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August 7, 2014

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

**RE: STB Finance Docket No. 35854
Wisconsin Department of Transportation – Petition for Declaratory Ruling –
Forest County, WI**

ELECTRONIC FILING

Dear Ms. Brown:

On behalf of the Wisconsin Department of Transportation, I respectfully submit this Petition for Declaratory Order electronically. WisDOT will follow with a Petition for Fee Waiver in hard copy, with ten (10) copies.

Sincerely yours,



Kathleen Chung, State Bar no. 1032802
Assistant General Counsel

Enclosures

FILED
August 8, 2014
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
August 8, 2014
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35854

**WISCONSIN DEPARTMENT OF TRANSPORTATION
-- PETITION FOR DECLARATORY ORDER--
REEDSBURG LINE NEAR MADISON, WI**

Kathleen Chung, State Bar No. 1032802
Assistant General Counsel
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, Wisconsin 53707-7910
Tel. (608) 266-8810

Attorney for Petitioner

ELECTRONIC FILING

Dated: August 7, 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35854

**WISCONSIN DEPARTMENT OF TRANSPORTATION
-- PETITION FOR DECLARATORY ORDER--
REEDSBURG LINE NEAR MADISON, 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 WisDOT has negotiated an agreement with the Union Pacific Railway Company (“UP”) to purchase approximately 69.62 miles of rail track and underlying right of way from UP near and between the cities of Reedsburg in Sauk County, and Madison in Dane County, Wisconsin. The property is currently owned by UP and operated by Wisconsin & Southern Railroad, L.L.C., (“WSOR”). WisDOT and parties have structured the acquisition and operating agreements so that WisDOT will not become a rail common carrier, and cannot unduly interfere with railroad operations.

WisDOT hereby submits this Petition seeking a Declaratory Order from the Surface Transportation Board (“the Board”) that no Board authority is required for WisDOT’s proposed acquisition of the 69.62 miles of railroad trackage located near and between the cities of Reedsburg and Madison, Wisconsin because the parties have intentionally and

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

specifically structured the transaction to comport with the terms and conditions of 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 (STB served July 7, 2000) (“*State of Georgia*”). WisDOT has ensured that this transaction also comports with more recent Board *State of Maine* decisions, including State of Wisconsin Department of Transportation – Petition for Declaratory Order, STB Finance Docket No. 35455 (STB served November 10, 2011) (“*State of Wisconsin – Barron County*”); and State of Wisconsin Department of Transportation – Petition for Declaratory Order, STB Finance Docket No. 35401 (STB served August 15, 2012) (“*State of Wisconsin – Gibson Line*”).

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

II. FACTUAL BACKGROUND

The subject trackage, collectively known as the Reedsburg Line (“the Rail Lines”) is owned by UP, and operated by WSOR. The Reedsburg Line begins at Milepost 134.00 near “MX”, a crossing of the Wisconsin & Southern Railroad Company near Madison, WI to Milepost 191.90 near Reedsburg, WI, including Milepost 83.78 to Milepost 85.50 in Madison, WI (Central Soya Spur); and (b) Milepost 81.00 to Milepost 71.00 (Madison to Cottage Grove Line).² The Rail Lines traverse zip codes: 53711, 53713, 53715, 53703,

² See Exhibit A, Map of Rail Line.

53704, 53597, 53529, 53555, 53561, 53913, 53951, 53961, 53959, 53714, 53716, 53718, and 53527, in Columbia, Dane and Sauk Counties, Wisconsin.

UP connects 23 states in the western United States and provides a critical link in the global supply chain. UP acquired the Rail Lines in 1995, when it acquired and merged with the previous owner, Chicago and North Western Transportation Company.³ WSOR acquired the operating authority by lease in 1996.⁴

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, WSOR serves as a primary common carrier on state-owned railroad lines in Wisconsin.⁵

Now, UP desires to sell the Rail Lines to WisDOT, and WSOR will continue to provide service over them. WisDOT intends to acquire the Rail Lines subject to the reservation by UP of a permanent, exclusive operating easement to provide rail service. UP will transfer this permanent, exclusive operating easement to WSOR upon STB authorization. WSOR currently operates on the Reedsburg Line pursuant to a lease agreement, dated Oct. 31, 1996, between UP and WSOR. This lease agreement will terminate upon transaction closing, if/when WSOR does acquire the common carrier authority from the Board.⁶

³ See Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company – Control – Chicago and North Western Holdings Corp. and Chicago North Western Transportation Company, STB Finance Docket No. 32133 (ICC Served Oct. 1, 1995).

⁴ See Wisconsin & Southern Railroad Company – Lease and Operating Exemption – Union Pacific Railroad Company, STB Finance Docket No. 33139 (Served Oct. 30, 1996)

⁵ 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., to control WSOR indirectly, which transaction was consummated on or about January 1, 2012. 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. The railroad continues to operate as Wisconsin & Southern Railroad L.L.C.

⁶ WSOR is expected to file its petition that the Board exempt from the prior approval requirement of the proposed acquisition by WSOR of the exclusive rail freight easement over the Reedsburg Line soon after the instant WisDOT filing. See STB Finance Docket No. FD 35848.

WisDOT will acquire the land and improved property from UP, without the permanent, exclusive operating easement, and shall grant use of the land and improved property to a local rail commission, which will work with WSOR, as operator, to provide rail service on the Rail Lines.

UP, WSOR, WisDOT, and the Wisconsin River Rail Transit Commission,⁷ (the “Commission”), a Wisconsin governmental entity, have executed a series of four transaction documents (“the Transaction Documents”) detailing this transaction. These transaction documents will be executed and/or closed upon a favorable ruling from the Board.

WisDOT and UP have executed a line sale contract, (“Reedsburg Line Sale Contract”)⁸, whereby UP will sell and WisDOT shall purchase the land and improved property of the Rail Lines, but UP will reserve a permanent, exclusive operating easement. UP will convey the operating easement to WSOR upon Board determination that WSOR may hold the common carrier obligation and authority over and on the Rail Lines.⁹

WisDOT and the Commission have negotiated and drafted a Land Use Agreement¹⁰ and a Grant Agreement¹¹ to govern their land and property responsibilities. The Commission

⁷ The Commission is a governmental entity consisting of interested Wisconsin counties of Crawford, Dane, Grant, Iowa, Jefferson, Rock Sauk, Walworth and Waukesha. Commission was created pursuant to Section 66.0301, Wis. Stats., in part, to oversee the preservation of rail service on certain rail lines acquired by the State of Wisconsin. The Commission 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 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.

⁸ See Exhibit B, *Reedsburg Line Sale Contract*, executed July 11, 2014.

⁹ See FN 6.

¹⁰ The *Land Use Agreement between WisDOT and the Commission* (“the Land Use Agreement”) will grant the Commission access to the land and improved property for the purpose of working with the authorized common carrier to provide freight rail service pursuant to the Operating Agreement. A copy of the Land Use Agreement is attached as Exhibit C

¹¹ See Exhibit D, *Grant Agreement by and between Wisconsin River Rail Transit Commission and Wisconsin Department of Transportation*, Agreement No. 0490-40-08(b)(1), August 2014.

and WSOR have negotiated and drafted an Operating Agreement¹² which provides for WSOR to conduct all rail operations on the Rail Lines.

The parties intend that this proposed transaction and sale will complement the proposed acquisition of connecting rail trackage to the south, in the City of Fitchburg and the Village of Oregon by the Commission, which would also be operated by WSOR. WisDOT anticipates that the Commission will file a request similar to this instant request for its *State of Maine* acquisition.¹³ WSOR will also file a petition for trackage rights and common carrier obligation to replace its lease exemption on the connecting trackage in the City of Fitchburg and the Village of Oregon, in Rock, Green and Dane Counties, Wisconsin.¹⁴

III. 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, (ICCTA), 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 common carrier under the ICCTA. *See* State of Wisconsin – Barron County, *supra*, at 1; State of

¹² See Exhibit E, *Operating Agreement by and between Wisconsin River Rail Transit Commission and Wisconsin & Southern Railroad, L.L.C.*, Agreement No. 0490-40-08(d)(1), August 2014.

¹³ Commission has secured STB Finance Docket No. 35843 for its Petition.

¹⁴ WSOR is expected to file its petition that the Board exempt it from the prior approval requirement of the proposed acquisition by WSOR of the exclusive rail freight easement over the connecting trackage in Rock, Green and Dane Counties, Wisconsin, soon after this WisDOT *Reedsburg* filing. *See* STB Finance Docket No. FD 35838.

Wisconsin - Gibson Line. WisDOT asserts that the instant Reedsburg transaction has met that test because WisDOT has carefully and specifically constructed it and the controlling agreements to comport with the terms and conditions of *State of Maine* lines of cases, and including the recent Wisconsin decisions.

WisDOT has a 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. WisDOT, acting as the State’s agent also 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 the more recent *Barron County* and *Gibson Line* decisions (FD 35455 and FD 35401, respectively).

WisDOT has designed this transaction to ensure that WisDOT does not assume any common carrier obligation by contracting for railroad operations through the Commission, 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 Documents specifically provide that WisDOT shall acquire the Rail Lines and improvements from UP, as set forth in the Deed’s legal description, and that the Seller, UP, reserves a permanent exclusive operating easement, which is subject only to the Board’s authority.

WisDOT neither provides, nor is equipped to provide, common carrier, “for-hire” rail freight service. It is WisDOT's and the Commission’s intention to preserve service over light density or abandoned rail lines through operator WSOR without themselves incurring a common carrier obligation, and these parties have fashioned 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 Documents so that the common carrier obligation will reside with WSOR upon Board determination, and after the exercise of WisDOT’s purchase and the recording of the Transaction Documents.

Reedsburg Line Sale Contract.

WisDOT and UP have negotiated and drafted a line sale contract, (“Reedsburg Line Sale Contract”),¹⁵ in consultation with WSOR and the Commission, whereby UP will sell and WisDOT will purchase the Rail Lines. The line sale transaction, pursuant to the Reedsburg Line Sale Contract, will be closed only upon a ruling from the Board that the transaction will not result in WisDOT acquiring any common carrier obligation, which shall

¹⁵ See Exhibit B, *Reedsburg Line Sale Contract*, executed July 11, 2014.

continue to reside in WSOR¹⁶. Upon Board determination, WSOR shall provide freight rail service pursuant to its common carrier obligation and authority, and the permanent, exclusive operating easement.

The Land Use Agreement and Grant Agreement.

The Land Use Agreement¹⁷ between WisDOT and the Commission provides for WisDOT to acquire the Rail Lines and grant its use to the Commission for the Commission to develop, maintain, and work with an operator for the operation of freight railroad service over the WisDOT-owned Rail Lines. To comport with *State of Maine*, the Land Use Agreement specifically provides that the 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 [the] Operator shall possess a permanent, exclusive operating easement to operate on the Rail Line.”¹⁸

The terms of the Land Use Agreement are subject to the Grant Agreement by and between Wisconsin River Rail Transit Commission and Wisconsin Department of Transportation, (the “Grant Agreement”).¹⁹

Section 2.1(a) of the Grant Agreement grants the Commission 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 2.2(b) further states that this Grant Agreement shall be perpetual.

¹⁶ See Reedsburg Line Sale Contract, Sec. 4(c).

¹⁷ The *Land Use Agreement between WisDOT and the Commission* (“the Land Use Agreement”) will grant the Commission access to the land and improved property for the purpose of working with the authorized common carrier to provide freight rail service pursuant to the Operating Agreement. A copy of the *Land Use Agreement* is attached as Exhibit C.

¹⁸ See Sec. 1, *Land Use Agreement*.

¹⁹ See Exhibit D, *Grant Agreement by and between Wisconsin River Rail Transit Commission and Wisconsin Department of Transportation*, Agreement No. 0490-40-08(b)(1), August 2014.

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 Commission will work with the Operator, here WSOR, but WSOR shall exclusively control, manage, staff and plan for the provision of freight rail service. The same section allows the Commission 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 Commission shall lease the land to an Operator, which shall operate rail services thereon, subject to the Operator’s permanent, exclusive operating easement, which Operator shall use the Land for the purpose of providing freight rail service and for all other purposes necessary to it. While Section 2.2 reserves certain rights including the State’s right to sell land not needed for continued freight service and the Commission’s right to contract for the provision of passenger service, Section 2.2(j) specifically states that the section does not limit the Operator’s ability to provide freight service.

Significantly, the Operating Agreement states at Section 5.1(b) that the “Operator shall exclusively control, manage, staff and plan for the provision of freight rail service . . . pursuant to its common carrier obligation and permanent, exclusive operating easement to provide exclusive originating and terminating freight rail service . . . including line-haul and switching services to shippers.” Again, this provision is set forth to ensure that the

agreement does not interfere with the Board-authorized operator and its ability to operate rail services.

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, each transaction document now explicitly states the intent of the parties that the documents comport with *State of Maine*, and recognize the Board's authority to assign common carrier obligation to the Operator, and Operator's exclusive permanent, operating easement. Each transaction document contains this specific provision to resolve relevant ambiguities in accordance with the Board's State of Maine line of precedents.²⁰

Finally, these agreements 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.

IV. 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.

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.

²⁰ See Sec. 19 Land Use Agreement; Sec. 13.2 Grant Agreement; and Sec. 13.2 Operating Agreement.

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

V. 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: August 7, 2014

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 regular or electronic mail on August 7, 2014:

Attorney Eileen Brownlee
Wisconsin River Rail Transit Commission
1038 Lincoln Avenue
P. O. Box 87
Fennimore, WI 53809
(608) 822-3251
ebrownle@tds.net

Attorney Mack Shumate
Law Department
Union Pacific Railroad Company
101 North Wacker Driver, Suite 1920
Chicago, IL 60606
(312) 777-2055
mackshumate@up.com

Attorney Karl Morell
Wisconsin & Southern Railroad, LLC
Ball Janik, LLP
1455 F St, NW, Suite 225
Washington, DC 20005
(202)638-3307
kmorell@bjllp.com



Kathleen Chung, State Bar No. 1032802
Assistant General Counsel
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, Wisconsin 53707-7910
(608) 266-8810
kathleen.chung@dot.wi.gov

Dated: August 7, 2014

**PROPOSED SALE TO
WIS DOT
STATE OF WISCONSIN**

Legend

● STATIONS

— PROPOSED SALE

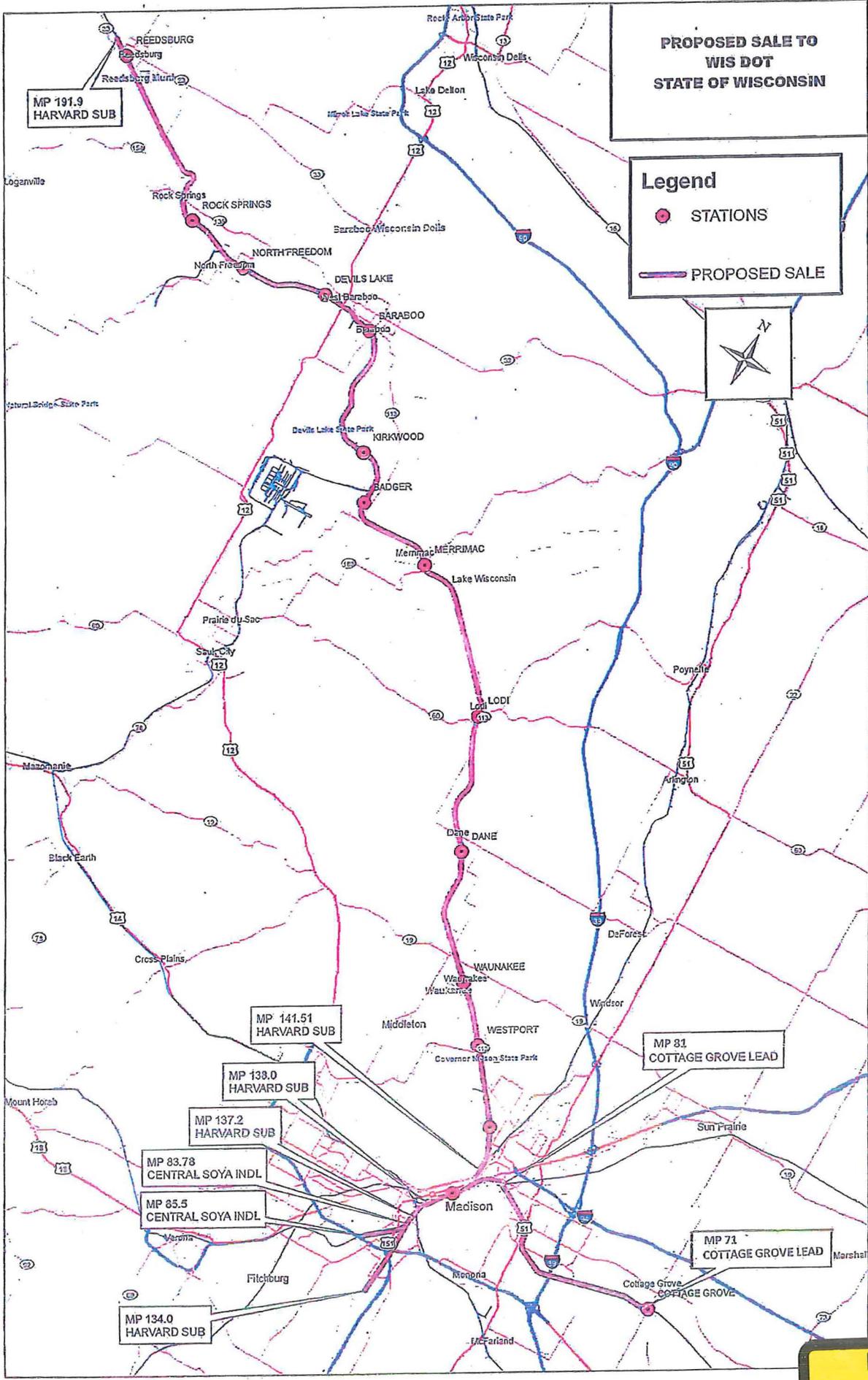


EXHIBIT
A
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LINE SALE CONTRACT

THIS LINE SALE CONTRACT ("Contract") is entered into as of this 11th day of July, 2014 ("Execution Date"), between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP"), and the WISCONSIN DEPARTMENT OF TRANSPORTATION, an agency of the State of Wisconsin ("WisDOT"), and the WISCONSIN & SOUTHERN RAILROAD, L.L.C., a Wisconsin limited liability company ("WSOR"), collectively known as the Parties ("Parties").

RECITALS:

WHEREAS, WisDOT desires to acquire that certain rail right-of-way known as the Madison to Reedsburg Line from Milepost 134.00 near Madison, Wisconsin to Milepost 191.90 near Reedsburg, Wisconsin; including the Central Soya Industrial Lead from Milepost 83.78 to Milepost 85.5; and the Cottage Grove Industrial Lead, Milepost 81.00 to Milepost 71.00 consisting of all of UP's interests in the Real Property and Personal Property (both defined below), which collectively make up the Corridor all as hereinafter defined excluding any interests in said Real Property, and/or Personal Property specifically reserved by UP in the Quit Claim Deed to Property or the Quit Claim Bill of Sale, as hereinafter defined, and attached hereto as **Exhibits B** and **C** respectively; and

WHEREAS, this Contract contemplates that WisDOT shall not assume any common carrier obligations to provide freight rail transportation service on the Corridor; and

WHEREAS, WSOR, subject to the approval of the Surface Transportation Board ("STB") desires to acquire a permanent exclusive easement for freight railroad purposes upon, over, under, across and through the Corridor for the purpose of providing common carrier rail freight transportation thereon (the "Freight Easement") pursuant to an operating agreement with the Wisconsin River Rail Transit Commission ("WRRTC"); and

WHEREAS, WSOR currently operates the Corridor as a common carrier pursuant to the STB authority granted under Finance Docket 33139, subject to that certain lease agreement ("Lease Agreement") dated 10/3/1996 between UP and WSOR; and

WHEREAS, WSOR and UP agree to terminate the Lease Agreement upon the Closing under this Contract; and

WHEREAS, the parties hereto desire that UP shall sell and WisDOT shall purchase the Corridor and UP shall grant and WSOR shall accept the Freight Easement Deed upon the Closing under this Contract; and



WHEREAS, WSOR and UP are parties to that certain Trackage Rights Agreement dated October 4, 1996 by and among WSOR, Wisconsin and Calumet Railroad Company, Inc., WRRTC and UP ("Trackage Rights Agreement") and WSOR and UP desire that the same be terminated upon Closing.

The Parties agree as follows:

Section 1. Purchase and Sale of the Corridor.

UP agrees to sell and WisDOT agrees to purchase, on the terms and conditions of this Contract, UP's right, title and interest in and to the Corridor, as shown on the attached print marked **Exhibit A**, except for the area depicted on **Exhibit A-1** which shall not be included in the sale. The sale of the Corridor shall include both the real property component of the Corridor ("Real Property") and the Personal Property component of the Corridor (the "Personal Property") including but not limited to any rail, ties, ballast, other track materials, signals, switches, bridges, culverts, communications equipment or facilities and other personal property (but not including rolling stock), fixtures (the "Fixtures") and improvements on the Corridor to the extent owned by UP. The Real Property and the Personal Property are collectively referred to herein as (the "Corridor").

EXCEPTING from this sale and RESERVING to UP, its successors and assigns, forever, the following:

A permanent, exclusive easement for freight railroad purposes upon, over, under, across, and through the Real Property, as more particularly set forth in the Quit Claim Deed to Property and the Freight Easement Deed attached hereto as **Exhibit E** and hereby made a part hereof.

Ownership of all Personal Property on the Corridor that are owned by UP, including without limitation, rails, ties, ballast, signals, switches, bridges and culverts and other rail appurtenances to the Corridor, are NOT reserved, and will be transferred to WisDOT at the Closing by the Quit Claim Bill of Sale in the form attached to this Contract as **Exhibit C**.

The conveyances made pursuant to this Contract is subject to all applicable federal, state and local laws, orders, rules and regulations, and all outstanding rights whether or not of record or open and obvious on the ground.

Section 2. Purchase Price.

The Purchase Price for the Corridor is Thirty Million and 00/100 Dollars (\$30,000,000.00). The Purchase Price shall be paid by WisDOT to UP at Closing as defined in Section 6(a) by wire transfer of United States funds for immediate credit.

Section 3. Legal Description.

Within sixty (60) days after the Effective Date of this Contract, UP, at its sole cost and expense, shall prepare a legal description of the Real Property and shall deliver the same to WisDOT for WisDOT's review and approval. WisDOT shall provide UP written notice of WisDOT's approval or disapproval of the legal description within twenty (20) days after WisDOT's receipt of the legal description. Failure to provide such notice shall be deemed notice of approval. In the event WisDOT disapproves the legal description, WisDOT shall have thirty (30) days to prepare a corrected legal description at its sole cost and expense. Such corrected legal description shall be subject to UP's review and approval.

Section 4. Conditions Precedent to Sale.

The sale and purchase of the Corridor are subject to the following conditions precedent:

(a) Title Review. WisDOT shall be responsible for assuring itself that the title and ownership to the Corridor is adequate for the continued operation of the Corridor as a freight rail line. UP shall make available for WisDOT's review, at UP's Real Estate Department in Omaha, Nebraska, during the UP's Real Estate Department business hours, UP's records located at such office and pertaining to the title or ownership to the Corridor. UP shall have no obligation to cure any title defects or ownership, except that at Closing, UP shall remove any liens against the Corridor of a definite and ascertainable amount that may be removed by the payment of money, other than liens created by WisDOT. If the results of WisDOT's review of the Lease Agreement and/or the agreements for the construction, maintenance, installation, repair and operations of fiber optic lines and other communication lines and appurtenant facilities ("Communication Facilities") are unsatisfactory in WisDOT's reasonable opinion, WisDOT may, at its option, terminate this Contract by giving UP written notice of termination within ten (10) days of the date of this Contract. If no written notice of termination is given by WisDOT to UP within ten (10) days of the date of this Contract, the Lease Agreement and Communication Facilities shall be deemed acceptable to WisDOT.

(b) Merrimac Bridge Study. WisDOT and its agents and contractors intend to perform an underwater inspection of Bridge 334 located at Milepost 164.15 across Lake Wisconsin near Merrimac, Wisconsin ("Merrimac Bridge"). If the results of such inspection are unsatisfactory in WisDOT's reasonable opinion, WisDOT may, at its option, terminate this Contract by giving UP written notice of termination within ten (10) days of this Contract. If no written notice of termination is given by WisDOT to UP within ten (10) days of the date of this Contract, the Merrimac Bridge shall be deemed suitable for WisDOT's purposes. If WisDOT terminates this Contract, then WisDOT shall deliver to UP copies of all inspection reports and any other documents related to the bridge inspection prepared for WisDOT pertaining to the Merrimac Bridge.

(c) STB Authority. WisDOT, at its sole cost and expense, shall acquire any necessary decision from the STB or its successor agency to acquire the Corridor. WSOR, at its sole cost and expense, shall acquire any necessary decision from the STB or its successor agency

to be the exclusive common carrier by railroad operator of the Corridor upon acceptance of the Freight Operating Easement under the Freight Easement Deed. WisDOT agrees to make all necessary submittals for such decision to the STB within 30 (thirty) days of the date of this Contract. Conditions, if any, imposed by the STB with regard to this acquisition of the Corridor and the operation of the Corridor by WSOR or any other authorized operator, shall be subject to all Parties' approval, prior to Closing. Such approvals may be withheld at each Party's sole and absolute discretion. UP shall cooperate with WisDOT and/or WSOR in connection with any hearings or submittals before the STB to obtain the necessary decision, but shall not be obligated to incur any cost or expense or to support any legal position which is not acceptable to UP. WisDOT's obligation to purchase the Corridor is dependent on a decision by the STB that WisDOT does not need STB approval to acquire the Corridor without the Freight Easement under the terms and conditions of this Contract. If the STB does not issue such a decision, or if any Party does not approve of the conditions imposed, WisDOT or UP may, at their sole and absolute discretion, decline to purchase or sell the Corridor, and this Contract will terminate without any further obligations due by or to either WisDOT or UP except as otherwise provided in this Contract.

(d) Labor Issues. UP shall assure itself, in its sole discretion, that the sale of the Corridor to WisDOT or the grant of the Freight Easement to WSOR will not result in a work stoppage on UP or any of its affiliates' lines of railroad, and that there are no other labor issues which might jeopardize the anticipated benefits to UP of the sale of the Corridor.

(e) UP's Representations and Warranties. The representations and warranties of UP in Section 9(a) shall be true and correct.

(f) WisDOT's Representations and Warranties. The representations and warranties of WisDOT in Section 9(b) shall be true and correct.

(g) UP's Management Approval. UP's Management Approval shall be obtained prior to execution of this Contract by UP.

(h) Freight Easement. Concurrent with Closing, UP shall grant at no cost and WSOR shall accept the Freight Easement Deed in the form attached as **Exhibit E**.

Section 5. Escrow.

(a) Escrow. Upon execution of this Contract by all Parties, an escrow account shall be opened with First American Title Insurance Company, National Commercial Services, 10 West Mifflin Street, Suite 302, Madison, Wisconsin 53703, Attention: Pat Katte ("Title Company"). On or before the date of Closing, WisDOT shall pay to UP by wire transfer of United States funds for immediate credit and deposit into escrow the following documents as duly executed by WisDOT: Assignment and Assumption Agreement and Quit Claim Bill of Sale; UP shall deposit into escrow the following documents as duly executed by UP: Quit Claim Deed to Property, Assignment and Assumption Agreement, Quit Claim Bill of Sale, and the Freight Easement; and WSOR shall deposit into escrow as duly executed by WSOR the Freight

Easement. Immediately upon confirmation of the wire transfer, pursuant to this section, the Title Company shall:

- (i) record and deliver the Quit Claim Deed to Property to WisDOT;
- (ii) record and deliver the Freight Easement to WSOR; and
- (iii) deliver an executed counterpart of the Assignment and Assumption Agreement and Quit Claim Bill of Sale to each of WisDOT and UP.

(b) Costs. Each Party shall bear and pay any and all costs and expenses for document preparation and title expenses required by it. WisDOT shall bear and pay any and all costs and expenses for any transfer taxes, fees, stamps, charges and all documentary, recording or filing fees, related to acquisition or transfer of the Corridor. UP shall pay the escrow fee.

Section 6. Closing.

(a) The sale and purchase of the Corridor shall close ("Closing") within thirty (30) days after issuance by the STB of the decision (1) by the STB that WisDOT does not need STB approval to acquire the Corridor without the Freight Easement, as described in Section 4(c), and (2) by the STB that WSOR has exclusive common carrier by railroad operating authority on the Corridor by virtue of accepting the Freight Operating Easement under the Freight Easement Deed ("Closing Date").

(b) If Closing does not occur within thirty (30) days after issuance of such STB decision due to failure of a condition precedent in Section 4, then UP may terminate this Contract and it shall be without any further force and effect, and without further obligation of any Party to the other. WisDOT shall have no right to occupancy of or entry upon any portion of the Corridor, except as set forth in Sections 4(a) and 4(b), until Closing.

Section 7. Transfer and Operating Documents.

UP's right, title and interest in the Corridor shall be transferred by UP to WisDOT by Quit Claim Deed to Property for the Real Property and Fixtures in the form of **Exhibit B** which is attached hereto and hereby made a part hereof; by Quit Claim Bill of Sale for the Personal Property in the form of **Exhibit C** which is attached hereto and hereby made a part hereof; and in the agreements identified in **Exhibit D-1** which is attached hereto and hereby made a part hereof, to the extent such agreements affect the Corridor, by Assignment and Assumption Agreement in the form of **Exhibit D** which is attached hereto and hereby made a part hereof.

In addition to the exceptions and reservations referenced in Section 1 of this Contract, WisDOT acknowledges that the Corridor may be subject to licenses and other third party rights that have not been disclosed by UP to WisDOT. It is the responsibility of WisDOT to determine if any of these undisclosed rights exist. If any license or other third-party right that affects only the Corridor is identified after the Execution Date, UP's rights and obligations under such license

or third-party right will be assigned to and assumed by WisDOT at or after Closing.

Section 8. Environmental Disclosures; As Is; Release; Environmental Indemnity; and General Indemnity.

(a) ENVIRONMENTAL DISCLOSURES. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BELOW, UP HAS NO KNOWLEDGE OF ANY CONDITION WITH RESPECT TO THE CORRIDOR OR THE OPERATION OF THE RAILROAD BUSINESS CONDUCTED THEREON THAT WOULD REASONABLY GIVE RISE TO ANY ACTION, SUIT OR PROCEEDING BEFORE ANY FEDERAL, STATE, MUNICIPAL OR OTHER GOVERNMENTAL AGENCY UNDER ANY ENVIRONMENTAL LAW, STATUTE, ORDINANCE OR ANY RULE OR REGULATION PROMULGATED THEREUNDER.

- i. IT IS KNOWN BY UP, WISDOT AND WSOR THAT THERE IS A FORMER LESSEE, RAYOVAC, FOLDER 178-85, THAT DID IMPACT RAILROAD RIGHT OF WAY INCLUDED WITHIN THE CORRIDOR. UP HAS INITIATED A LEGAL ACTION AGAINST RAYOVAC TO RESOLVE THIS MATTER.
- ii. IT IS KNOWN BY UP, WISDOT AND WSOR THAT THERE IS A REMEDIATION PROJECT IDENTIFIED IN THE BUREAU OF REMEDIATION AND REDEVELOPMENT SYSTEM DATA BASE AS 02-13-00843 ON AND IN THE VICINITY OF THE CORRIDOR CONDUCTED BY HYDRITE CHEMICAL AT THE DIRECTION OF THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES.
- iii. IT IS KNOWN BY UP, WISDOT AND WSOR THAT THERE IS A PRESUMED ASSUMPTION THAT STRUCTURES AND DEVICES (E.G. BRIDGES AND SIGNAL BOXES) MAY CONTAIN ASBESTOS, LEAD PAINT AND PCBS. SOME SIGNAL BOX LOCATIONS MAY HAVE CONTAINED (OR CONTINUE TO CONTAIN) ACID BATTERIES USED AS AN EMERGENCY BACKUP POWER SUPPLY.
- iv. IT IS KNOWN BY UP, WISDOT AND WSOR THAT AS THE OPERATING RAILROAD ON THE CORRIDOR SINCE 1996, WSOR HAS BEEN AND IS RESPONSIBLE FOR REPORTING ANY ENVIRONMENTAL INCIDENTS TO THE PROPER GOVERNMENTAL AUTHORITY. TO UP'S KNOWLEDGE WSOR HAS NOT MADE ANY SUCH REPORTS.

(b) AS IS. WISDOT AND ITS REPRESENTATIVES, PRIOR TO THE EFFECTIVE DATE, WILL HAVE BEEN AFFORDED THE OPPORTUNITY TO MAKE SUCH INSPECTIONS OF THE CORRIDOR AND MATTERS RELATED THERETO AS WISDOT AND ITS REPRESENTATIVES DESIRE. WISDOT ACKNOWLEDGES AND

AGREES THAT THE CORRIDOR IS TO BE SOLD TO AND ACCEPTED BY WISDOT IN AN "AS IS" CONDITION WITH ALL FAULTS. UP MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE CORRIDOR. IN PARTICULAR, BUT WITHOUT LIMITATION, UP MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE USE, CONDITION, TITLE, OCCUPATION OR MANAGEMENT OF THE CORRIDOR, OR COMPLIANCE WITH APPLICABLE STATUTES, LAWS, CODES, ORDINANCES, REGULATIONS, REQUIREMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (WHETHER OR NOT OF RECORD), OR THE VOLUME, NATURE OR QUANTITY OF RAIL TRAFFIC. WISDOT ACKNOWLEDGES THAT IT IS ENTERING INTO THIS CONTRACT ON THE BASIS OF WISDOT'S OWN INVESTIGATION OF THE PHYSICAL AND ENVIRONMENTAL CONDITIONS OF THE CORRIDOR, INCLUDING THE SUBSURFACE CONDITIONS. THIS CONTRACT CONSTITUTES THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THE PURCHASE AND SALE OF THE CORRIDOR AND SUPERSEDES ANY CONTEMPORANEOUS ORAL OR WRITTEN REPRESENTATIONS, STATEMENTS, DOCUMENTS OR UNDERSTANDINGS.

(c) RELEASE. FROM AND AFTER CLOSING, WISDOT, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES UP, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES IN ANY WAY ARISING OUT OF OR ATTRIBUTABLE TO ANY OCCURRENCE ON OR AFTER THE CLOSING DATE CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE, PHYSICAL OR ENVIRONMENTAL CONDITION OF THE CORRIDOR (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE CORRIDOR BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT, AND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF UP, WISDOT OR ANY THIRD-PARTY, AND DAMAGE TO PROPERTY OF UP, WISDOT OR ANY THIRD-PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF UP, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

(d) ENVIRONMENTAL INDEMNITY. As a condition to Closing under this Contract, WSOR shall provide UP with the following Environmental Indemnity which shall also cover the period from October 20, 1996 to Closing in WSOR's Freight Easement Deed:

FROM AND AFTER CLOSING, WSOR SHALL, TO THE EXTENT PERMITTED BY WISCONSIN LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS UP, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES (COLLECTIVELY, "ENVIRONMENTAL COSTS"), IN ANY WAY ARISING OUT OF OR ATTRIBUTABLE TO ANY OCCURRENCE ATTRIBUTABLE TO THE KNOWN ENVIRONMENTAL ISSUES ON OR AFTER OCTOBER 20, 1996 TO THE CLOSING DATE AND THEREAFTER AFTER THE CLOSING DATE CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE CORRIDOR (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE CORRIDOR BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO (INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT), AND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF UP, WSOR, WISDOT OR ANY THIRD PARTY, AND DAMAGE TO PROPERTY OF UP, WSOR, WISDOT OR ANY THIRD PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF UP, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

NOTWITHSTANDING THE FOREGOING, UP, WISDOT AND WSOR AGREE THAT,

A. General Allocation of Environmental Responsibility. With the exceptions provided in the following subsections (A) and (B), from and after Closing, WisDOT, at no cost to UP, is responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation with respect to any existing or future environmental contamination of the Corridor (collectively, "**Environmental Remediation**"). The provisions of this Section shall survive the Closing.

B. UP acknowledges that WisDOT has not waived, released, remised, acquitted or discharged UP or UP's Affiliates from claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation, if any, on account of or in any way arising out of or in connection with any contamination in, under and emanating from the Rayovac Site Folder 178-85, to the extent such contamination is located on the Corridor on the date of Closing (the "**Rayovac Site Folder 178-85**"). WisDOT shall not be responsible to UP to complete the Environmental Remediation of the Rayovac Site Folder 178-85. After Closing, UP shall use commercially reasonable efforts to cause Rayovac to determine the environmental condition of the Rayovac Site and complete any Environmental Remediation that may be

required by federal, state or local regulatory agencies of the Rayovac Site Folder 178-85 and to obtain the applicable agency's written acknowledgment that the required Environmental Remediation or encapsulation has been completed. Provided, however, UP's commercially reasonable efforts to cause Rayovac to complete any such Environmental Remediation or encapsulation shall be limited to the Corridor, and UP shall have no obligation to use any efforts to cause Rayovac to complete any remediation on, or take any other action with respect to, any property other than the Corridor. Concurrently with the Closing, WisDOT shall grant to UP a permit to access the Corridor in order for UP to complete any required Environmental Remediation or encapsulation of the Rayovac Site Folder 178-85. The permit will be in a form reasonably acceptable to both parties and, among other things, will not unreasonably interfere with the use of the Corridor as an industrial railway corridor. If the Rayovac Site Folder 178-85 has not received Environmental Remediation or encapsulation by December 31, 2016, UP shall, within one hundred twenty (120) days thereafter, commence and continue to work diligently to complete such Environmental Remediation or encapsulation and shall obtain the applicable regulatory agency's written acknowledgment that the required Environmental Remediation or encapsulation has been completed. Also, WisDOT and UP acknowledge that any Environmental Remediation or encapsulation of the Rayovac Site Folder 178-85 on the Corridor by UP shall be proposed to be based on the use of the Corridor as an industrial railway corridor, and WisDOT shall restrict the use of, or accept a use restriction on, the applicable area of the Corridor accordingly in order to obtain agency approval of any such proposed remediation plan and then to obtain such written acknowledgement following cleanup to a standard acceptable for such use. If WisDOT later elects to use the Corridor for some other purpose, which requires further remediation of the Corridor, then WisDOT, and not UP, shall have responsibility for such further remediation. Absent WisDOT's subsequent change in use of the Corridor, WisDOT assumes no responsibility for the Rayovac Site Folder 178-85 other than accepting a restriction on the use of the subject portion of the Corridor, as needed to obtain the regulatory agency's written acknowledgment that the required Environmental Remediation or encapsulation has been completed. Provided, however, at such time as UP or Rayovac has obtained such written acknowledgement that the required Environmental Remediation has been completed, on the Rayovac Site Folder 178-85, UP shall be deemed to have performed all its obligations under this Contract. Provided, however, UP shall have no responsibility to obtain such written acknowledgment for any property other than the Corridor. The provisions of this Section shall survive the Closing.

C. UP acknowledges that WisDOT has not waived, released, remised, acquitted or discharged UP or UP's Affiliates from claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation, if any, on account of or in any way arising out of or in connection with any contamination in, under and emanating from the Hydrite contamination site in Cottage Grove identified as WDNR's Bureau for Remediation and Redevelopment Tracking System - BRRTS Activity 02-12-000843 to the extent such contamination is located on the Corridor on the date of Closing. The provisions of this Section shall survive the Closing.

action is desired to cure the breach. If, upon the expiration of thirty (30) days from the receipt of such notice, the breach has not been cured and is a material breach, the injured party shall have the right, at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured party from resorting to any other remedy permitted at law or equity including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole. Failure of the injured party to demand or enforce a cure for breach in one instance or more shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

(c) If errors in the legal description for the Real Property are identified after Closing, UP and WisDOT agree to work together to better define, modify and correct the legal description at the sole cost and expense of WisDOT and agree that any updated legal description will be substituted into a Corrective Quit Claim Deed.

(d) WSOR and UP agree that upon Closing the Trackage Rights Agreement shall automatically terminate and be of no further force and effect.

Section 11. CONDEMNATION AND CASUALTY

(a) Condemnation. If, prior to the Closing, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Corridor, WisDOT and UP shall each have the unilateral right, exercisable by giving notice of such decision to the other parties within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Contract, and no party shall have any further rights or obligations under this Contract (other than the Surviving Obligations). If neither WisDOT nor UP elects to terminate this Contract pursuant to this Section 11, the net proceeds of condemnation awards payable to UP by reason of such condemnation shall be paid or assigned to WisDOT upon Closing.

(b) Casualty. If, prior to the Closing, the Corridor shall be damaged by fire, flood, earthquake or other insured casualty to a material degree, that is, if the cost of restoration of the damaged portion of the Corridor exceeds twenty percent (20%) of the Purchase Price, UP shall notify WisDOT to the extent of its knowledge and WisDOT shall have the option either to (i) elect not to acquire the Corridor, in which case this Contract shall terminate, and the parties shall be relieved of all further rights and obligations with respect thereto or (ii) to acquire the Corridor, subject to such casualty, without adjustment in the Purchase Price and otherwise in accordance with the terms and provisions of this Contract, but WisDOT shall be entitled to all insurance proceeds paid by an insurer on account of such casualty which would otherwise accrue to UP. WisDOT shall give written notice to UP of any election pursuant to this Section 11(b) within thirty (30) business days following receipt by WisDOT of any written notice of such casualty. Failure of WisDOT to make such election within said period shall be deemed an election to proceed to purchase the Corridor pursuant to clause (ii) above. If prior to the Closing, the Corridor suffers a casualty other than to an extent entitling WisDOT to elect not to acquire the Corridor pursuant to this Section 11(b), WisDOT shall close the transaction contemplated by this

Contract in accordance with the terms hereof as though such casualty had not occurred, except that UP shall, at Closing, pay or assign to WisDOT any net insurance proceeds paid or payable to UP in respect thereof. Risk of physical loss to the Corridor on and after the Closing shall be borne by WisDOT.

Section 12. MISCELLANEOUS PROVISIONS.

(a) Entire Agreement. This Contract constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, oral or written, between the parties concerning the subject matter of this Contract.

(b) Amendment. No modification, addition or amendment to this Contract shall be effective unless such modification, addition or amendment is in writing and signed by the Parties.

(c) Assignment. This Contract shall be binding upon, and inure to the benefit of the parties hereto and their respective successors, heirs, administrators and assigns, except that WisDOT's interests under this Contract may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without UP's prior written approval, until after the Closing at which time this clause shall terminate. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void and WisDOT shall be deemed in default hereunder.

(d) Governing Law. This Contract shall be governed by the laws of the State of Wisconsin.

(e) Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

(f) Exhibits. The Exhibits attached to and referred to in this Contract are incorporated into this Contract by reference.

(g) Notices and Knowledge. Any notices required or desired to be given under this Contract shall be in writing and personally served, given by overnight express delivery, or given by mail. Telecopy notices shall be deemed valid only to the extent they are (i) actually received by the individual to whom addressed and (ii) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

UP: UNION PACIFIC RAILROAD COMPANY
ATTN: Regional Director, Network & Industrial Development
1400 Douglas Street, Mailstop 1350
Omaha, Nebraska 68179
Telephone: (402) 544-4215
Facsimile: (402) 233-2550

With copy to: UNION PACIFIC RAILROAD COMPANY
ATTN: Mack H. Shumate, Jr.
101 North Wacker Drive, Suite 1920
Chicago, IL 60606
Telephone: (312) 777-2055
Facsimile: (312) 777-2065

WisDOT: WISCONSIN DEPARTMENT OF TRANSPORTATION
ATTN: Chief, Railroads and Harbors Section
4802 Sheboygan Ave, Room 701
Madison, WI 53705
Telephone: (608) 267-9284
Facsimile: (608) 267-3567

WSOR: WISCONSIN & SOUTHERN RAILROAD, L.L.C.
315 W. 3rd Street
Pittsburgh, KS 66762
Telephone: (620) 231-2230
Facsimile: (620)231-0812

TITLE COMPANY: FIRST AMERICAN TITLE INSURANCE COMPANY
National Commercial Services
ATTN: Pat Katte
10 West Mifflin Street, Suite 302
Madison, WI 53703
Telephone: (608) 204-7409
Facsimile: (608) 204-7414

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

(h) Unless specifically provided otherwise in this Contract, knowledge attributable to UP shall be limited to that which is to the knowledge of an officer of UP at the level of Vice President or above.

(i) Severability. If any provision of this Contract is illegal, invalid or unenforceable under present or future laws, then it is the intention of the parties that the remainder of the

Contract shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

(j) Time is of the Essence. Time is of the essence of this Contract.

(k) Merger. The provisions of this Contract shall merge into the deed to be delivered by UP to WisDOT and shall not survive the Closing, except for the provisions of Sections 4, 7, 8, 9, 10 and 12.

(l) No Brokers. The negotiations relative to the transactions contemplated in this Contract have been conducted by the parties without the intervention of any person which would give rise to any valid claim against any party for brokerage commissions or other like payment. Each party, to the extent it may lawfully do so, shall indemnify, defend and hold harmless the other party against and from all claims for brokerage commission or other like payment arising out of the transactions contemplated by this Contract and occasioned by the actions of such indemnifying party.

(m) Non-Foreign Status. UP, Federal ID No. 94-6001323, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by WisDOT. A certification prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached hereto as **Exhibit B-1** and is hereby made a part hereof.

(n) Professional Fees and Costs. If any legal or equitable action, arbitration, bankruptcy, reorganization or other proceeding is brought or undertaken, or an attorney retained to enforce this Contract or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Contract, then the successful or prevailing party or parties in such undertaking (or the party that would prevail if an action were brought) shall be entitled to recover reasonable attorney's fees, expert witness fees, court costs and other expenses, in addition to any other relief to which such party may be entitled.

(o) Contract Expenses. The Parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Contract and in closing and carrying out the transactions contemplated by this Contract.

(p) Satisfaction or Waiver of Contingencies. The consummation of the Closing shall be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

(q) Parties in Interest. Except as expressly provided in this Contract, nothing in this Contract, whether express or implied, is intended to confer any rights or remedies under or by reason of this Contract on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Contract intended to relieve or discharge the obligation or liability of any third persons to any party to this Contract, nor shall any provision give any third persons any right to subrogation or action over against any party to this Contract.

(r) Waiver. No waiver of any of the provisions of this Contract shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

(s) Effect of Headings. The headings of the paragraphs of this Contract are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

(t) Number and Gender. When required by the context of this Contract, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

(u) Joint and Several Liability. In the event a party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as parties under this Contract.

(v) Further Assurances. All parties to this Contract agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Contract, provided that the party requesting such further action shall bear all costs and expenses related thereto.

(w) Negotiated Terms. The parties agree that the terms and conditions of this Contract are the result of negotiations between the parties and that this Contract shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Contract.

(x) Recitals and Exhibits. The recitals and contents of all Exhibits to this Contract are incorporated by reference and constitute a material part of this Contract.

(y) Confidentiality. It is understood and agreed by all parties that all information, studies and reports relating to the environmental condition of the Corridor obtained by WisDOT will be subject to the state open records law, Wis. Stats. Secs. 19.31, et seq. However, to the extent legally permissible, (i) all information, studies and reports relating to the environmental condition of the Corridor obtained by WisDOT, either by the observations and examinations of its agents and representatives or as disclosed to it by UP, shall remain confidential and WisDOT shall not disclose any such matters to any person or governmental agency except as unconditionally required by law and (ii) if the transaction contemplated herein fails to close for any reason, WisDOT shall deliver and return to UP, at no cost to UP, all such information, reports and studies, and WisDOT shall make no further distributions or disclosures of any such information, reports and studies. The provisions of this Section shall survive the termination of this Contract.

(z) Not an Offer. The submission of this Contract to WisDOT for review or signature does not constitute an offer to sell the Corridor to WisDOT nor the granting of an option or other rights with respect to the Corridor to WisDOT. No Contract with respect to the purchase and

sale of the Corridor shall exist, and this writing shall have no binding force or effect, until executed and delivered by UP and WisDOT.

(aa) Survival. WisDOT and UP acknowledge and agree that in the event of the termination howsoever of this Contract, the obligations of and indemnity, to the extent allowed by law, by WisDOT, and its respective agents and contractors, shall not be limited, impaired or otherwise affected by any termination of this Contract as a result of such termination.

(bb) Tax-Deferred Exchange. The Parties acknowledge that UP and/or WisDOT may elect to exchange the Corridor for other real property in a tax deferred exchange under Section 1031 of the Internal Revenue Code of 1986 as amended. UP and WisDOT agree to cooperate with the other in connection with such an exchange and, following a reasonable period of time for review of the exchange documents, shall sign or procure any document reasonably requested to effectuate it. Agreeing to cooperate under this paragraph shall not obligate the other Parties to delay closing nor cause a Party to be liable to any other Party if the transaction fails to qualify as a tax-deferred exchange. Moreover, UP and WisDOT shall each bear any additional transaction costs attributable to its own exchange.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the Execution Date:

Attest:

UNION PACIFIC RAILROAD COMPANY

C. J. Meyer

By:

Jonk Love

Title:

Assistant Vice President - Real Estate

Attest:

WISCONSIN DEPARTMENT OF
TRANSPORTATION

Rebecca Abel

By:

[Signature]

Title:

Administrator, OTIM
WisDOT

Attest:

WISCONSIN & SOUTHERN RAILROAD, L.L.C.

Cindy Deared

By:

[Signature]

Title:

Chairman of the Board

EXHIBIT A

PRINT OF CORRIDOR

**PROPOSED SALE TO
WIS DOT
STATE OF WISCONSIN**

Legend

- STATIONS
- PROPOSED SALE

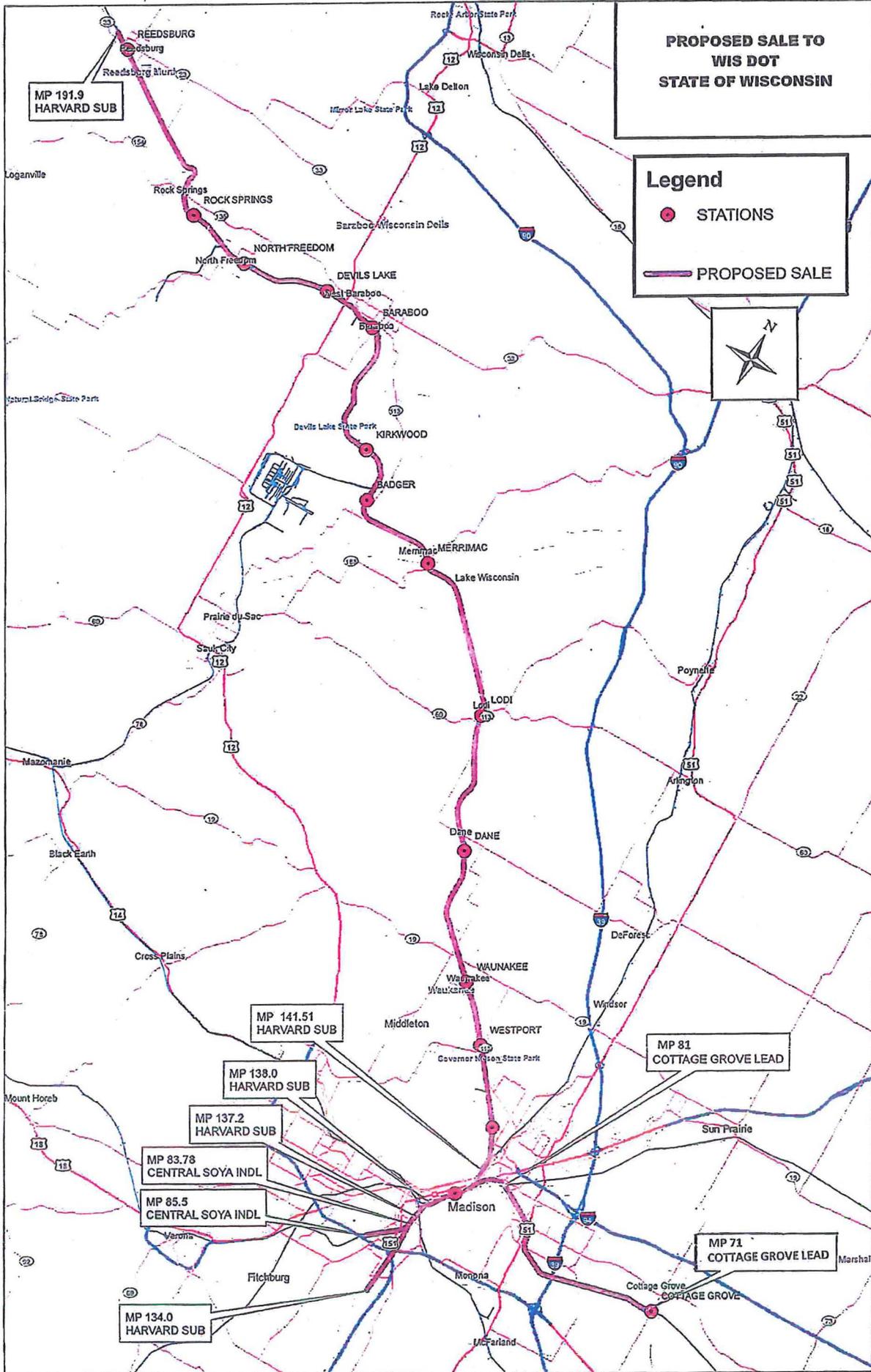
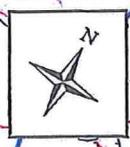


EXHIBIT A-1

PROPERTY EXCLUDED FROM SALE

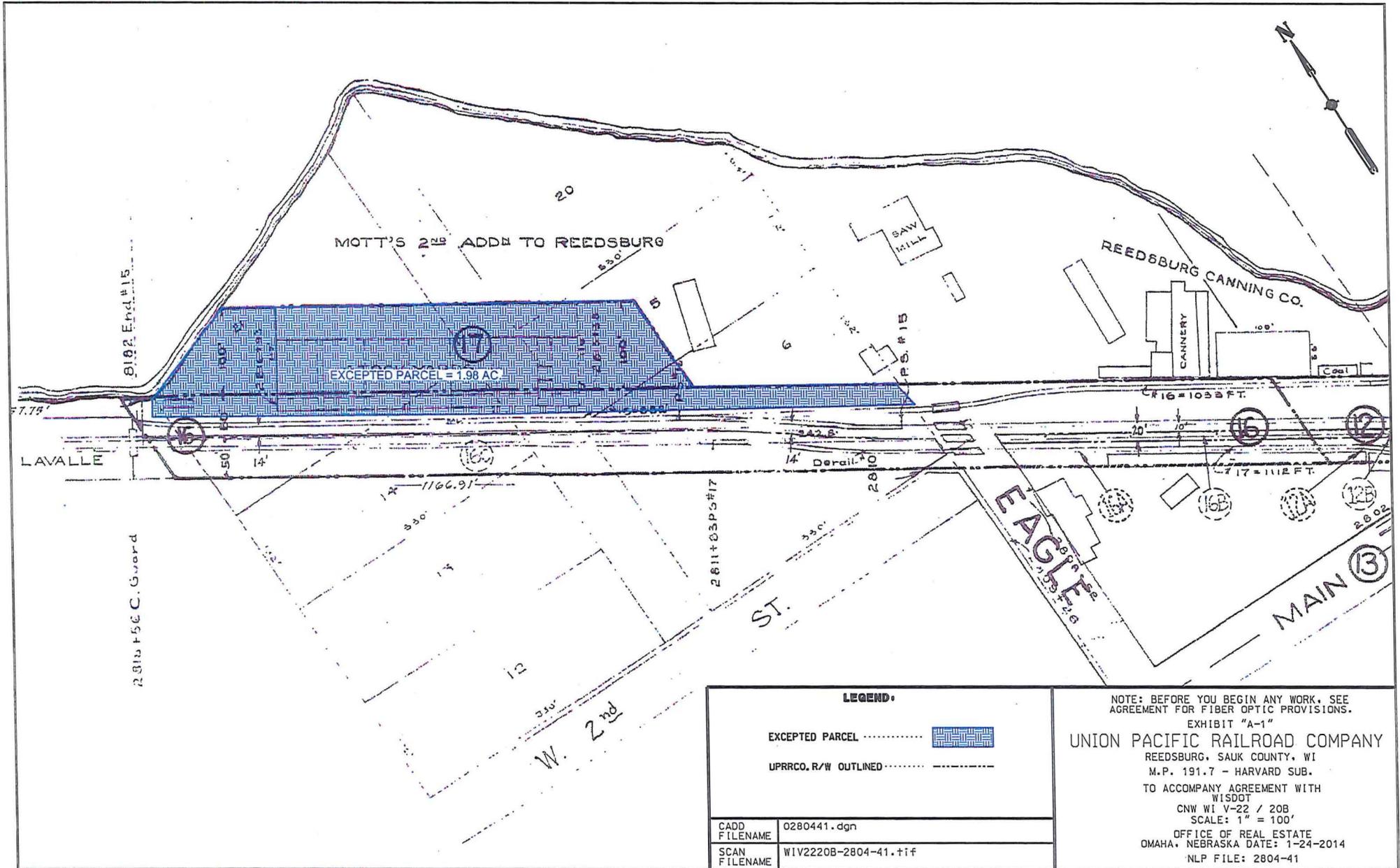


EXHIBIT B

QUITCLAIM DEED

Document Number

COVER SHEET
FOR
RECORDATION
OF
QUIT CLAIM DEED
FROM

UNION PACIFIC RAILROAD COMPANY
TO
WISCONSIN DEPARTMENT OF TRANSPORTATION

Recording Area

Name and Return Address:

Wisconsin Department of Transportation

QUIT CLAIM DEED TO PROPERTY

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“UP”), (formerly, known as Southern Pacific Transportation Company, a Delaware corporation), as grantor, in consideration of the sum of Thirty Million Dollars (\$30,000,000), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUIT CLAIM unto Wisconsin Department of Transportation, an agency of the State of Wisconsin (“WisDOT”), and unto its successors and assigns forever, as grantee, all of UP’s right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the “Real Property”) situated in the State of Wisconsin, as more particularly described in **Exhibit B-2**, hereto attached and hereby made a part hereof.

UP EXCEPTS from the Real Property hereby quit claimed and RESERVES unto itself, its successors and assigns, forever, the following:

a permanent, exclusive easement upon the Real Property, for purposes of conducting freight rail operations and otherwise to fulfill UP's rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Real Property to provide freight rail service to all customers on or served from the Real Property, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations (the “Freight Easement”). All of the terms and conditions of this Freight Easement shall be binding upon, and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any assignment of this Freight Easement shall be conditioned upon the assignee assuming all obligations set forth herein and entering into an operating agreement with the Wisconsin River Rail Transit Commission. WisDOT hereby consents to the assignment of this Freight Easement to Wisconsin & Southern Railroad, L.L.C. (“Short Line Operator”). Notwithstanding any language herein to the contrary, UP shall have the unrestricted right to assign its rights and interest under this Freight Easement to Short Line Operator, and upon UP’s assignment of its rights and interest under this Freight Easement to Short Line Operator, UP shall be released and discharged from any further obligation or liability under this Freight Easement and references to UP hereunder shall then refer to Short Line Operator or any successor to Short Line Operator, as applicable.

UP and WisDOT intend by this instrument that UP quit claim to WisDOT any after-acquired title to the Real Property which arises in favor of UP from and after the date hereof.

[Remainder of page left blank; signature page to follow]

IN WITNESS WHEREOF, UP and WisDOT have caused this deed to be duly executed as of the _____ day of _____, 2014.

Attest:

UNION PACIFIC RAILROAD COMPANY

By _____

Printed Name: _____

Title: _____

(Seal)

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this ____ day of _____, 2014, before me, _____, Notary Public in and for said County and State, personally appeared _____ and _____ who are the _____ and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

SEAL

This instrument was prepared by:

Union Pacific Railroad Company
Law Department
1400 Douglas Street, Stop 1580
Omaha, Nebraska 68179

Attest:

WISCONSIN DEPARTMENT OF TRANSPORTATION,
an agency of the State of Wisconsin

By _____
Printed Name: _____
Title: _____

(Seal)

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2014, before me, _____, Notary Public in and for said County and State, personally appeared _____ and _____ who are the _____ and the _____, respectively, of the Wisconsin Department of Transportation, an agency of the State of Wisconsin, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

SEAL

EXHIBIT B-1

CERTIFICATION OF NON-FOREIGN STATUS

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, Wisconsin Department of Transportation, an agency of the State of Wisconsin, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY is not a disregarded entity as defined in Section 1.445.2(b)(2)(iii) of the Internal Revenue Code;
3. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
4. UNION PACIFIC RAILROAD COMPANY'S office address is 1400 Douglas Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Title: _____
Date: _____

EXHIBIT B-2

REAL PROPERTY DESCRIPTION

EXHIBIT C

QUIT CLAIM BILL OF SALE

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP") for and in consideration of One Dollar (\$1.00) and other valuable consideration does hereby sell, quit claim, transfer and deliver to WISCONSIN DEPARTMENT OF TRANSPORTATION, an agency of the State of Wisconsin ("WisDOT"), its successors and assigns, UP's ownership interest in and to the following described personal property, to wit:

All rails, ties, ballast, signals, switches, bridges, culverts, and other rail appurtenances located on the real property located in the State of Wisconsin described in **Exhibit A**, attached hereto and hereby made a part hereof.

UP, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE TITLE, OWNERSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING UNDERSTOOD THAT THE WISDOT IS PURCHASING THE PERSONAL PROPERTY DESCRIBED ABOVE IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS.

IN WITNESS WHEREOF, the UP and WisDOT have each duly executed this instrument as of the _____ day of _____, 2014.

UNION PACIFIC RAILROAD COMPANY

**WISCONSIN DEPARTMENT OF
TRANSPORTATION**

By _____

By _____

Title: _____

Title: _____

EXHIBIT A TO EXHIBIT C

DESCRIPTION TO BE ATTACHED

EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter the "Assignor") does, for valuable consideration, effective as of the date hereof assign, transfer and set over unto the WISCONSIN DEPARTMENT OF TRANSPORTATION, an agency of the State of Wisconsin ("Assignee"), all of the Assignor's right, title and interest in, to and under each and all of the agreements shown in **Exhibit D-1**, hereto attached and hereby made a part hereof.

Assignor and Assignee understand and agree that this Assignment is conditional and does not become fully and finally effective until 90 days from the execution of this Assignment, and that Assignor reserves the right to revoke this Assignment as to any contract or agreement listed in **Exhibit D-1** by giving written notice to Assignee within such 90 days that a particular agreement should not be included in this Assignment. Assignor may, in such manner, revoke this Assignment as to any such agreement or contract, ab initio, in whole or in part if it shall determine that any such agreement does not affect, or only partially affects, the property transferred this date by Assignor to Assignee. Assignor represents that, to the best of its knowledge, the agreements shown on **Exhibit D-1** are all that pertain to or affect the "Corridor" as described in that certain Line Sale Contract between the parties dated, as of _____, 2014 covering the sale of the corridor from Milepost 134.00 near Madison, Wisconsin to Milepost 191.90 near Reedsburg, Wisconsin; including the Central Soya Industrial Lead from Milepost 83.78 to Milepost 85.5; and the Cottage Grove Industrial Lead, Milepost 81.00 to Milepost 71.00. In the event, however, other contracts or agreements affecting the aforementioned trackage are subsequently discovered by Assignor, Assignor will promptly execute an assignment of same to Assignee using the form of this Assignment.

In addition, it is understood and agreed that:

1. One or more of the agreements or contracts listed in **Exhibit D-1** may affect, pertain to or cover the aforesaid Corridor, as well as property and/or right-of-way not sold by Assignor to Assignee, and this Assignment shall only be effective to partially assign Assignor's interest therein to the extent that such agreement or contract pertains to the Corridor. Any future payments due from third parties thereunder shall be collected by Assignor and the Assignor shall pay to the Assignee its pro rate portion thereof.

2. This Assignment is subject to all of the terms and conditions of the aforesaid Line Sale Contract.

Subject to the above, Assignee hereby accepts the assignment of the agreements shown on **Exhibit D-1**, assumes all of the duties, obligations and liabilities of Assignor thereunder, and agrees to release the Assignor, its successors and assigns, from any and all obligations arising out of, or pursuant to, the agreements or applicable portions thereof herein assigned from and after the effective date hereof.

THIS ASSIGNMENT shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns. No provision hereof shall be construed as intended for the benefit of any third party.

Dated as of: _____, 2014.

Attest:

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

(Seal)

Attest:

**WISCONSIN DEPARTMENT OF
TRANSPORTATION**

By: _____

Title: _____

EXHIBIT D-1

LIST OF AGREEMENTS TO BE ASSIGNED AND ASSUMED

EXHIBIT E

**WHEN RECORDED RETURN TO
AND MAIL TAX NOTICES TO:**

Wisconsin & Southern Railroad, L.L.C.
315 W. 3rd Street
Pittsburg, KS 66762
Phone 620-231-2230
Fax 620-231-0812

SPACE ABOVE FOR RECORDER'S USE ONLY

FREIGHT EASEMENT DEED

This Freight Easement Deed (this "Deed") is made and entered into as of this ____ day of _____, 2014 ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, Grantor, and **WISCONSIN & SOUTHERN RAILROAD L.L.C.**, a Wisconsin limited liability company, Grantee, WITNESSETH:

Whereas, by Quitclaim Deed to Property dated _____, 2014, recorded _____, as Instrument No. _____ in the Official Records of _____ County, Wisconsin (the "Quitclaim Deed"), Grantor reserved unto itself, its successors and assigns, a permanent, exclusive easement upon, under and across certain real property (the "Property") from Grantor's Milepost 134.00 near Madison to Milepost 191.90 near Reedsburg known as the Madison to Reedsburg Line, and from Grantor's Milepost 83.78 to Milepost 85.5 known as the Central Soya Industrial Lead, and from Grantor's Milepost 81.00 to Milepost 71.00 known as the Cottage Grove Industrial Lead, in the Counties of Sauk, Columbia and Dane, State of Wisconsin, described in **Exhibit A** attached hereto and incorporated herein by reference for purposes of conducting freight rail operations and otherwise to fulfill Grantor's rights and

obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Property to provide freight rail service to all customers on or served from the Property, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations (the "Freight Easement").

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignment and quitclaim by Grantor.

Effective as of the date of this Deed, Grantor hereby transfers, conveys, assigns and quitclaims to Grantee all of Grantor's right, title and interest in and to and under the Freight Easement. Grantor warrants that as of the Effective Date of the Deed ("Effective Date"), there is no other freight rail carrier to which Grantor has granted rights to use the Property.

2. Acceptance and Assumption by Grantee.

Grantee hereby accepts the foregoing, transfer, conveyance, assignment and quitclaim of Grantor's right, title and interest in, to and under the Freight Easement and assumes and agrees to perform and keep and to be bound by all covenants, agreements, and obligations contained in this Deed pertaining to the Freight Easement with respect to the Property to be made, kept and performed by the Grantor thereunder.

3. Release of Grantor.

From and after the effective date of this Deed, the Grantee agrees to release the Grantor from any obligations to be kept, observed and performed by Grantor under the Freight Easement with respect to the Property.

4. Grantee's Obligations That Shall Survive the Effective Date.

By execution of this Deed, Grantee, for itself, and its successors and assigns, assumes and agrees to obtain all authority under federal laws and regulations to exclusively perform the obligations as a common carrier by freight railroad under applicable federal laws and regulations and to perform all such obligations to the shipping public with respect to the Property, and to so perform the obligations of

Grantee under the Operating Agreement between Grantee and the Wisconsin River Rail Transit Commission, its successors and assigns.

Grantee will not abandon, suspend or discontinue its operation by rail over all or any part of the Property without first applying for and obtaining from the Surface Transportation Board ("STB"), and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such abandonment, suspension or discontinuance of operations over the Property.

As Is. GRANTEE AND ITS REPRESENTATIVES, PRIOR TO THE EFFECTIVE DATE, WILL HAVE BEEN AFFORDED THE OPPORTUNITY TO MAKE SUCH INSPECTIONS OF THE PROPERTY AND MATTERS RELATED THERETO AS GRANTEE AND ITS REPRESENTATIVES DESIRE. GRANTEE SHALL TAKE THE FREIGHT EASEMENT IN AN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR VOLUME OR QUALITY OF TRAFFIC ON THE PROPERTY AND SUBJECT TO: (A) ALL OUTSTANDING RIGHTS; AND (B) WITHOUT LIMITATION OF (A) ABOVE, THE RIGHTS, INTERESTS, CONTRACTS, AGREEMENTS AND LICENSES IDENTIFIED ON **EXHIBIT B** ATTACHED HERETO AND HEREBY MADE A PART HEREOF (WHICH ARE HEREINAFTER REFERRED TO AS "GRANTOR AGREEMENTS").

Release. FROM AND AFTER THE CLOSING DATE, GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES IN ANY WAY ARISING OUT OF AN ACCIDENT OR EVENT FIRST OCCURRING ON OR AFTER OCTOBER 20, 1996 TO THE EFFECTIVE DATE AND THEREAFTER AFTER THE EFFECTIVE DATE OF THIS AGREEMENT AND CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO (INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE

CONSERVATION AND RECOVERY ACT) INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF GRANTOR, GRANTEE OR ANY THIRD PARTY, AND DAMAGE TO PROPERTY OF GRANTOR, GRANTEE OR ANY THIRD PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS. NOTWITHSTANDING THE FOREGOING, IT IS KNOWN BY GRANTOR AND GRANTEE THAT THERE IS A FORMER LESSEE OF THE PROPERTY, RAYOVAC, FOLDER 178-85, THAT DID IMPACT RAILROAD RIGHT OF WAY INCLUDED WITHIN THE PROPERTY. UP HAS INITIATED A LEGAL ACTION AGAINST RAYOVAC TO RESOLVE THE MATTER. GRANTOR ACKNOWLEDGES THAT GRANTEE SHALL HAVE NO OBLIGATION TO WAIVE, RELEASE, REMISE AND ACQUIT AND FOREVER DISCHARGE GRANTOR FROM CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION, IF ANY, ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH ANY CONTAMINATION IN, UNDER AND EMANATING FROM THE RAYOVAC SITE, FOLDER 178-85.

Environmental Indemnity. FROM AND AFTER THE CLOSING DATE, GRANTEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES (COLLECTIVELY, "ENVIRONMENTAL COSTS"), IN ANY WAY ARISING OUT OF AN ACCIDENT OR EVENT FIRST OCCURRING ON OR AFTER OCTOBER 20, 1996 TO THE EFFECTIVE DATE AND THEREAFTER AFTER THE EFFECTIVE DATE OF THIS AGREEMENT AND CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO (INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE

CONSERVATION AND RECOVERY ACT), AND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF GRANTOR, GRANTEE OR ANY THIRD PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS. GRANTOR ACKNOWLEDGES THAT GRANTEE SHALL HAVE NO OBLIGATION TO INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR FROM CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION, IF ANY, ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH ANY CONTAMINATION IN, UNDER AND EMANATING FROM THE RAYOVAC SITE, FOLDER 178-85. GRANTOR AND GRANTEE ALSO ACKNOWLEDGE THAT GRANTOR HAS AGREED TO CERTAIN OBLIGATIONS RELATIVE TO THE RAYOVAC SITE, FOLDER 178-85, INCLUDING THOSE OUTLINED IN THAT CERTAIN LINE SALE CONTRACT DATED _____, AND GRANTOR SHALL COMPLY WITH ALL SUCH OBLIGATIONS. GRANTOR, SHALL, INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTEE FROM CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION, IF ANY, ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH ANY CONTAMINATION IN, UNDER AND EMANATING FROM THE RAYOVAC SITE, FOLDER 178-85, OR GRANTOR'S FAILURE TO COMPLY WITH ALL THE OBLIGATIONS OUTLINED IN THAT CERTAIN LINE SALE CONTRACT DATED _____.

General Indemnity. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, REGARDLESS OF THE NEGLIGENCE, NEGLIGENCE PER SE OR STRICT LIABILITY OF GRANTOR OR GRANTOR'S AGENTS, EMPLOYEES, SERVANTS, AFFILIATED COMPANIES, SUCCESSORS OR ASSIGNS (COLLECTIVELY THE "GRANTOR'S AGENTS"), GRANTEE SHALL PROTECT, DEFEND, HOLD HARMLESS, AND INDEMNIFY AND REIMBURSE GRANTOR FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, SUITS, PENALTIES, FINES, EXPENSES, DAMAGES, LOSSES AND COSTS, INCLUDING ATTORNEY'S FEES (COLLECTIVELY, "COSTS"), INCURRED BY OR ASSESSED AGAINST GRANTOR AND/OR THE GRANTOR'S AGENTS, DUE TO OR RESULTING FROM PERSONAL INJURIES, DEATH, OR PROPERTY LOSS OR DAMAGE ARISING OUT OF GRANTEE'S USE, OPERATION OR MAINTENANCE OF THE PROPERTY ON OR

AFTER OCTOBER 20, 1996 TO THE EFFECTIVE DATE AND THEREAFTER AFTER THE EFFECTIVE DATE OR AS A RESULT OF GRANTEE'S BREACH OF, OR FROM ITS FAILURE TO COMPLY WITH, ANY PROVISIONS OF THIS AGREEMENT, EVEN IF THE COST (A) RESULTS IN WHOLE OR IN PART FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE GRANTOR OR THE GRANTOR'S AGENTS, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, AND THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA") OR (B) IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, NEGLIGENCE PER SE, OR STRICT LIABILITY OF THE GRANTOR.

5. Breaches and Remedies.

Upon the occurrence of any breach of any term hereof, the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach. If, upon the expiration of thirty (30) days from the receipt of said notice, the breach has not been cured (or, if such breach cannot be cured within 30 days, steps have not been taken to effect such cure and pursued with all due diligence within said period) and is a material breach, the injured party has the right (but not the obligation) at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof, including any and all reasonable attorney's fees, and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured party from resorting to any other remedy permitted under this Agreement or at law or equity including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole in the premises. Failure of the injured party to demand or enforce a cure for breach in one instance shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

The failure of any party hereto to enforce at any time any of the provisions of this Agreement or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Agreement or any part hereof of the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

6. Freight Easement runs with STB authorized Common Carrier Authority.

This permanent and exclusive freight operating easement is retained by the Grantee until Grantee obtains authority from the STB to discontinue or abandon Grantee's common carrier by railroad operations on the Property and consummates such discontinuance or abandonment or the Wisconsin Department of Transportation ("WisDOT") or the Wisconsin River Rail Transit Commission obtains authority from the STB for the adverse discontinuance or abandonment of Grantee's common carrier by railroad operations on the Property and consummates such adverse discontinuance or abandonment. Upon STB issuance of any subsequent common carrier by railroad authority to a third person to operate as a common carrier by railroad upon the Property, the permanent and exclusive freight operating easement shall be assigned to and assumed by that operator, under the same terms and conditions as this Deed. Notwithstanding the foregoing, upon the natural expiration or termination of the Operating Agreement, if any Class II or Class III rail carrier other than WSOR or an affiliate thereof shall assume the common carrier by railroad freight operations over the Property, the parties hereto agree to use their commercially reasonable best efforts to cause any such new Class II or Class III rail carrier to take an assignment of all rights and assumption of all obligations from the WSOR of WSOR's common carrier by railroad rights and obligations with regard to the Property and the Freight Easement.

7. Notices.

All notices, demands, requests or other communications which may be or are required to be given, served or sent by any party to the other pursuant to this Deed shall be in writing and shall be deemed to have been properly given or sent:

(a) If intended for Grantor, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Grantor at:

Union Pacific Railroad Company
1400 Douglas Street
Mailstop 1350
Omaha, Nebraska 68179
Attention: Sr. Director Rail Line Planning
Phone: 402-544-3169
Fax: 402-501-2243

(b) If intended for Grantee, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Grantee at:

Wisconsin & Southern Railroad L.L.C.
315 W. 3rd Street
Pittsburg, KS 66762
Phone: 620-231-2230
Fax: 620-231-0812

Each notice, demand, request or communication which shall be mailed by registered or certified mail to any party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Any party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

8. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be duly executed as of the _____ day of _____, 2014.

GRANTOR:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

Attest:

Assistant Secretary

By: _____
Name: _____
Title: _____

(Seal)

GRANTEE:

Attest:

**WISCONSIN & SOUTHERN RAILROAD,
L.L.C., a Wisconsin limited liability
company**

Secretary

By: _____

Name: _____

Title: _____

(Seal)

Union Pacific Railroad Company

Sauk County, Wisconsin

Exhibit "A"

[See Next Sheet Attached]

Union Pacific Railroad Company

Columbia County, Wisconsin

Exhibit "A"

[See Next Sheet Attached]

Union Pacific Railroad Company

Exhibit "B"

[See Next Sheet Attached]

**LAND USE AGREEMENT
BY AND BETWEEN
WISCONSIN RIVER RAIL TRANSIT COMMISSION
AND
WISCONSIN DEPARTMENT OF TRANSPORTATION**

Agreement No. 0490-40-08(a)(1)

This Agreement is made and entered into this ____ day of _____, 2014 by and between the Wisconsin River Transit Commission, 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. 0490-40-48 (a-1), dated March 20, 1987; 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 Sections 84.09, 85.08 and 85.09, Wis. Stats. to acquire, improve, preserve and maintain land, improved property and interests necessary therein for transportation purposes such as preservation and restoration of railroad services; and

WHEREAS, Commission was established pursuant to Sections 59.58 and 66.0301, Wis. Stats. 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, Dane and Sauk formerly owned by 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: (a) Milepost 134.00 in Madison near "MX", a crossing of the Wisconsin & Southern Railroad Company,) to Milepost 191.90 near Reedsburg (Madison to Reedsburg Line), including Milepost 83.78 to Milepost 85.50 in Madison (Central Soya Spur); and (b) Milepost 81.00 to Milepost 71.00 (Madison to Cottage Grove Line), collectively, the "Rail Line," 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 Rail Line for railroad purposes, and shall have use and access to these properties subject to the conditions contained herein or in Grant Agreement, (Agreement number 0490-40-08(b)(1) by and between the Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation dated _____ 2014 (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.
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 in accordance with bridge inspection and management plan requirements as outlined in 49 CFR Part 237. (The Commission shall be eligible for aid under existing state and federal financial assistance programs for the above purposes.)
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 purposes.)
7. Commission may not sublet any of the above described property without prior written 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, exclusive operating easement, and shall not unduly interfere with 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. Commission agree to be bound under this Agreement by the same terms and conditions regarding hold harmless and insurance as are set forth in Article 6.0 Liability and Insurance of Grant Agreement 0490-40-08(b-1) between the Commission and WisDOT.

15. If for any reason the Commission is in default of this Agreement, 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.

16. 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.) In the event such an administrative rule is promulgated, WisDOT shall notify Commission of any such proposed rule and hearing(s) on such rule.

17. 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.

18. This Agreement may be cancelled by either party 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. Notwithstanding this provision, Operator may not terminate service until it obtains authority from the STB to discontinue service or WisDOT or the Commission or WisDOT obtains authority from the STB for the adverse discontinuance of Operator's service.

19. 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 Wisconsin River Rail Transit Commission has caused this Agreement to be signed by its duly authorized officers, this ____ day of _____, 2014.

WITNESS:

WISCONSIN RIVER RAIL TRANSIT COMMISSION

Alan Sweeney, Chair

Charles Anderson, Secretary

IN WITNESS WHEREOF, the Wisconsin Department of Transportation has caused this Agreement to be signed by its duly authorized officer, this ____ day of _____, 2014.

WITNESS:

WISCONSIN DEPARTMENT OF TRANSPORTATION

Donna Brown-Martin, Director;
Bureau of Transit, Local Roads, Railroads and Harbors

ATTACHMENT A

**Property Description of the
Madison to Reedsburg/Cottage Grove Line**

LEGAL DESCRIPTION

GRANT AGREEMENT
BY AND BETWEEN
WISCONSIN RIVER RAIL TRANSIT COMMISSION
AND
WISCONSIN DEPARTMENT OF TRANSPORTATION.

AGREEMENT NO. 0490-40-08(b)(1)

AUGUST 2014



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ATTACHMENT 1--LAND USE AGREEMENT

ATTACHMENT 2--OPERATING AGREEMENT

ATTACHMENT 3-- SUMMARY OF EXISTING FRA TRACK CLASSIFICATION

GRANT AGREEMENT

This Agreement made and entered into this _____ day of _____, 2014 by and between the Wisconsin River Rail Transit Commission, a governmental entity established in accordance with Section 66.0301, Wis. Stats., having its principal office at 20 South Court Street P.O. Box 262, City of Platteville, Wisconsin, 53818 ("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. 0490-40-48(b)(1), dated March 20, 1987; and

WHEREAS, certain rail facilities in Dane, Columbia and Sauk counties, Wisconsin, have been abandoned, or have been threatened with abandonment or discontinuance of service, and have been purchased by WisDOT; and

WHEREAS, Commission is currently comprised of the counties of Crawford, Dane, Grant, Iowa, Jefferson, Rock, Sauk, Walworth and Waukesha 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 support the operation of 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(t) 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 freight railroad service over the Improved Property of the Principal Line Segments subject to all the conditions and limitations set forth in this Agreement and the Land Use Agreement identified in Section 1.0(o); 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 _____, 2014, and this Grant Agreement By and Between Commission and WisDOT dated _____, 2014; 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, Sections 66.0301 and 59.58, Wis. Stats. provide Commission the legal authority to enter into this Agreement; and

WHEREAS, Sections 85.02, 85.08(2)(b), 85.08(4) and 20.395, Wis. Stats. 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. "BNSF" means the Burlington Northern and Santa Fe Railroad Company, or its successors or assigns, if any.
- c. "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.
- d. "Commencement Date" means the date this Agreement is approved in writing by WisDOT on the Signature Page of this Agreement.
- e. "Commission" means the Wisconsin River Rail Transit Commission.
- f. "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.
- g. "CN" means Canadian National Railway Company, and its subsidiaries, assigns and successors, if any.
- h. "CPR" means the Canadian Pacific Railway D/B/A the Soo Line Railroad Company and its successors, if any.
- i. "EWCRC" means the East Wisconsin Counties Railroad Consortium.

- j. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.
- k. "Grant Agreement" means this agreement, Grant Agreement No. 0490-40-08(b)(1) By And Between Commission And WisDOT, dated _____, 2014, and any amendments thereto pertaining to the Madison to Cottage Grove/Reedsburg rail lines.
- l. "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.
- m. "Improved Property" means Buildings and Trackage located upon the Land of the Rail Line.
- n. "Land" means the real estate, generally sixty-six (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.
- o. "Land Use Agreement" means the Land Use Agreement No. 0490-40-08(a)(1) by and between the Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation, dated _____, 2014 and any amendments thereto.
- p. "Operator" means the Wisconsin & Southern Railroad, L.L.C., and its successors, if any.
- q. "Operating Agreement" means the Operating Agreement No. 0490-40-08(d)(1) By And Between Wisconsin River Rail Transit Commission And Wisconsin and Southern Railroad, L.L.C., dated _____, 2014, and any amendments thereto.
- r. "PRTC" means Pecatonica Rail Transit Commission.
- s. "Person" means an individual, a partnership, an association, or bodies politic or corporate.
- t. "Principal Line Segment" means one of the following as defined by their beginning and end points:
 - (1) Milepost 134.00 near "MX" in Madison, a crossing of the Wisconsin & Southern Railroad Company, to Milepost 191.90 near Reedsburg (Madison to Reedsburg Line), including Milepost 83.78 to Milepost 85.50 in Madison (Central Soya Spur).
 - (2) Milepost 81.00 to Milepost 71.00 (Madison to Cottage Grove Line)
- u. "Rail Line" means the Principal Line Segments in aggregate.

- v. "RHS" means Railroads and Harbors Section of WisDOT.
- w. "South Central" means South Central Wisconsin Rail Transit Commission.
- x. "STB" means the Surface Transportation Board of the United States Department of Transportation, or its successors, if any.
- y. "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.
- z. "UP" means the Union Pacific Railroad Company and its successors, if any.
- aa. "Watco" means Watco Companies, L.L.C., or any successor thereto whether by merger, consolidation or acquisition, the indirect parent company of Wisconsin & Southern Railroad, L.L.C.
- ab. "WisDOT" means the Wisconsin Department of Transportation.
- ac. "WRRTC" means the Wisconsin River Transit Commission.
- ad. "WSOR" means Wisconsin and Southern Railroad, L.L.C, its successors, if any.

ARTICLE 2.0 – GRANT, LEASE, LICENSE, TERM AND RESERVATION.

Section 2.1 Grant and Match for Rail Line Acquisition

(a) WisDOT's Grant Amount. WisDOT hereby grants to Commission in the form of the Improved Property eighty (80) percent of the cost of the Improved Property on Madison to Reedsburg and Madison to Cottage Grove rail lines. The total value of the improved property is five million dollars (\$5,000,000), and WisDOT's eighty (80) percent grant is four million dollars (\$4,000,000).

(b) Commission's Match Amount. The amount of \$1,000,000 paid by Commission, or on behalf of Commission by WSOR, to WisDOT was and continues to be Commission's share of the existing lines acquisition cost required under Section 85.08(4m)(c), Wis. Stats.

(c) WisDOT further grants the use of land to Commission under the terms of agreement number 0490-40-08(a)(1), Land Use Agreement, between commission and WisDOT, dated _____, 2014 and attached hereto as Attachment 1.

(d) WisDOT will provide Commission a description of the land within ninety (90) days of the signing of this Agreement. Said descriptions shall be made a part of Attachment 1.

Section 2.2 - Lease, License and Term.

(a) In addition to the Improved Property and the use of the Land, WisDOT hereby grants to Commission 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 2.3 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 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 2.3 - Reservation.

The Land and Improved Property involved in this Agreement are the Land and Improved Property defined in Section 1.0(n) 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 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 2.3(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 its own initiative or 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 Improved Property and use of Land subject to the following conditions:

(a) Subject to Section 2.3(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 thirty-three (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 ownership of same to Operator for the purchase price provided by Operator and other reasonable purchase and transfer costs incurred by Commission. Notwithstanding the foregoing sentence, the 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 to Commission and Operator.

(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 and common carrier obligation. 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, WisDOT shall provide Commission and Operator with the right of continued use of the sidetrack and Land sixteen and one-half (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 concurrence 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 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. 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 only 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 permanent, exclusive operating easement or common carrier obligation 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 or passenger excursion rail service, pursuant to Chp. Trans 31, Wis. Admin. Code. 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

ARTICLE 3.0 - RENT.

Commission shall be permitted to charge Operator a lease or rental fee for use of the Land and Improved Property. Any Commission income from rent or other sources may only be used as outlined in Article 10.3.

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 provide 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 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 rail lines owned by other railroads as requested.

Section 4.3 - Interchange Agreements.

It is recognized that Operator may enter into interchange agreements with the BNSF, CN, CPR, UP and the Belt Line Railroad Company of Chicago (BLR) 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 as requested by WisDOT or Commission.

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, WisDOT may require Commission to, or Commission may, at its option, declare Operator in default of the Operating Agreement.

ARTICLE 5.0 - RAILROAD OPERATIONS.

Section 5.1 - Generally.

(a) Commission shall verify that Operator has or shall acquire and 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, and any other regulatory agency as required by law.

(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 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. 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 maintain the requisite 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 at its own cost and expense, 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. Funding of the work included in the Maintenance Plan, as defined in Section 5.2, shall be the responsibility of the Operator. Tracks shall be maintained to FRA Class 2 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 2 standards and a list of line segments that shall be maintained to FRA Class 1 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 49 CFR Part 237 and 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 ninety (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 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 agency or operator.

(c) Safety and Other Inspections. Operator shall be required to 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 Commission or their agents. 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 WisDOT or the Wisconsin Office of the Commissioner of Railroads.

(d) Equipment. Operator shall be required 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 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 be required 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 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 be required to 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 be required to 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 be required 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 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 be required to 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 Section 90, Wis. Stats., local ordinance or contract.

(l) Vegetation Control. Operator shall be required to 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 be required to assume full responsibility for the ordinary repair and maintenance of all culverts, trestles and bridge structures on the Rail Line in accordance with 49 CFR Part 237.

(n) Highways and Streets. Operator shall be required to 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. Structures shall be maintained and repaired in accordance with 49 CFR 47 Part 237.

(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 ten (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 by Operator. The Plan or modification shall be revised and resubmitted within thirty (30) days following a WisDOT request so as to overcome the deficiencies, if any, identified by WisDOT. WisDOT approval of the maintenance plan does not imply or commit WisDOT funding of any part of the work included in the maintenance plan. Funding of the maintenance plan is the responsibility of Operator.

(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 ten (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 Commission or WisDOT, Commission shall require Operator to 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 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 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. Commission shall or shall require Operator 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, Commission or its Operator shall maintain, at its own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than fifty million dollars (\$50,000,000) per occurrence, or other form reasonably 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. Commission agrees to maintain or require Operator 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, Commission or Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above or in lieu of federal employer's liability coverage and for the covering of any employees, if any, who are not covered under FELA. Commission further agrees to carry or require Operator to carry property insurance including but not limited to fire and extended coverage for any buildings and structures subject to damage and rolling stock insurance in an amount not less than fifteen million dollars (\$15,000,000.00). 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. Upon approval from WisDOT, 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, any insurance policy shall be written by a reputable insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided, and approved by WisDOT, such approval shall not be unreasonably withheld, and Commission or Operator shall provide to WisDOT written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage and within sixty (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 Commission or Operator shall provide WisDOT with notification of such suspension or cancellation no less than ten (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 Commission or 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 Commission or Operator shall maintain a self-insured retention consistent with prudent industry practice for a similar company and the financial ability of Commission or Operator to satisfy such self-insured retention. The self-insured retention shall be no more than three million dollars (\$3,000,000) per occurrence for railroad liability, employee injuries under FELA, property damage and rolling stock equipment, without the consent of WisDOT. If for whatever reason, the Commission or Operator determine that maintaining such a level of self-insured retention is either

impractical, unavailable or uneconomical, then Commission and Operator shall confer with WisDOT on the amount of self-insured retention at least sixty (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 Commission shall require Operator to provide Commission and WisDOT a certificate from a financial institution reasonably acceptable to Commission and WisDOT verifying that the Operator or Watco has an ongoing minimum line of credit of ten million dollars (\$10,000,000) of unencumbered funds that would be available to cover any loss. Further, the Operator and/or Watco shall be required to provide notice should said line of credit be terminated or the unencumbered line of credit amount falls below ten million dollars (\$10,000,000). If at any time Operator and/or Watco shall fail to comply with the above line of credit requirement (but solely during the pendency of any non-compliance), WisDOT may require that Operator and/or Watco file a letter of credit ("LOC") for an amount and upon terms reasonably agreed to by the parties but the amount shall not exceed the amount equal to the then existing self-insured retention maintained by Operator. The LOC will be available to be drawn upon by WisDOT to satisfy any self-insured retention on any pending claim(s) against Operator to the extent not timely satisfied by Operator. Upon Operator's or Watco's cure of any compliance failure pertaining to the line of credit requirement, WisDOT shall immediately release any LOC put in place by the parties as set forth above.

(d) Reporting of Incidents and Claims. During the term of this Agreement and any extension thereof, any property damage exceeding one hundred thousand dollars (\$100,000) or injury to person occurring on the Rail Line or from the operation of the equipment of Commission or Operator or by the employees of Commission or Operator (herein referred to as an "incident") shall be immediately reported to WisDOT. Commission or Operator shall, within five (5) days, provide a written report, which shall also include a summary of the facts of the incident and any law enforcement or FRA reports. An estimate by the Commission or Operator as to the approximate potential liability, which might arise from any incident and any information that could impact legal proceedings shall be provided verbally and shall be considered confidential. If a notice of injury or claim of damage is made to Commission or Operator regarding any incident, then Commission or Operator shall forthwith furnish WisDOT with a copy thereof. Thereafter, Commission or Operator shall provide WisDOT written updates on such matter and shall periodically, but not less frequently than semi-annually, report to WisDOT as to further happenings regarding the incident including the final disposition of the matter. Any such updates shall be provided in a format reasonably designed to preserve any applicable attorney client privilege.

(e) Review and Modification of Liability Insurance. Commission shall ensure that the coverage limits of Commission's or 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 (12) 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 pursuant to Section 13.8. Review of liability insurance shall be conducted by Commission, Operator, and WisDOT, upon the written request of WisDOT or Commission, no less than ninety (90) days prior to the expiration date of the policy then in force, except that a special review may be conducted in the event Commission or Operator experience 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(e)(iv), (v), and (vi) herein. The following conditions shall apply to the review and modification of Comprehensive Railroad Liability Insurance:

- (i) WisDOT may reasonably require Commission or Operator to purchase additional insurance as may be consistent with industry best practice for a similarly situated company, and naming the additional insureds as is required under Section 6.2(a) herein. Irrespective of any other provision in this Agreement, no annual increase, if elected by WisDOT without the concurrence of Commission and Operator shall exceed five (5) percent of the coverage limits in place for the policy year immediately preceding such election. Commission or 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 Commission or Operator purchasing any less insurance coverage for any other aspect of coverage required under Section 6.2(a) herein.
- (ii) **(Intentionally Omitted)**
- (iii) The amount of the increase, if any, in the Commission's or Operator's expenditure for liability insurance required by 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 reasonable 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) coverage amounts and self insured retentions consistent with industry best practice for a similarly situated company. 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. 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 thirty (30) days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than fifty (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) Commission or 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(e)(v) herein, any one of them may require arbitration in accordance with Section 6.2(e)(iii) herein to determine the required amount of insurance coverage.
- (vii) Notwithstanding any other provision regarding insurance contained herein, Commission or 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(e)(iii) herein, but in no event shall the coverage limit be less than fifty million dollars (\$50,000,000) per occurrence, 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 Commission's or 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, or (4) when Commission or Operator is in violation of Wisconsin or federal law. 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 or WisDOT 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 13.3 below. The declaration of default 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 contractual obligations of Commission to WisDOT to require Operator to obtain and maintain STB common carrier obligation and provide freight rail 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 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 thirty (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 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.

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 twenty (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 thirty (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 twenty (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 ten (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 thirty (30) consecutive days to any station on such Principal Line Segment, or

(b) The availability of an average of less than one (1) train per week for a consecutive twelve (12) week period to any station on such Principal Line Segment, or

(c) The failure to move any revenue freight car loads for twelve (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 8.2 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, WisDOT, 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 resolved and/or 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 twenty-four (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 one hundred twenty (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 - 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, subject Section 85.09 Wis. Stats., and 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 sixty (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, fail to respond in writing within such sixty (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 determination 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 8.2 - 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. 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 is four million five hundred, ninety-five thousand, four hundred dollars (\$4,595,400) for acquisition of Improved Property from the UP and four hundred and four thousand, six hundred dollars (\$404,600) for major bridge improvements made by WSOR for a total initial value of the Improved Property of five million dollars (\$5,000,000). The initial investment basis of each party is as follows: (1) WisDOT – four million dollars (\$4,000,000); (2) Commission - \$0.00; and, (3) Operator – five hundred ninety-five thousand, four hundred dollars (\$595,400) cash and four hundred and four thousand, six hundred dollars (\$404,600) in kind for a

total one million dollars (\$1,000,000). Upon termination of the Grant Agreement, the basis of WisDOT, Commission and Operator shall be calculated as follows:

(i) No more than sixty (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 at fair market value, which shall be determined by appraisal. 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 fifteen (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 right of first refusal is not exercised, the cost of such appraisals shall accrue to the Operator. If right of first refusal is exercised, the cost of the third appraisal is shared equally with each party also paying its respective appraiser.

(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 one hundred (100) percent 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 8.3 - New Improved Property.

Commission or Operator, 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 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, 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 Commission.

(a) To the best knowledge of Commission, 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 the event that termination occurs and the Operator is duly removed, and WisDOT requires Commission or Operator to do so, Commission will support and require Operator to support Commission and/or WisDOT efforts to provide a replacement freight rail service, without obligation of Operator to expend additional funds to do so.

(d) All non-federal funding required for completion of the objective of this Agreement and/or required under the terms of any 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 Commission and/or Operator from sources other than federal programs prohibited from use as match from other federal program funds.

ARTICLE 10.0 - REPORTS AND ACCOUNTS.

10.1 - Reports.

(a) Commission shall require Operator or Watco to submit the following information to Commission and WisDOT as specified.

(i) A certificate of covenant compliance as identified in Section 6(2)(c), within forty-five (45) days after the end of each quarter year for its operations (for the avoidance of doubt, the Operator shall operate on a calendar year basis);

(ii) A summary of originating and terminating traffic by commodity, by Principal Line Segment and by month. This summary will be provided at least annually;

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

(b) Commission shall require Operator or Watco as to item (i) below provide for inspection at a location mutually agreed to by WisDOT, and as to items (ii)-(v) below submit to WisDOT, in a format and manner reasonably acceptable to WisDOT the following reports:

(i) Independently audited financial statements for Watco and unaudited financial statement for the Operator for each year ending December 31, to be submitted on or before June 30 of the year following the applicable audit year; If upon WisDOT's inspection of the above financial records, Operator is not in compliance with the financial covenants set forth in this Agreement, then WisDOT shall be allowed to retain copies of the financial statements. Otherwise, WisDOT's rights are merely a review right and no copies of the financial statements shall be retained by WisDOT. If

Operator is required to allow WisDOT to retain copies of the financial statements as set forth above, then the Operator shall clearly mark any confidential and proprietary information included in the audited and/or unaudited financial statements and any related financial information as confidential proprietary information. WisDOT shall notify Operator immediately upon receipt of any request for information marked as confidential or proprietary. All records retained by WisDOT shall be subject to Wisconsin Public Records Law, Section 19.31, et seq., Wis. Stats.

(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 of Operator thirty (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.

(v) A certificate of financial covenant compliance, provided within forty-five (45) days after the end of each quarter year confirming Watco's compliance with the financial covenants (or any waivers thereof) contained within Watco's then existing senior credit facility.

Section 10.2 - Accounts.

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

(b) Commission shall require 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 and shall likewise make those accounts and reports available to Commission.

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 49 CFR 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.

As of the date of the Operating Agreement, 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 - 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 Environmental Protection Agency and the State Historical Preservation Officer.

Section 12.2 - 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 Wisconsin River Rail Transit Commission and Crawford, Dane, Grant, Iowa, Jefferson, Rock, Sauk, Walworth and Waukesha 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 12.3 - Nondiscrimination.

(a) Commission agrees that no otherwise qualified disabled individual in the United States, as defined in Section 705(9)(A) of Title 29 USC and in subchapter II of Section 111, Wis. Stats., shall, solely by reason of disability, 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.

(b) Commission shall and shall require Operator to agree not to engage in any act of employment discrimination as specified in Section 111.322, Wis. Stats, against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters.

(c) Commission shall and shall require Operator to agree to comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require its subcontractors by contractual agreement to also comply:

- a. Title VI of the Civil Rights Act of 1964, 42 USC 2000, et seq.
- b. Subchapter II of Section 111, Wis. Stats.

- c. Section 16.765, Wis. Stats. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.
- (d) Commission and Operator in their 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.
- (e) These provisions 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. Operator agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

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.

All records retained by WisDOT shall be subject to Wisconsin Open Records Law, Section 19.31, et seq., Wis. Stats.

Non-Appropriation of Funds. With respect to any payment required to be made by WisDOT under this Agreement, the parties acknowledge WisDOT's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature.

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

Chair
Wisconsin River Rail Transit Commission
20 South Court Street
P.O. Box 262
Platteville, WI 53818

Wisconsin & Southern Railroad, L.L.C.
ATTN: General Counsel
315 W. 3rd Street
Pittsburg, Kansas 66762

Watco Companies L.L.C.
ATTN: General Counsel
315 W. 3rd Street
Pittsburg, Kansas 66762

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 8.3.

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 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 - 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 13.13 - 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 13.14 - 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 Wisconsin River Rail Transit Commission has caused this Agreement to be signed by its duly authorized officers, this ____ day of _____, 2014.

WITNESS:

WISCONSIN RIVER RAIL TRANSIT

COMMISSION

Alan Sweeney, Chair

Charles Anderson, Secretary

IN WITNESS WHEREOF, the Wisconsin Department of Transportation has caused this Agreement to be signed by its duly authorized officer, this ____ day of _____ 2014.

WITNESS:

WISCONSIN DEPARTMENT OF TRANSPORTATION

Donna Brown-Martin, Director
Bureau of Transit, Local Roads, Railroads and Harbors

ATTACHMENT 1

**LAND USE AGREEMENT
#0490-40-08(a)(1)
BY AND BETWEEN THE
WISCONSIN RIVER RAIL TRANSIT COMMISSION
AND THE
WISCONSIN DEPARTMENT OF TRANSPORTATION
DATED _____**

ATTACHMENT 2

OPERATING AGREEMENT

#0490-40-08(d)(1)

BY AND BETWEEN THE

WISCONSIN RIVER RAIL TRANSIT COMMISSION

AND THE

WISCONSIN DEPARTMENT OF TRANSPORTATION

DATED

ATTACHMENT 3

SUMMARY OF EXISTING FRA TRACK CLASSIFICATION

(TO BE DEVELOPED FOLLOWING ACQUISITION)

OPERATING AGREEMENT
BY AND BETWEEN
WISCONSIN RIVER RAIL TRANSIT COMMISSION
AND
WISCONSIN & SOUTHERN RAILROAD, L.L.C.

AGREEMENT NO. 0490-40-08(d)(1)

AUGUST 2014



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ATTACHMENT 1 -- LAND USE AGREEMENTS

ATTACHMENT 2 -- GRANT AGREEMENTS

ATTACHMENT 3 -- SUMMARY OF EXISTING FRA TRACK CLASSIFICATION

APPENDIX A - RENTAL

OPERATING AGREEMENT

This Agreement made and entered into this _____ day of _____, 2014 by and between Wisconsin River Rail Transit Commission, a governmental entity established in accordance with Section 66.0301, Wis. Stats., having its principal office at 20 South Court Street, P.O. Box 262, Platteville, WI, 53818, ("Commission") and Wisconsin & Southern Railroad, L.L.C., 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 315 W. 3rd Street, Pittsburg, KS, 66762, ("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. 0490-40-48(d), dated September 1, 1997; and

WHEREAS, Commission is currently comprised of Crawford, Dane, Iowa, Jefferson, Grant, Rock, Sauk, Walworth and Waukesha Counties and 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(s) 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 the Improved Property of the Principal Line Segments in Wisconsin subject to all the conditions and limitations set forth in the Grant Agreements and Land Use Agreements identified in Section 1.0(k) and (o) respectively, and, subject to the Operator's permanent, exclusive operating easement and the Surface Transportation Board ("STB") authority to provide freight railroad service; and

WHEREAS, Operator is also operating over the tracks of the East Wisconsin Counties Railroad Consortium ("EWCRC") and Pecatonica Rail Transit Commission ("PRTC") 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 _____ 2014, and the Grant Agreement By and Between the Commission and WisDOT dated _____ 2014; and

WHEREAS, Operator has been furnished copies of and reviewed the Grant Agreement – Improved Railroad Property Acquisition by and between the City of Fitchburg and Village of Oregon, and WisDOT dated January 27, 1999 and; the Land Use and Lease Agreement by and between Wisconsin River Rail Transit Commission, and the City of Fitchburg and Village of Oregon.

WHEREAS, this Agreement replaces and supersedes Agreement No. 0490-40-48(d) by and between Commission and Operator, dated January 27, 1999.

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. "BNSF" means the Burlington Northern and Santa Fe Railroad Company, or its successors or assigns, if any.
- c. "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.
- d. "Commencement Date" means the date this Agreement is approved in writing by WisDOT on the Signature Page of this Agreement.
- e. "Commission" means the Wisconsin River Rail Transit Commission.
- f. "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.
- g. "CN" means Canadian National Railway Company, and its subsidiaries, assigns and successors, if any.
- h. "CPR" means the Canadian Pacific Railway D/B/A the Soo Line Railroad Company and its successors, if any.
- i. "EWCRC" means the East Wisconsin Counties Railroad Consortium.
- j. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.

- k. "Grant Agreements" means:
- (1) Grant Agreement No. 0490-40-08(b)(1) By And Between Commission And WisDOT, dated _____, 2014, and any amendments thereto pertaining to the Madison to Cottage Grove/Reedsburg rail lines.
 - (2) Grant Agreement – Improved Railroad Property Acquisition by and between the Commission and WisDOT dated _____ 2014 pertaining to the Fitchburg to Evansville rail line.
- l. "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.
- m. "Improved Property" means Buildings and Trackage located upon the Land of the Rail Line.
- n. "Land" means the real estate, generally sixty-six (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.
- o. "Land Use Agreement" means: Land Use Agreement No. 0490-40-08(a)(1) by and between Commission and WisDOT, dated _____, 2014 and any amendments thereto.
- p. "Operator" means the Wisconsin & Southern Railroad, L.L.C., and its successors, if any.
- 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:
- (1) Milepost 134.00 near "MX" in Madison, a crossing of the Wisconsin & Southern Railroad Company, to Milepost 191.90 near Reedsburg (Madison to Reedsburg Line), including Milepost 83.78 to Milepost 85.50 in Madison (Central Soya Spur).
 - (2) Milepost 81.00 to Milepost 71.00 (Madison to Cottage Grove Line)
 - (3) Milepost 119.0 near Evansville to Milepost 134.00 near "MX" in Madison, a crossing of the Wisconsin & Southern Railroad Company (Fitchburg to Evansville Line)
- t. "Rail Line" means the Principal Line Segments 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. "Watco" means Watco Companies, L.L.C., or any successor thereto whether by merger, consolidation or acquisition, the indirect parent company of Wisconsin & Southern Railroad, L.L.C.
- aa. "WisDOT" means the Wisconsin Department of Transportation.
- ab. "WRRTC" means the Wisconsin River Rail Transit Commission.
- ac. "WSOR" means Wisconsin and Southern Railroad, L.L.C, its successors, if any.

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 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 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(k) and (o) 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 its own initiative or upon request, 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, WisDOT retains the right 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 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 thirty-three (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 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 ownership of same to Operator for the purchase price provided by Operator and other reasonable purchase and transfer costs incurred by Commission. Notwithstanding the foregoing sentence, the 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 to Operator. Commission shall not consent to WisDOT sale or lease of any Land and Improved Property within thirty-three (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 thirty-three (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 Agreements, 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 permanent, exclusive operating easement and common carrier obligation of Operator. 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 sixteen and one-half (16.5) feet from the center line on each side of the side track.

(d) WisDOT retains the right to lease Land, which is not under license and lease to Operator or not presently leased to third parties. 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 obtain the concurrence 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. Pursuant to Chp. Trans 29, Wis. Admin. Code. 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 permanent, exclusive operating easement or its common carrier obligation 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 or passenger excursion rail service, pursuant to Chp. Trans 31, Wis. Admin. Code. 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.

ARTICLE 3.0 - RENT.

(a) Operator's rent to Commission shall be in accordance with Attachment 7 to Agreement No. 0490-40-48(d) between Commission and Operator, a copy of which is attached hereto as Appendix A.

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

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 provide 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 required by law.

(b) Operator shall furnish Commission and WisDOT copies of trackage rights or lease agreement(s) allowing Operator to operate over lines not owned by Commission and WisDOT upon request.

Section 4.3 - Interchange Agreements.

It is recognized that Operator may enter into interchange agreements with the BNSF, CN, CPR, UP and the Belt Line Railroad Company of Chicago (BLR) 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 or upon WisDOT requirement, declare Operator in default of this Operating 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, and any other regulatory agency as required by law.

(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 shall 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. 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 obtain and maintain the requisite 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. 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 at its own cost and expense 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. Funding of the work included in the maintenance plan, as defined in Section 5.2, shall be the responsibility of Operator. Tracks shall be maintained to FRA Class 2 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 2 standards and a list of line segments that shall be maintained to FRA Class 1 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 49 CFR Part 237 and 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 the operation of any such leases. Operator understands that any agreement for leasing Land is subject to the Grant Agreements or Land Use Agreements 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 Section 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 in accordance with 49 CFR Part 237.

(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. Structures shall be maintained and repaired in accordance with 49 CFR Part 237.

(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 ten (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 by Operator. The Plan or modification shall be revised and resubmitted within thirty (30) days following a WisDOT request so as to overcome the deficiencies, if any, identified by WisDOT. WisDOT approval of the maintenance plan does not imply or commit WisDOT funding of any part of the work included in the maintenance plan. Funding of the maintenance plan is the responsibility of Operator.

(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 ten (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 fifty million dollars (\$50,000,000) per occurrence, or other form reasonably 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 or in lieu of federal employer's liability coverage and for the covering of any employees, if any, who are not covered under FELA. Operator further agrees to carry property insurance including but not limited to fire and extended coverage for any buildings and structures subject to damage and rolling stock insurance in an amount not less than fifteen million dollars (\$15,000,000). 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, any insurance policy shall be written by a reputable insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided, and approved by 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 sixty (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 ten (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 consistent with prudent industry practice for a similar company and the financial ability of Operator to satisfy such self-insured retention. The self-insured retention shall be no more than three million dollars (\$3,000,000) per occurrence for railroad liability, employee injuries under FELA, property damage and rolling stock equipment, without the consent of the Commission and WisDOT. 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 sixty (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 provide Commission and WisDOT a certificate from a financial institution reasonably acceptable to Commission and WisDOT verifying that the Operator or Watco (as heretofore defined in Article 1.0) has an ongoing minimum line of credit of ten million dollars (\$10,000,000) of unencumbered funds that would be available to cover any loss. Further, the Operator and/or Watco shall provide notice should said line of credit be terminated or the unencumbered line of credit amount falls below ten million dollars (\$10,000,000). If at any time Operator and/or Watco shall fail to comply with the above line of credit requirement (but solely during the pendency of any non-compliance), WisDOT may require that Operator and/or Watco file a letter of credit ("LOC") for an amount and upon terms reasonably agreed to by the parties but the amount shall not exceed the amount equal to the then existing self-insured retention maintained by Operator. The LOC will be available to be drawn upon by WisDOT to satisfy any self-insured retention on any pending claim(s) against Operator to the extent not timely satisfied by Operator. Upon Operator's or Watco's cure of any compliance failure pertaining to the line of credit requirement, WisDOT shall immediately release any LOC put in place by the parties as set forth above.

(d) Reporting of Incidents and Claims. During the term of this Agreement and any extension thereof, any property damage exceeding one hundred thousand dollars (\$100,000) or injury to person 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 WisDOT. Operator shall, within five (5) days, provide a written report, which shall also include a summary of the facts of the incident and any law enforcement or

FRA reports. An estimate by the Operator as to the approximate potential liability, which might arise from any incident and any information that could impact legal proceedings shall be provided verbally and shall be considered confidential. If a notice of injury or claim of damage is made to Operator regarding any incident, then Operator shall forthwith furnish Commission and WisDOT each with a copy thereof. Thereafter, Operator shall provide Commission and WisDOT written updates on 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. Any such updates shall be provided in a format reasonably designed to preserve any applicable attorney client privilege.

(e) 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 (12) 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, upon the written request of WisDOT or Commission, no less than ninety (90) 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(e)(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 reasonably require Operator to purchase additional insurance as may be consistent with industry best practice for a similarly situated company, and naming the additional insureds as is required under Section 6.2(a) herein. Irrespective of any other provision in this Agreement, no annual increase, if elected by Commission and WisDOT without the concurrence of the Operator shall exceed five (5) percent of the coverage limits in place for the policy year immediately preceding such election. 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) **(Intentionally Omitted)**
- (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 reasonable 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) coverage amounts and self insured retentions consistent with industry best practice for a similarly situated company. 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. 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 thirty (30) days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than fifty (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(e)(v) herein, any one of them may require arbitration in accordance with Section 6.2(e)(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(e)(iii) herein, but in no event shall the coverage limit be less than fifty million dollars (\$50,000,000) per occurrence, 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, (4) when Operator is in violation of Wisconsin or federal law, or (5) at the option of Operator, when the Land Use Agreements or the Grant Agreements 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 13.3 below. The declaration of default 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 contractual 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 common carrier obligation 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 ten (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 thirty (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 twenty (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 twenty (20) day period. If Operator

does not remove any of its equipment within the twenty (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 ten (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 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 thirty (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 twelve (12) week period to any station on such Principal Line Segment, or
- (c) The failure to move any revenue freight car loads for twelve (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 8.2 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, WisDOT, 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 resolved and/or 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 twenty-four (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 one hundred twenty (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 - 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, subject to Sec. 85.09. Wis. Stats., and 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 sixty (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, fail to respond in writing within such sixty (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 determination 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 8.2 - 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. 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 is four million five hundred, ninety-five thousand, four hundred dollars (\$4,595,400) for acquisition of Improved Property from the UP and four hundred and four thousand, six hundred dollars (\$404,600) for major bridge improvements made by WSOR for a total initial value of the Improved Property of five million dollars (\$5,000,000). The initial investment basis of each party is as follows: (1) WisDOT – four million dollars (\$4,000,000); (2) Commission - \$0.00; and, (3) Operator – five hundred ninety-five thousand, four hundred dollars.(\$595,400) cash and four hundred and four thousand, six hundred dollars (\$404,600) in kind for a total of one million dollars (\$1,000,000). Upon termination of the Grant Agreements, the basis of WisDOT, Commission and Operator shall be calculated as follows:

(i) No more than sixty (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 at fair market value, which shall be determined by appraisal. 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 fifteen (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 right of first refusal is not exercised, the cost of such appraisals shall accrue to the Operator. If right of first refusal is exercised, the cost of the third appraisal is shared equally with each party also paying its respective appraiser.

(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 one hundred percent (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 8.3 - New Improved Property.

Commission or Operator, 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 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 Operator is duly removed, and Commission requires Operator to do so, Operator will support Commission and/or WisDOT efforts to provide a replacement freight rail service, without obligation of Operator to expend additional funds to do so.

(d) All non-federal funding required for completion of the objectives of this Agreement and/or required under the terms of any 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, Wis. Stats., for the purpose of establishing, acquiring, maintaining, and operating a local transportation system. Pursuant to Section 66.0301, Wis. Stats., the Commission 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 Commission.

(b) To the best knowledge of Commission and its Commissioners, 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 Agreements and the Grant Agreements, in effect on the date of this Agreement, and the same have not been 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 Agreements or Grant Agreements 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 Agreements and the Grant Agreements 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) Operator or Watco shall submit the following information to Commission and WisDOT as specified.

(i) A certificate of covenant compliance as identified in Section 6(2)(c), within forty-five (45) days after the end of each quarter year for its operations (for the avoidance of doubt, the Operator shall operate on a calendar year basis);

(ii) A summary of originating and terminating traffic by commodity, by Principal Line Segment and by month. This summary will be provided at least annually;

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

(b) Operator or Watco shall as to item (i) below provide for inspection at a location mutually agreed to by WisDOT, and as to items (ii)-(v) below submit to WisDOT, in a format and manner reasonably acceptable to WisDOT the following reports:

(i) Independently audited financial statements for Watco and unaudited financial statement for the Operator for each year ending December 31, to be submitted on or before June 30 of the year following the applicable audit year; If upon WisDOT's inspection of the above financial records, Operator is not in compliance with the financial covenants set forth in this Agreement, then WisDOT shall be allowed to retain copies of the financial statements. Otherwise, WisDOT's rights are merely a review right and no copies of the financial statements shall be retained by WisDOT. If Operator is required to allow WisDOT to retain copies of the financial statements as set forth above, then the Operator shall clearly mark any confidential and proprietary information included in the audited and/or unaudited financial statements and any related financial information as confidential proprietary information. WisDOT shall notify Operator immediately upon receipt of any request for information marked as confidential or

proprietary. All records retained by WisDOT shall be subject to Wisconsin Public Records Law, Section 19.31, et seq., Wis. Stats.

(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 of Operator thirty (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.

(v) A certificate of financial covenant compliance, provided within forty-five (45) days after the end of each quarter year confirming Watco's compliance with the financial covenants (or any waivers thereof) contained within Watco's then existing senior credit facility.

Section 10.2 - Accounts.

(a) Operator shall establish and maintain a system of accounts as prescribed by the STB or as determined by Operator and reasonably approved 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 - 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 Environmental Protection Agency and the State Historical Preservation Officer.

Section 12.2 - 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 Wisconsin River Rail Transit Commission and Dane, Crawford, Grant, Iowa, Jefferson, Rock, Sauk, Walworth and Waukesha 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 12.3 - Nondiscrimination.

(a) Operator agrees that no otherwise qualified disabled individual in the United States, as defined in Section 705(9)(A) of Title 29 USC and in subchapter II of Section 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.

(b) Operator agrees not to engage in any act of employment discrimination as specified in Section 111.322, Wis. Stats, against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters.

(c) 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 also comply:

- a. Title VI of the Civil Rights Act of 1964, 42 USC 2000, et seq.
- b. Subchapter II of Section 111, Wis. Stats.
- c. Section 16.765, Wis. Stats. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

(d) 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.

(e) These provisions 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. Operator agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

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.

All records retained by WisDOT shall be subject to Wisconsin Public Records Law, Section 19.31, et seq., Wis. Stats.

Non-Appropriation of Funds. With respect to any payment required to be made by WisDOT under this Agreement, the parties acknowledge WisDOT's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature.

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 STB, 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

Chair
Wisconsin River Rail Transit Commission
20 South Court Street
P.O. Box 262
Platteville, WI 53818

Wisconsin & Southern Railroad, L.L.C.
ATTN: General Counsel
315 W. 3rd Street
Pittsburg, KS 66762

Watco Companies L.L.C.
ATTN: General Counsel
315 W. 3rd Street
Pittsburg, Kansas 66762

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 Agreements and the Grant Agreements 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 Agreements or the Grant Agreements 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 8.3.

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 Agreements and Grant Agreements 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, and pursuant to Section 85.09, Wis. Stats., 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 agreements and will be subject to and comply with federal and state laws as imposed by the grant agreements 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 state or 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 - 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 13.15 - Approval by WisDOT.

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

Section 13.16 - 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 13.17 - 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 Wisconsin River Rail Transit Commission, has caused this Agreement to be signed by its duly authorized officers, this _____ day of _____, 2014.

WITNESS:

WISCONSIN RIVER RAIL TRANSIT COMMISSION

Alan Sweeney, Chair

Charles Anderson, Secretary

IN WITNESS WHEREOF, the Wisconsin & Southern Railroad, L.L.C., by its Managers, has caused this Agreement to be signed by its Chief Financial Officer, this _____ day of _____, 2014.

WITNESS:

WISCONSIN & SOUTHERN RAILROAD, L.L.C.

Rick Baden, President

WisDOT APPROVAL in Accordance with Section 13.16 of this Agreement:

WISCONSIN DEPARTMENT OF TRANSPORTATION

Commencement Date

Donna Brown-Martin, Director
Bureau of Transit, Local Roads, Railroads and Harbors

“Watco Companies, L.L.C., parent company of Wisconsin & Southern Railroad, L.L.C., hereby joins this Agreement for the limited purpose of the representations and obligations specifically assumed by it herein.”

WATCO COMPANIES, L.L.C.

Date

Rick Baden, President

ATTACHMENT 1

Land Use Agreements

LAND USE AGREEMENT No. 0490-40-08(a)(1) by and between Commission and WisDOT, dated _____, 2014 and any amendments thereto pertaining to Madison to Cottage Grove/Reedsburg rail lines.

ATTACHMENT 2

Grant Agreements

GRANT AGREEMENT No. 0490-40-08(b)(1) By And Between Commission and WisDOT, dated _____, 2014, and any amendments thereto pertaining to the Madison to Cottage Grove/Reedsburg rail lines.

GRANT AGREEMENT for Improved Railroad Property Acquisition by and between the Commission and WisDOT dated _____, 2014 pertaining to the Fitchburg to Evansville rail line.

ATTACHMENT 3

Summary of Existing FRA Track Classification

(TO BE DEVELOPED FOLLOWING ACQUISITION)

APPENDIX A

RENTAL

ATTACHMENT 7
TO AGREEMENT NO. 0490-40-48(d)

ATTACHMENT 7

to

AGREEMENT NO. 0490-40-48(d)

WHEREAS, the Wisconsin River Rail Transit Commission ("Commission") has leased improved property on Land subject of the long-term operating agreement between Commission and the Wisconsin & Southern Railroad Company ("Operator"), such agreement dated September 1, 1997, for the purpose of preserving and encouraging continuance of rail service on the Rail Line; and

WHEREAS, the Wisconsin & Southern Railroad Company ("Operator") covenants, agrees and binds itself to pay to Commission a rental payment for use and operation of Land subject to the long-term operating agreement between Commission and Operator; and

WHEREAS, on February 16, 2001, the Commission and Operator fully executed Attachment 4 to Agreement No. 0490-40-48(d), thereby relieving Operator of rental payments for the year 2000 and 2001 and reinstating a rental payment of \$25,000 for the year 2002; and

WHEREAS, Attachment 4 to Agreement No. 0490-40-48(d) was made in effect until December 31, 2002, at which time the \$10.00 per loaded car rent payment would be reviewed and may be reduced or increased by mutual agreement of Commission and Operator; and

WHEREAS, Attachment 5 to Agreement No. 0490-40-48(d) was approved by the Commission on December 6, 2002, and remained in effect until December 31, 2004, as of which time the \$10.00 per loaded car rent payment could be reviewed and reduced or increased by mutual agreement of Commission and Operator; and

WHEREAS, Attachment 6 to Agreement No. 0490-40-48(d) was approved by the Commission on December 20, 2004, and remained in effect until December 31, 2007, as of which time the Commission determined to set the Operator's annual rental obligation for the years 2005, 2006 and 2007 at \$25,000 per year; and

WHEREAS, subsequent to 2007, the Commission increased the Operator's annual rental obligation to \$30,000 per year and later at \$45,000 per year and that obligation has continued through December 2013; and

NOW, THEREFORE, the parties hereto covenant and agree as follows:

1. The Commission and Operator have mutually agreed upon an annual rental obligation for the year 2014, set at the amount of \$48,150 per year. Such

agreement shall be in effect until December 31, 2014.

2. The Operator's rental payments shall be due and payable the first business day of each calendar quarter commencing January 1, 2014.
3. This Attachment shall be in effect until December 31, 2014, at which time the \$10.00 per loaded car rent payment will be reviewed and may be reduced or increased by mutual agreement of Commission and Operator.

IN WITNESS WHEREOF, the Wisconsin River Rail Transit Commission has authorized Karl Nilson, its Chairman, and Charles Anderson, its Secretary, to sign this Agreement this ____ day of _____ 2014.

WISCONSIN RIVER RAIL TRANSIT COMMISSION

BY: Karl Nilson
Karl Nilson, Chairman

ATTEST: Charles Anderson
Charles Anderson, Secretary

IN WITNESS WHEREOF, the Wisconsin and Southern Railroad, L.L.C. has authorized its _____ to sign this Agreement this 7 day of March 2014.

WISCONSIN AND SOUTHERN RAILROAD, L.L.C.

BY: Tom Fucini

APPROVED:

WISCONSIN DEPARTMENT OF TRANSPORTATION

BY: Frank A. Armstrong