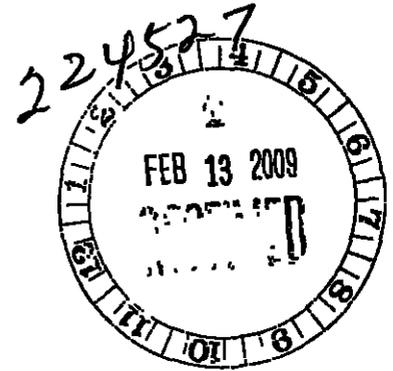


LAW OFFICES  
**JOHN D. HEFFNER, PLLC**  
1750 K STREET, N W  
SUITE 200  
WASHINGTON, D C 20006  
PR. (202) 296-3333  
FAX: (202) 296-3939



February 13, 2009

BY HAND

Hon. Anna K. Quinlan,  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

ENTERED  
Office of Proceedings

FEB 13 2009

Part of  
Public Record

**RE: STB Finance Docket No. 35191  
Wisconsin & Southern Railroad Co.-Trackage Rights  
Exemption-Union Pacific Railroad Company**

Dear Ms. Quinlan:

On behalf of Wisconsin & Southern Railroad Co., I am submitting an original and ten copies of a verified notice of trackage rights exemption pursuant to 49 CFR 1180.2(d)(7) together with a caption summary and a motion for protective order. In addition, I am enclosing a check for \$1,400 to cover the filing fee pursuant to 49 CFR 1002.2 (f)(40) and a copy of this filing on a disk formatted in MS Word

Please date stamp and return one copy of this letter.

Sincerely yours,

John D. Heffner  
Counsel

**FILED**

FEB 13 2009

**SURFACE  
TRANSPORTATION BOARD**

Enclosures

cc. Mack H. Shumate, Jr, Esq  
Kathleen Chung, Esq.

**FEE RECEIVED**

FEB 13 2009

**SURFACE  
TRANSPORTATION BOARD**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

**STB FINANCE DOCKET NO. 35191**

**WISCONSIN & SOUTHERN RAILROAD CO.  
-- TRACKAGE RIGHTS EXEMPTION --  
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 CFR 1180.2(d)(7)**

Respectfully submitted,

Wisconsin & Southern  
Railroad Co.

By its attorneys:

JOHN D. HEFFNER, PLLC  
John D. Heffner  
1750 K Street, NW - Suite 200  
Washington, DC 20006  
(202) 296-3334

James H. M. Savage  
Of counsel

Date February 13, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423

STB FINANCE DOCKET NO. 35191

WISCONSIN & SOUTHERN RAILROAD CO.  
-- TRackage RIGHTS EXEMPTION --  
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 CFR 1180.2(d)(7)

Pursuant to 49 CFR 1180.2(d)(7), the Wisconsin & Southern Railroad Co. ("WSOR") submits this Verified Notice of Exemption for trackage rights and provides the following information:

49 CFR 1180.6(a)(1)(i): A brief summary of the proposed transaction, the names of the applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

**Summary**

WSOR seeks Board authority to acquire overhead trackage rights over the Kohler Line of the Union Pacific Railroad Company ("UPRR") between MP 4.0 near Kohler, WI and MP 1 2 at Kohler Junction near Sheboygan, WI, a distance of 2.8 miles. These rights provide WSOR direct access to handle rail traffic

to and from the facilities of the Cargill Malt Plant, Kohler, WI as well as to interchange freight with UPRR at Sheboygan.

**Applicants' identifying information:**

Wisconsin & Southern Railroad Co.  
P. O. Box 90229  
Milwaukee, WI 53209  
(414)438-8820

Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
(402)544-5000

**Applicant's counsel to receive correspondence:**

For Wisconsin & Southern Railroad Co.

John D Heffner  
John D. Heffner, PLLC  
1750 K Street, NW - Suite 200  
Washington, DC 20006  
(202)296-3334

For Union Pacific Railroad Company

Mack H. Shumate, Jr., Esq.  
Union Pacific Railroad Company  
101 N. Wacker Drive, Suite 1920  
Chicago, IL 60606  
(312)777-2055

**49 CFR 1180.6(a)(1)(ii): The proposed time schedule for consummation of the proposed transaction.**

WSOR proposes to consummate the proposed transaction on or about April 15, 2009 at least thirty (30) days after the filing of this notice.

49 CFR 1180.6(a)(1)(iii): The purpose sought to be accomplished by the proposed transaction.

The purpose of the proposed transaction is to promote industrial development in Eastern Wisconsin by redeveloping active use of a dormant manufacturing facility, the former Cargill Malting Plant, located in Kohler; and to facilitate overhead movement of cars by WSOR from its Kiel-to-Saukville Line over UPRR's Kohler Line to be interchanged with UPRR in Sheboygan.

49 CFR 1180.6(a)(5): A list of the State(s) in which any part of the property of each applicant carrier is situated.

WSOR presently operates within the States of Wisconsin and Illinois. UPRR presently operates rail lines in the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, Nevada, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

49 CFR 1180.6(a)(6): Map (Exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed.

A map satisfying this provision is attached hereto as Exhibit 1.

49 CFR 1180.6(a)(7)(ii): Agreement (Exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at §1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

WSOR is furnishing a copy of the freight operating agreement and the trackage rights agreement, collectively attached as Exhibit 2.

The procedures set forth in the Board's Decision regarding Disclosure of Rail Interchange Commitments<sup>1</sup> do not apply to this transaction as there is no provision in the UPRR sale and lease agreements restricting WSOR's future interchange with a third party carrier. There are two interchange points: UPRR with WSOR at Sheboygan and WSOR with UPRR at Kohler Junction.

---

<sup>1</sup> STB Docket No. EP-575-1 (served May 29, 2008)

Labor Protection.

As mandated by law, WSOR will provide labor protection as set forth in Norfolk and Western Ry. Co. - Trackage Rights - BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. - Lease and Operate, 360 I.C.C. 653 (1980).

Environmental and historic reporting requirements.

The proposed transaction is exempt from environmental review under 49 CFR 1105.6(c)(4), which provides that environmental documentation need not be prepared for trackage rights transactions or transactions that will not cause any operating changes that exceed the thresholds established in 1105.7(e)(4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad property.

Respectfully submitted



John D. Heffner, PLLC  
1750 K Street, NW  
Suite 200  
Washington, D.C. 20006  
(202) 296-3334

VERIFICATION

STATE OF WISCONSIN )  
                          )     SS  
COUNTY OF MILWAUKEE )

I, Timothy Karp, being duly sworn according to law, hereby depose and state that I am authorized to make this Verification, that I have read the foregoing document, and that I know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information and belief.

Timothy Karp

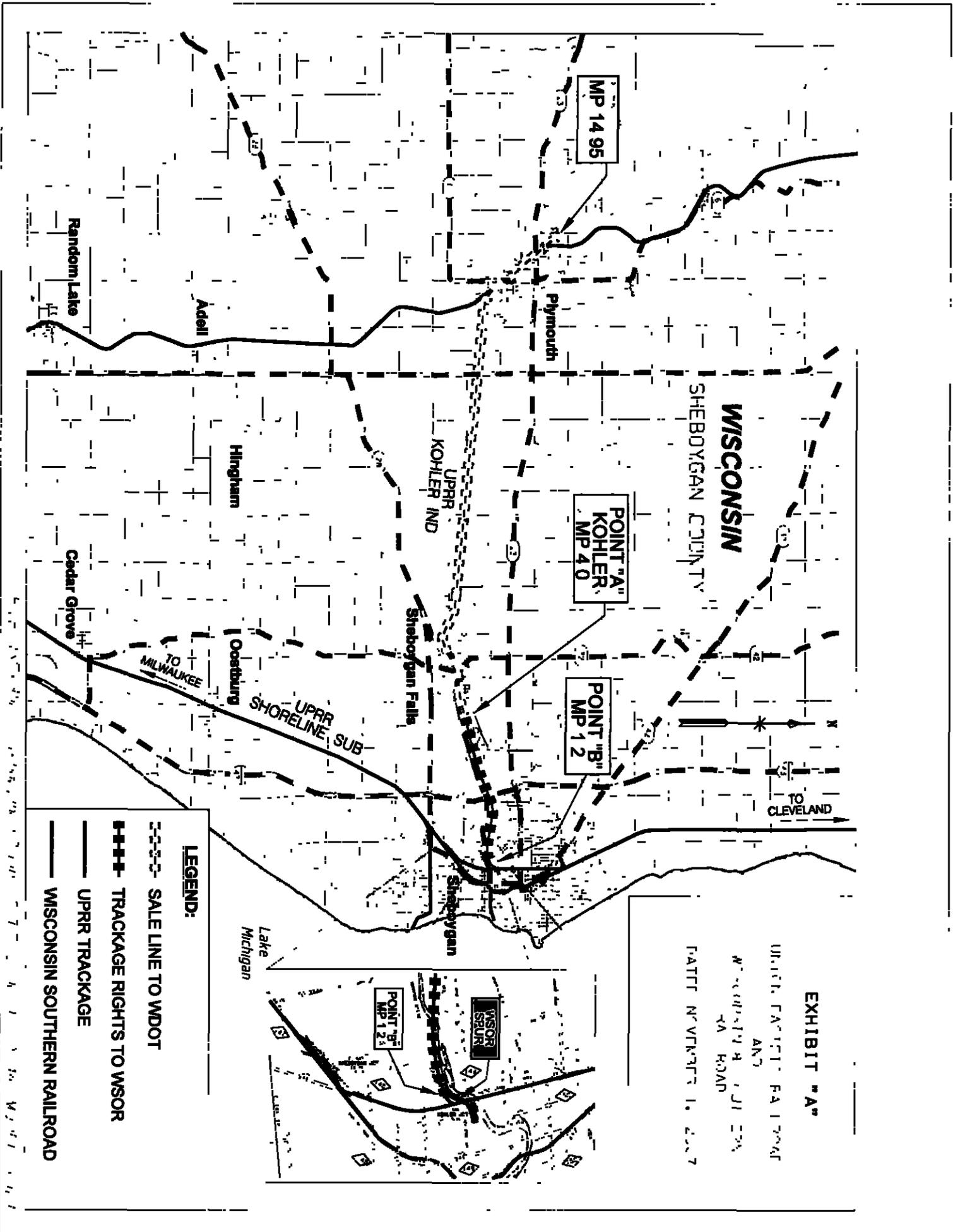
Subscribed and sworn to before me, a Notary Public, in and for the City and County of Milwaukee, in the State of Wisconsin, this 12<sup>th</sup> day of ~~October, 2008.~~  
February, 2009

Robert J. Lopez  
Notary Public

My Commission expires:

April 17, 2011

## **EXHIBIT 1**



WISCONSIN  
SHEBOYGAN COUNTY

MP 14.95

POINT "A"  
KOHLER  
MP 4.0

POINT "B"  
MP 1.2

TO CLEVELAND

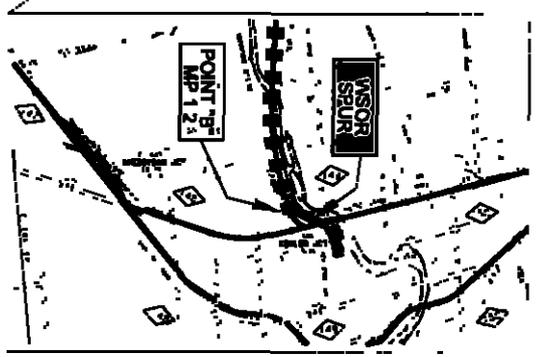
TO MILWAUKEE

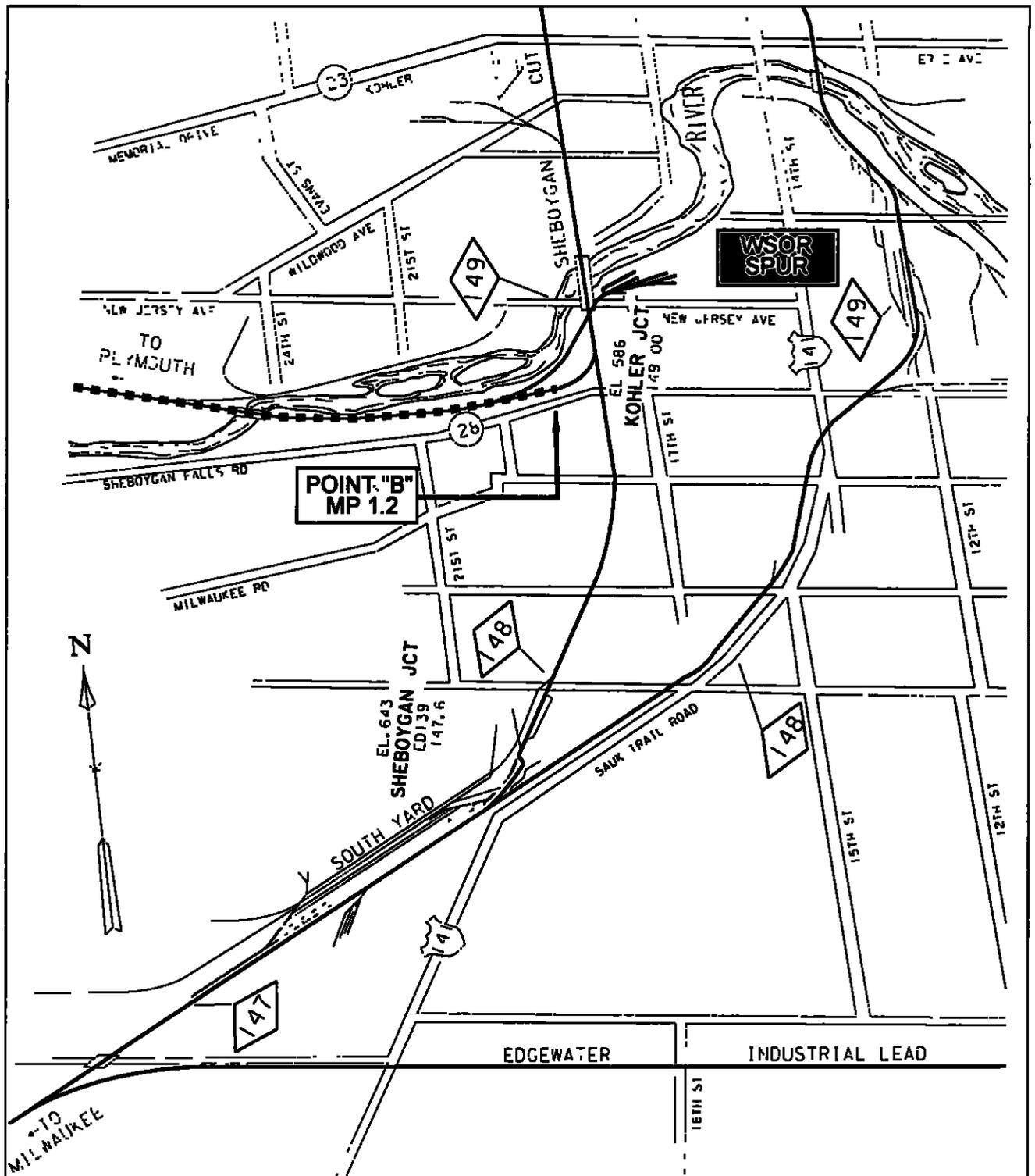
Lake Michigan

**EXHIBIT "A"**  
 UPRR TRAFFIC FAIRWAY  
 AND  
 TRACKAGE RIGHTS TO WSOR  
 VIA ROAD  
 PATENT NUMBER 1,234,567

**LEGEND:**

- SALE LINE TO WDOT
- +--+ TRACKAGE RIGHTS TO WSOR
- UPRR TRACKAGE
- WISCONSIN SOUTHERN RAILROAD





**LEGEND:**

- TRACKAGE RIGHTS TO WSOR
- ACCESS TRACKAGE
- EXHIBIT "B" INTERCHANGE TRACKAGE
- UPRR TRACKAGE

**EXHIBIT "B"**

INTERCHANGE TRACKS  
between  
UNION PACIFIC RAILROAD  
and  
WISCONSIN & SOUTHERN RAILROAD

DATED NOVEMBER 1, 2007

## **EXHIBIT 2**

## **FREIGHT OPERATING AGREEMENT**

This Agreement ("Agreement") is made and entered into as of February, 2009 ("Effective Date") between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and **WISCONSIN & SOUTHERN RAILROAD CO.**, a Wisconsin corporation ("Grantee").

### **RECITALS**

A This Agreement is entered into between Grantor and Grantee pursuant to the Freight Easement Deed and Agreement executed by Grantor and Grantee with an effective date of \_\_\_\_\_, 2009, under which Grantor quitclaimed to Grantee a freight easement ("Freight Easement") upon, over and across the lines of railroad between Grantor's Milepost 4 0 near Kohler, and Milepost 14 95 at Plymouth, all in Sheboygan County, Wisconsin (the "Property"),

B This Agreement sets forth additional terms and conditions governing Grantee's freight operation of the lines of railroad on Property pursuant to the Freight Easement

C Grantee's use, rights and obligations regarding Grantor's right-of-way covered by the Overhead Trackage Rights Agreement (the "Overhead Trackage Rights Agreement"), dated as of the date of this Agreement, shall be governed by such Overhead Trackage Rights Agreement

## **AGREEMENT**

### **SECTION 1. RAIL SERVICE.**

1.1 Beginning on the Effective Date, Grantee is entitled to use the Property for the full and exclusive operation of rail freight service Grantor shall

not grant any rights to any other party to use the Property for the operation of rail freight service. Grantor warrants that as of the Effective Date, there is no other freight rail carrier to which Grantor has granted rights to use the Property

**SECTION 2. INTENTIONALLY OMITTED**

**SECTION 3. ABANDONMENT, SUSPENSION OR DISCONTINUANCE.**

**3.1** 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, PROVIDED, HOWEVER, that Grantee will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue its operations on the Property, without first giving Grantor sixty (60) days' notice of Grantee's intent to do so.

**SECTION 4. REPRESENTATIONS AND WARRANTIES.**

**4.1** Grantor represents and warrants that

(a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and is qualified to do business in the state of Wisconsin

(b) It has full power and authority to enter into this Agreement and to carry out the obligations of Grantor hereunder

(c) Its execution of and performance under this Agreement do not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body

**4.2 Grantee represents and warrants that:**

(a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Wisconsin and is qualified to do business in the State of Wisconsin.

(b) It has full power and authority to enter into this Agreement, and, subject to necessary judicial and regulatory authority, to carry out its obligations hereunder

**SECTION 5. OBLIGATIONS OF THE PARTIES.**

**5.2 Laws.** Grantee at its sole cost and expense shall comply with all applicable federal, state and municipal laws, ordinances, and regulations

**5.3 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 A ATTACHED HERETO AND HEREBY MADE A PART HEREOF (WHICH ARE HEREINAFTER REFERRED TO AS "GRANTOR AGREEMENTS")

**5.4 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 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.

**5.5 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 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

**5.6 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

**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, PROVIDED, HOWEVER, THAT ALL COSTS INCLUDING COSTS FOR PERSONAL INJURIES, DEATH OR PROPERTY LOSS ARISING IN CONNECTION WITH TOXIC WASTE OR ENVIRONMENTAL CONDITIONS, WILL BE GOVERNED BY THE PROVISIONS OF SECTIONS 5.3, 5.4, 5.5**

**5.7 Switch Charge. Grantor is not responsible for and will not absorb any switch charge of any carrier not a party to this Agreement**

**SECTION 7. BREACHES; REMEDIES.**

**7.1 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.

**7.2** 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.

#### **SECTION 8. ARBITRATION.**

**8.1** If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such single arbitrator within twenty (20) days after written notice by

one party of its desire for arbitration to the other party. If the parties cannot so agree, the party demanding such arbitration (the demanding party) shall notify the other party (the noticed party) in writing of such demand, stating the question or questions to be submitted for decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator, notify the demanding party in writing of such appointment, and at its option submit a counter-statement of question(s). Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party shall select one for the noticed party so failing. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Delaware upon application by any party after ten (10) days' written notice to the other party.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in the parties' statements, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony and arguments, said single arbitrator or

the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

**8.2** Each party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

The non-privileged books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the other parties and the arbitrator(s).

## **SECTION 9. MISCELLANEOUS.**

**9.1 Entire Agreement.** This Agreement and the Easement Deed and Agreement express the entire agreement between the parties and supersede all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

**9.2 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 Agreement 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

(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 Co  
5300 North 33<sup>rd</sup> Street  
P O. Box 9229  
Milwaukee, Wisconsin 53209  
Attn. President

**9.3** 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

**9.4 Successors and Assigns** This Agreement shall run with the land, shall be binding upon and inure to the benefit of Grantor and Grantee, and shall be binding upon the successors and assigns of Grantee, subject to the limitations

hereinafter set forth Grantee may not assign its rights under this Agreement or any interest therein, or attempt to have any other person assume its obligations under this Agreement, without the prior written consent of Grantor, which may be withheld at Grantor's sole and absolute discretion

**9.5 Knowledge** For purposes of this Agreement the term "knowledge" means that which is known by an officer of the Grantor at the level of Vice President or above.

**9.6 Severability**. If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

**9.7 Article Headings**. Article headings used in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose

**9.8 Governing Law** This Agreement will be governed and construed in accordance with the laws of the State of Nebraska

**9.9 Amendments** No modification, addition or amendments to this Agreement will be effective unless and until such modification, addition or amendment is in writing and signed by the parties

**9.10 Execution Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be duly executed on their behalf, as of the date first herein written

**UNION PACIFIC RAILROAD COMPANY**

By \_\_\_\_\_

Title. \_\_\_\_\_

**WISCONSIN & SOUTHERN RAILROAD  
CO**

By \_\_\_\_\_

Title. \_\_\_\_\_

**EXHIBIT A**

**(See Sheets Next Attached)**

Kehler Industrial Land Assignment List

AUD_NUMB	PURP_DESC	PART_NAME	CITY	SABV	MR_SFTS	ANNU_RNT
NW1D3034	Auger Permitt/Unloading Device	GILSON BROTHERS CO	PLYMOUTH	WI	0	0
NW1D3035	Auger Permitt/Unloading Device	BEHNS MFR COMPANY	SHEROYGAN FALLS	WI	0	0
NW1D6708	Auger Permitt/Unloading Device	BEHNS MANUFACTURING COMPANY	SHEROYGAN FALLS	WI	0	0
NW1G2304	Auger Permitt/Unloading Device	SULFA FORM COMPANY	PLYMOUTH	WI	0	0
NW1G983	Auger Permitt/Unloading Device	SHEROYGAN FALLS COOP ASSN	SHEROYGAN FALLS	WI	0	0
NW1X3004	Auger Permitt/Unloading Device	SHEROYGAN FALLS CO-OPERATIVE ASSN.	SHEROYGAN FALLS	WI	0	0
NW1X5959	Auger Permitt/Unloading Device	RAYMOND WACHTER	SHEROYGAN FALLS	WI	0	0
NW1X7662	Auger Permitt/Unloading Device	STANDARD OIL CO	PLYMOUTH	WI	0	0
NW19408	Bridge Agreement	STATE OF WISCONSIN	SHEROYGAN FALLS	WI	0	0
NW1D5657	Crossing - Pedestrian Agreement	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0
185802	Crossing - Private Roadway	BEHNS MANUFACTURING COMPANY IN	SHEROYGAN FALLS	WI	7.1	1566.73
NW1D6815	Crossing - Private Roadway	BEHNS MANUFACTURING CO	SHEROYGAN FALLS	WI	0	0
NW1D6308	Crossing - Private Roadway	BEHNS MANUFACTURING COMPANY	SHEROYGAN FALLS	WI	0	0
NW1D6339	Crossing - Private Roadway	BEHNS MANUFACTURING	SHEROYGAN FALLS	WI	0	0
NW1D9398	Crossing - Private Roadway	JOSEPH E. RICHARDSON, SR.	SHEROYGAN FALLS	WI	0	0
185177	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEROYGAN FALLS	WI	998	0
185178	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEROYGAN FALLS	WI	998	0
185278	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEROYGAN FALLS	WI	998	0
185279	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEROYGAN FALLS	WI	998	0
185288	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEROYGAN FALLS	WI	999	0
215739	Crossing - Wireline	BEHNS MANUFACTURING COMPANY	SHEROYGAN FALLS	WI	7.25	0
NW1F1268	Crossing - Wireline	SHEROYGAN FALLS, WI	SHEROYGAN FALLS	WI	0	0
NW1F1789	Crossing - Wireline	WISCONSIN POWER & LIGHT	PLYMOUTH	WI	0	0
NW1F3711	Crossing - Wireline	PLYMOUTH, WI	PLYMOUTH	WI	0	0
NW1F3149	Crossing - Wireline	SHEROYGAN FALLS ELECTRIC UTIL	SHEROYGAN FALLS	WI	0	0
NW1X0773	Crossing - Wireline	SHEROYGAN FALLS, CITY OF	SHEROYGAN FALLS	WI	0	0
NW1X0803	Crossing - Wireline	SHEROYGAN FALLS, CITY OF	SHEROYGAN FALLS	WI	0	0
NW1X2989	Crossing - Wireline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0
NW1X3962	Crossing - Wireline	SHEROYGAN FALLS, CITY OF	SHEROYGAN FALLS	WI	0	0
NW1X3982	Crossing - Wireline	WISCONSIN TELEPHONE CO.	SHEROYGAN FALLS	WI	0	0
NW1X5883	Crossing - Wireline	WISCONSIN TELEPHONE CO	SHEROYGAN FALLS	WI	0	0
NW1X5157	Crossing - Wireline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0
NW1X6798	Crossing - Wireline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0
NW1X8228	Crossing - Wireline	FALLS MOTOR CORP	SHEROYGAN FALLS	WI	0	0
NW1X9880	Crossing - Wireline	WISCONSIN ELECTRIC POWER CO.	SHEROYGAN FALLS	WI	0	0
NW1Y1607	Crossing - Wireline	WISCONSIN ELECTRIC POWER CO.	SHEROYGAN FALLS	WI	0	0
189572	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	12	0
189688	Crossing Pipeline	WISCONSIN PUBLIC SERVICE CORPO	SHEROYGAN	WI	7.67	0
190030	Crossing Pipeline	SHEROYGAN FALLS, CITY OF	SHEROYGAN	WI	7.5	0
190091	Crossing Pipeline	SHEROYGAN FALLS, CITY OF	SHEROYGAN	WI	7.5	0
207718	Crossing Pipeline	CITY OF PLYMOUTH	PLYMOUTH	WI	13.48	0
207944	Crossing Pipeline	WISCONSIN PUBLIC SERVICE CORPORATION	PLYMOUTH	WI	13.48	0
222774	Crossing Pipeline	PLYMOUTH UTILITIES	PLYMOUTH	WI	12.44	0
236212	Crossing Pipeline	CITY OF SHEROYGAN FALLS	PLYMOUTH	WI	5.47	0
241651	Crossing Pipeline	CITY OF PLYMOUTH	PLYMOUTH	WI	12.89	0

Koehler Industrial Land Acquisitions List

NW13245	Crossing Pipeline	STATE OF WISCONSIN	SHEBOYGAN FALLS	WI	0	0	0
NWE1017	Crossing Pipeline	GREAT LAKES HOMES, INC	SHEBOYGAN FALLS	WI	0	0	0
NWE172	Crossing Pipeline	WISCONSIN PUBLIC SERVICE	PLYMOUTH	WI	0	0	0
NWE1731	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0	0
NWE2187	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0	0
NWE3115	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0	0
NWE363	Crossing Pipeline	SHEBOYGAN FALLS, CITY OF	SHEBOYGAN FALLS	WI	0	0	0
NWE3214	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0	0
NWE5424	Crossing Pipeline	BEAUS MANUFACTURING CO	SHEBOYGAN FALLS	WI	0	0	0
NWE5503	Crossing Pipeline	BEAUS MFG. CO	SHEBOYGAN FALLS	WI	0	0	0
NWE8058	Crossing Pipeline	PLYMOUTH, CITY	PLYMOUTH	WI	0	0	0
NWE9143	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0	0
NWE8232	Crossing Pipeline	SHEBOYGAN FALLS, CITY OF	SHEBOYGAN FALLS	WI	0	0	0
NWE6801	Crossing Pipeline	SHEBOYGAN FALLS, CITY OF	SHEBOYGAN FALLS	WI	0	0	0
NWE7320	Crossing Pipeline	BEAUS MANUFACTURING COMPANY	SHEBOYGAN FALLS	WI	0	0	0
NWE7330	Crossing Pipeline	KOHLER, VILLAGE OF	KOHLER	WI	0	0	0
NWE7837	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0	0
NWE7868	Crossing Pipeline	PLYMOUTH UTILITIES	PLYMOUTH	WI	0	0	0
NWE8210	Crossing Pipeline	RICHARDSON, JAMES L	SHEBOYGAN FALLS	WI	0	0	0
NWE8244	Crossing Pipeline	SHEBOYGAN FALLS UTILITIES	SHEBOYGAN FALLS	WI	0	0	0
NWX1032	Crossing Pipeline	BORDEN CO	PLYMOUTH	WI	0	0	0
NWX1072	Crossing Pipeline	ANR PIPELINE COMPANY	PLYMOUTH	WI	0	0	0
NWX1083	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0	0
NWX1324	Crossing Pipeline	KOHLER, VILLAGE OF	KOHLER	WI	0	0	0
NWX1984	Crossing Pipeline	S. R. CHEESE CO	PLYMOUTH	WI	0	0	0
NWX3418	Crossing Pipeline	HERMAN HALLER	SHEBOYGAN FALLS	WI	0	0	0
NWX4380	Crossing Pipeline	KRAFT CHEESE CO	PLYMOUTH	WI	0	0	0
NWX5018	Crossing Pipeline	KRAFT CHEESE CO.	PLYMOUTH	WI	0	0	0
NWX5950	Crossing Pipeline	WISCONSIN PUBLIC SERVICE CORP.	KOHLER	WI	0	0	0
NWX5973	Crossing Pipeline	THE BORDEN CO	PLYMOUTH	WI	0	0	0
NWX6265	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0	0
NWX7248	Crossing Pipeline	O W TUM	SHEBOYGAN FALLS	WI	0	0	0
NWX7471	Crossing Pipeline	WISCONSIN PUBLIC SERVICE CORP	PLYMOUTH	WI	0	0	0
NWX7477	Crossing Pipeline	KRAFT BROTHERS CHEESE CO.	PLYMOUTH	WI	0	0	0
NWX8329	Crossing Pipeline	A. RUSELUNK & W. GALERIESE, JR	SHEBOYGAN FALLS	WI	0	0	0
NWX8332	Crossing Pipeline	LAKE LE MAHLEN	SHEBOYGAN FALLS	WI	0	0	0
NWX8388	Crossing Pipeline	HENRY P EDLER	SHEBOYGAN FALLS	WI	0	0	0
NWX8414	Crossing Pipeline	HARRISON JOSLIN	SHEBOYGAN FALLS	WI	0	0	0
NWX8415	Crossing Pipeline	OTTO FENNER & LAKE LEMAHLEN	SHEBOYGAN FALLS	WI	0	0	0
NWX8425	Crossing Pipeline	PLYMOUTH REFRIGERATOR, WATER & POWER CO.	PLYMOUTH	WI	0	0	0
NWX8935	Easement - Pipe, Wire, Roadway, Drainage	KOHLER, VILLAGE OF	KOHLER	WI	0	0	0
NWX8925	Easement - Pipe, Wire, Roadway, Drainage	CHARTER COMMUNICATIONS	SHEBOYGAN FALLS	WI	888	0	0
217871	Encroachment - Wireline	BEAUS MANUFACTURING COMPANY	SHEBOYGAN FALLS	WI	7.5	0	0
223047	Encroachment - Wireline	BEAUS MANUFACTURING	SHEBOYGAN FALLS	WI	5.25	0	0
NWY0535	Exchanges of Property	MILW & NORTHERN RAILWAY CO.	PLYMOUTH	WI	0	0	0



**SURFACE TRANSPORTATION BOARD**

**Notice of Exemption**

**Finance Docket No. 35191**

**Wisconsin & Southern Railroad Co.  
-- Trackage Rights --  
Union Pacific Railroad Company**

Union Pacific Railroad Company ("UPRR") has agreed to grant Wisconsin & Southern Railroad Co. ("WSOR") overhead trackage rights between UPRR Milepost 4.0 in Kohler, WI and UPRR Milepost 1.2 at Kohler Junction near Sheboygan, WI, a distance of 2 8 miles. The trackage rights provide WSOR with rail access to the facilities of the former Cargill Malting Plant at Kohler as well as enable WSOR to interchange freight with UPRR at Sheboygan. The trackage rights will be effective on April 15, 2009.

This notice is filed pursuant to 49 CFR 1180 2(d)(7).  
Petitions to revoke the exemption under 49 U.S.C. 10502(d)

may be filed at any time. The filing of a petition to  
revoke will not stay the transaction

Dated. \_\_\_\_\_

By the Board

Anne K. Quinlan,

Acting Secretary

(Seal)