failures or inability of Commission to meet all the requirements for holding and retaining the Land and Improved Property, then this Agreement terminates and ceases, and no liability attaches to Commission for such termination, provided that Commission has fulfilled its obligation herein to offer Operator an opportunity to cure any such default.

(b) References are made in this Agreement to rights of WisDOT to sell and lease portions of the Land acquired by the State and permitted to Commission. It is the position of Commission that all the Land that has been acquired was used for transportation purposes and should be retained for present or future transportation purposes. However, WisDOT retains the right, subject to the provisions of Section 2.2 of this Agreement, to retake and sell portions determined by it not to be needed for transportation purposes on the assumption that future use and experience may indicate there are portions of the Land which might be declared excess for present or future transportation uses or are not needed for preservation of railroad service and therefore should be sold. As to leasing, it is the assumption of Commission that property presently provided to Commission does have or in the future would have a transportation use. Included in this assumption are the notions that portions of the Land immediately accessible to the Rail Line contribute to the transportation use when the lessee is a user or potential user of rail service and the Land should remain available for future rail transportation uses. It is a contention of WisDOT that there are certain portions of the Land, which can be leased for limited co-use purposes to adjacent owners without jeopardizing the use by Operator, or future required full use by Operator. WisDOT has retained the right to make co-use leases in such situations, but it has been the position of Commission as stated to WisDOT that this type of lease should be limited in use and in time. Except as restricted under Section 2.2, present buildings are part of the property conditionally owned or controlled by Commission. Commission is giving the use of buildings to Operator as a part of this lease and license when needed by Operator, but otherwise Commission has retained the right to lease them in accordance with Section 2.2(e).

Section 13.13 - Rehabilitation.

(a) In the event Operator determines in the future that application should be made for rehabilitation, Commission agrees to cooperate with Operator in making such an application or applications. In the event rehabilitation grants are obtained, Operator agrees to comply with the

Federal and state laws as imposed by any such Grant Agreement and will be subject to and comply with Federal and state laws as imposed by the Grant Agreement as to handicap restrictions, environmental protection, approved project procurement, prohibited interest in the proceeds, affirmative action requirements and other applicable laws.

(b) All rehabilitation and improvements and substitute service facilities, installed or accomplished using state or federal financial assistance regardless of the ownership of the property on which they are located, when any such property is no longer used for its original approved project purpose, shall be subject to disposition as described by State and Federal regulations. In connection with any rehabilitation or improvement, the Operator shall file on behalf of the owner of such property, in the appropriate land records, a notice reciting that property was improved or installed with Federal assistance and that its use and disposition are subject to the terms of this Agreement. If the Operator's chief legal counsel advises that such notice cannot be filed, the Operator shall so advise the Commission, and shall recommend alternate procedures whereby compliance with the provisions of this Agreement can be achieved.

Section 13.14 - Arbitration.

(a) General. In the event of any unresolved disagreements between the parties concerning the construction of the Agreement or performance by each of the parties hereunder, the parties shall submit such disagreement to arbitration.

(b) Procedure. The party desiring arbitration shall give notice in writing to the other party identifying the matters in issue and designating an individual as their arbitrator. Within ten (10) days thereafter, the other party shall, by written notice to the original party, agree to said arbitrator or appoint a second arbitrator. The two arbitrators so appointed shall, within ten (10) days thereafter, appoint a third arbitrator as mutually agreed, and the three arbitrators shall hold the hearing and commence to determine the matter within thirty (30) days of the appointment of the third arbitrator. If the second arbitrator shall not have been appointed, the first arbitrator shall proceed to commence to determine the matter within thirty (30) days of the failure to so appoint a second arbitrator. If the two arbitrators selected by the parties are unable to agree upon the third arbitrator, the third arbitrator shall be appointed by the American Arbitration Association. Except as otherwise provided herein, the arbitrators shall arbitrate the issues in accordance with the rules and procedures of the American Arbitration Association, and a determination of the majority of the arbitrators, or of the sole arbitrator as the case may be, shall be final and conclusive between and upon the parties, and judgment upon same may be entered in any court having jurisdiction thereof. The arbitrator(s) shall give written notice of their findings to each party.

Section 13.15 - Specific Performance.

Operator and Commission shall have the right, as provided by law, to require specific performance by the other party of the other party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days from the time Operator or Commission has first notified the other party of the other party's obligation to perform.

Section 13.16 - Approval by WisDOT.

This Agreement to be effective must be approved by WisDOT. This is in compliance with the agreements between WisDOT and Commission and the charter contract of Commission.

Section 13.17 - Execution.

This instrument shall be fully executed in triplicate with a copy being delivered to each party and to WisDOT and in such further counterparts as may be desired by the parties.

Section 13.18 - Entire Agreement.

This Agreement together with those documents referred to herein contains the entire agreement of the parties and supersedes any and all prior agreements and draft agreements, or oral understandings between the parties.

Signatures.

IN WITNESS WHEREOF, the East Wisconsin Counties Railroad Consortium, by its Board of Directors, has caused this Agreement to be signed by its duly authorized officers, this _____ day of _____, 2012.

WITNESS:

EAST WISCONSIN COUNTIES RAILROAD
CONSORTIUM

Jerald Holub, Chair

Jef Hall, Secretary

IN WITNESS WHEREOF, the Wisconsin & Southern Railroad, LLC, by its Board of Managers, has caused this Agreement to be signed by its President, this _____.

WITNESS:

WISCONSIN & SOUTHERN RAILROAD, LLC

William E. Gardner, President

WisDOT APPROVAL in Accordance with Section 13.16 of this Agreement:

WISCONSIN DEPARTMENT OF TRANSPORTATION

Commencement Date

Ronald E. Adams, Chief
Railroads and Harbors Section

ATTACHMENT 1

**LAND USE AGREEMENT #0490-40-51(A-1)
BY AND BETWEEN
THE EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM AND
THE WISCONSIN DEPARTMENT OF TRANSPORTATION
DATED _____**

ATTACHMENT 2

GRANT AGREEMENT

#0490-40-51(B-1)

BY AND BETWEEN

THE EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM AND

THE WISCONSIN DEPARTMENT OF TRANSPORTATION DATED

DATED _____