

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

The Chicago, Lake Shore and South Bend Railway) Company--Acquisition and Operation Exemption--) Norfolk Southern Railway Company)	F.D. Docket No. 34960
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Joint Stipulation Regarding Confidential Designation Of Various Documents In
Reply of The Chicago, Lake Shore and South Bend Railway Company
to Petition to Revoke and Stay Exemption

This Joint Stipulation is jointly filed on behalf of the City of South Bend, Indiana (“City”), Brothers of Holy Cross, Inc. (“Brothers”) and the Sisters of the Holy Cross, Inc. (“Sisters”) (collectively referred to hereinafter as “Respondents”) and The Chicago, Lake Shore and South Bend Railway Company (“CLS&SB”).

Background

Whereas, on December 4, 2006, CLS&SB filed a Motion for a Protective Order covering certain “proprietary email and written correspondence between CLSSB and Norfolk Southern Railway Company in connection with the sale of the subject rail line.”¹ Respondents immediately filed a reply to the motion challenging the confidentiality of the unidentified documents;

Whereas, by Decision served December 14, 2006, the Board’s Secretary granted CLS&SB’s motion;

¹ CLS&SB Motion at p. 1.

Whereas, Respondents, on December 19, 2006, filed a Motion to Strike Confidential Designation of Various Documents In Reply of The Chicago, Lake Shore and South Bend Railway Company to Petition to Revoke and Stay Exemption, and

Whereas the parties have jointly resolved all issues regarding the confidentiality of the tendered documents;

Is it hereby Stipulated and Agreed that;

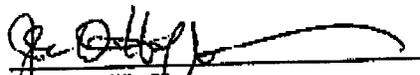
1. The documents attached to CLS&SB's Petition to Reject Application and identified as Exhibits A, B, C, D and E shall be treated as proprietary and confidential and subject to the Undertaking.

2. It is further understood and agreed that Exhibits D and E, which are confidential, are copies of an edited version of page 6 of a December 2, 2005 draft of a proposed Purchase and Sales Agreement prepared by Norfolk Southern Railway Company ("NSR"). Because the original "12-2-05" draft was previously forwarded on June 12, 2006 to counsel for Respondents for their use, the original draft shall not be treated as proprietary and confidential and shall not be subject to the Undertaking.

3. The documents attached to CLS&SB's Petition to Reject Application and identified as Exhibits F, G, H, I, J, K and L (copies of which are attached hereto) shall not

be treated as proprietary and confidential and shall not be subject to the Undertaking.

Respectfully submitted,



John D. Heffner
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1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
Counsel for The Chicago, Lake Shore
& South Bend Railway Company
(202) 263-4180



Jeffrey M. Janowski
Deputy City Attorney
227 West Jefferson Blvd.
South Bend, IN 46601
Counsel for the
City of South Bend, IN
(574) 235-9241



Richard H. Streeter
Barnes & Thornburg LLP
750 17th Street, N.W. Suite 900
Washington, D.C. 20006
Counsel for the Brothers of Holy Cross, Inc.
and Sisters of the Holy Cross, Inc.
(202) 408-6933

Dated: December 27, 2006

EXHIBIT F



CITY OF SOUTH BEND

STEPHEN J. LUECKE, MAYOR

OFFICE OF THE MAYOR

June 1, 2006

Mr. John Affleck-Graves
Executive Vice President
University of Notre Dame
400 Main Building
Notre Dame, IN 46556

Dear John:

During recent discussions with my staff, Gary Landrio indicated that South Bend Short Line Railroad is moving forward with plans to purchase the track right-of-way which runs from the west side of South Bend to Notre Dame. Though I know that there are potential cost savings for the University from having coal delivered by train, I cannot support the plan that Mr. Landrio's group has presented. I wanted to let you know that the City will actively oppose this purchase.

This line has effectively been abandoned for years. Some of the rails have been removed, most of the ties are seriously deteriorated or missing. While some estimates indicate that it would take over \$1 million to make the tracks and trestle safe for use (and this figure does not include any funds for traffic control gates at street intersections), Mr. Landrio proposes to start operations with an initial investment of \$200,000. This does not give me confidence in their business plan.

Even if the track and trestle were to be fully restored to safe conditions, the reintroduction of train traffic to these tracks would be negative for the neighborhoods they traverse. Over the years, train whistles have been a source of major complaints to my office. This line would add seventeen crossings, each requiring the train to blow its whistle. Other train noise and adverse community impacts would be detrimental to residential areas. Initially, the short line railroad would deliver fifteen cars of coal to the university. Because the locomotive cannot pull all fifteen loaded coal cars up the Angela hill, the cars would be parked near North Shore Club as the locomotive shuttles five cars at a time. So each delivery would entail crossing 933 six times (without any traffic controls). The number of cars per delivery could grow to thirty, doubling the shuttle time and the crossings of a major entry to South Bend. In addition to the 933 crossing, I am particularly concerned with an unprotected crossing of Lincolnway West.

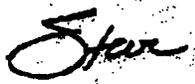
COUNTY-CITY BUILDING • 227 W. JEFFERSON BOULEVARD • SOUTH BEND, INDIANA 46601
PHONE 574/235-9261 • FAX 574/235-9892 • TDD 574/235-5567

Mr. John Affleck-Graves
June 1, 2006
Page 2

Mr. Landrio's group has shown little regard for neighborhood concerns. He has proposed that the City close streets at the crossings, rather than take the responsibility to install traffic control gates. He is not planning to make any significant improvements to the trestle over the river. He believes that residents will welcome hearing the train horns. These are among the many reasons that I oppose this proposal. It is hard for me to find positives here. To be honest, federal regulations make the chance for a successful remonstrance unlikely. Nevertheless, we will state our case for the record, focusing on the safety and quality of life issues as well as the investment needed to bring this line up to standards.

I will be out of town for two weeks. If you or your staff would like any additional information from us, please contact Gary Gilot, Director of Public Works (235-5923).

Sincerely,



Stephen J. Luecke
Mayor

EXHIBIT G



City of South Bend Common Council

441 County-City Building • 227 W. Jefferson Blvd
South Bend, Indiana 46601-1830

(574) 235-9321
Fax (574) 235-9173
TDD (574) 235-5567
<http://www.ci.south-bend.in.us>

Timothy A. Rouse
President

Roland Kelly
Vice-President

Karen L. White
Chairperson, Committee
of the Whole

Derek D. Dieter
First District

Charlotte D. Pfeifer
Second District

Roland Kelly
Third District

Ann Puzzello
Fourth District

David Varner
Fifth District

Ervin Kuspa
Sixth District

Al "Buddy" Kirsits
At Large

Timothy A. Rouse
At Large

Karen L. White
At Large

Kathleen Czekanski-Farrand
Council Attorney

Carol Colby Kaesebier
Vice-President and General Counsel
University of Notre Dame

John Affleck-Graves
Executive Vice President
University of Notre Dame

James J. Lyphout
Vice President for Business Operations
University of Notre Dame
317 Main Building
Notre Dame, Indiana 46556

Paul Kempf, Director of Utilities
102 Facilities Building
University of Notre Dame
Notre Dame, Indiana 46556

June 13, 2006

Facsimile: (574) 631-8212

Re: **Proposed South Bend Short Line Railroad Services to the
University of Notre Dame**

Dear Vice-Presidents Kaesebier, Affleck-Graves and Lyphout and Mr. Kempf:

The South Bend Common Council is calling a Committee of the Whole meeting on **Thursday, June 15, 2006, 5:00 p.m.**, in the Council Informal Meeting Room, 4th Floor County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601. We respectfully request each of you to be present for this meeting or if you are unable to attend to send a representative from your office.

We are faxing to you a copy of Mayor Stephen J. Luecke's June 1st letter which he sent to Mr. Affleck-Graves, which summarizes some of the many concerns which the city has regarding the proposed South Bend Short Line Railroad services to the university.

Yesterday, the South Bend Common Council received an update from our Public Works Director, Gary Gilot, who highlighted the following issues and concerns

regarding the proposed railroad spur line operations which would severely negatively impact South Bend. In light of the serious gravity of the situation with the purchase from Norfolk Southern by Mr. Landrio set for Wednesday, June 21st, we believe that a public meeting on this issue is imperative. In light of the many concerns raised we are also inviting U.S. Senator Evan Bayh, U.S. Senator Richard Lugar and U.S. House of Representatives Chris Chocola to this meeting.

- Multiple safety concerns
- Quality of life concerns
- Impact on neighborhoods/commercial corridors
- Lack of private investment by Gary Landrio
- Lack of commitment from Mr. Landrio to seven (7) identified "minimum requirements" for such operations to be operable ?

Several additional concerns were raised by the Council, which included:

- Proposed South Bend Short Line Railroad Services being totally incompatible with the South Bend City Plan ?
- Financial impact to the City of South Bend regarding multiple public safety concerns of the proposed seventeen (17) crossings of public streets; four (4) crossing on private properties and a minimum of five (5) public alleys which are blocked or dead-ended by rails
- Potential violations of the Manual of Uniform Traffic Control Devices ?
- Potential safety violations of applicable federal laws ?

The City of South Bend values the many contributions made by the University to our community. However, it appears that the minimal economic benefit of transporting coal by rail instead of by truck which the university may realize will undoubtedly cause detrimental effects on the South Bend community.

The multi-faceted adverse effects of the proposed railroad spur line to the University of Notre Dame has the potential of harming the relationship between South Bend and Notre Dame. In light of the University's many positive outreach efforts, such as establishing a downtown office and revitalizing the neighborhoods around campus, we believe that this new business proposal on coal acquisition may cause irreparable harm to our future relationship.

The City is prepared to take all legal actions necessary to protect the public health, safety and welfare of our citizens, our neighborhoods, our businesses and the many cultural and entertainment venues located in South Bend.

We are also inviting Mr. Landrio to this meeting so that he may publicly address all of our concerns.

We look forward to open dialogue on this issue with each of you on Thursday at 5 p.m.

Thank you.

Sincerely,


Timothy A. Rouse
Council President

Enclosure

cc: The South Bend Common Council	Hand-Delivered
Mayor Stephen J. Luecke	Hand-Delivered
Rev. John Jenkins, University President	Fax: (574) 631-8212
U.S. Senator Evan Bayh	Fax: (574) 236-8319
U.S. Senator Richard Lugar	Fax: (317) 226-5508
U.S. House of Representatives Chris Chocola	Fax: (574) 251-1066
John Voorde, City Attorney	Hand-Delivered
Charles S. Leone, City Attorney	Hand-Delivered
Kathleen Cekanski-Farrand, Council Attorney	Hand-Delivered
Gary Gilot, Public Works Director	Hand-Delivered
Jeffrey M. Janskowski, Deputy City Attorney	Hand-Delivered
The Board of County Commissioners	Hand-Delivered
Rafael Morton, President of County Council	Hand-Delivered
Mr. Mark Eagan, Chamber of Commerce	Fax: (574) 289-0358
Sandra Seanor, MACOG	Hand-Delivered
Mr. Gary Landrio, South Bend Short Line Railroad	Fax: (814) 726-9855
Federal Railroad Administration	webmaster@fra.dot.gov
News Media	

EXHIBIT H

CLB+SB

john heffner

From: "Randall Gustafson" <randygustafson@stoneconsulting.com>
To: "John Heffner, Esq." <j.heffner@verizon.net>
Sent: Friday, June 23, 2006 1:48 PM
Subject: Fw: South Bend STB filing (City)

They have some learning to do about the STB process, but they certainly made well on their intent to participate.

Do you think that the overt attempts to strongarm ND into not using the railroad actually constitute interference with interstate commerce? I'm beginning to wonder here. This is pretty bad:

"I assured the mayor at that stage that if the city and the county were strongly opposed to the railroad proposal, the university would not go forward," Affleck-Graves said.

Notre Dame officials have worked hard over the years to build a strong relationship with the city, the county and local residents. "We would not do anything to damage that relationship," Affleck-Graves said.

That doesn't mean that the university always will agree with local governmental officials on every matter, he said. But in the case of the railroad proposal, Notre Dame will yield to the wishes of the local community, he said."

At what point can you actually sue the city for damages?????

----- Original Message -----

From: Randall Gustafson
To: garylandrio@stoneconsulting.com ; harveystone@stoneconsulting.com
Sent: Friday, June 23, 2006 1:39 PM
Subject: South Bend STB filing (City)

This just in:

<http://www.stb.dot.gov/filings/all.nsf/6084f194b67ca1c4852567d9005751dc/9365110db9c7d2de8525719500565a?OpenDocument>

6/23/2006

EXHIBIT I

**HOLY CROSS VILLAGE / CCRC
RAILROAD CROSSING APPROVALS
MEETING NOTES AND ISSUE SUMMARY**

PANZICA

**MAY 30, 2006 / 10:00 – 11:45 AM / Holy Cross Brothers Provincial Offices
First Floor Conference Rm / Notre Dame, IN**

ATTENDEES:

Brother John May, CSC, Director of Planning, Brothers of Holy Cross, Midwest Province
Brother Thomas Shaughnessy, CSC, President of Development, HCB, Midwest Province
Brother Richard Gilman, CSC, President, Holy Cross College
Ron Searcy, AIA, The Troyer Group, Mishawaka, IN
Gerry Phipps, P.E., The Troyer Group, Mishawaka, IN
Dick Mintz, Attorney, Barnes & Thornburg, South Bend, IN
Gary Landrio, Stone Consulting (South Bend Rail Company (SBRC)), Warren, PA
Philip Panzica, RA, President, Panzica Building Corporation, South Bend, IN

ITEMS DISCUSSED:

- 1) **SBRC OVERVIEW:** Gary Landrio was introduced to the meeting attendees and gave an overview of SBRC's purchase of the coal line. The purchase and placing the line back into service has numerous goals and issues, including:
 - Historically the line has provided coal service to ND. SBRC will be repairing the tracks and placing the line back into service to deliver coal to Notre Dame. Loading and trucking coal to ND is not environmentally sound and uses substantially more fuel to deliver coal within the City.
 - University currently uses 80,000 tons of coal annually, with the anticipated growth to over 100,000 tons annually in the future. SBRC anticipates 30 carloads weekly, delivered by (2) trains of 15 cars weekly.
 - When the tracks are placed back into service, SBRC sees opportunities to increase the use of the rail with passenger trains to Holy Cross College, St. Mary's and Notre Dame. SBRC envisions a limited Friday/Saturday service schedule to support students at breaks, Christmas and other busy weekends. SBRC also envisions having trains come in on football game days to bring fans to the campus.
 - An affiliate rail organization, the South Shore Heritage Line Foundation, is looking for space along the line to create a working train museum. Consideration is being given to a parcel of land the rail line may control at the north end of St. Mary's campus.
 - The SBRC has signed the Norfolk and Southern purchase agreement and both parties have agreed to a closing on the rail June 21, 2006 in Atlanta, Georgia.
 - SBRC envisions this line becoming a "full line" rail service of both coal cars and passenger cars. HCV needs to consider that coal cars are heavily loaded and require longer distances to start and stop and most likely coal cars will continue to travel the campus at +/- 10 MPH loaded, up to 20 MPH when hauling empty cars out. Passenger train cars are lighter and are able to start and stop quicker; therefore, they will travel the campus at 30+ MPH. Crossings must be given serious consideration for safety.

- SBRC is not requiring the crossings to be upgraded immediately. The upgrades will be implemented when the level of service increases.
 - Coal service is anticipated to begin September 2006.
 - Passenger service is anticipated to begin September 2007.
- 2) **RAIL DISCUSSION:** The group had an open discussion concerning the lines route through the City of SB, neighborhoods, museum goals and numerous obstacles to placing the line in service.
 - 3) **VILLAGE ISSUES:** It was agreed that the focus of the meeting was to seek mutual agreement on railroad crossings for the HCV campus. Although the project team had hoped the rail would be abandoned, the Brothers of Holy Cross are not obstructionists to the apparent reopening. The immediate need is for SBRC and HCV-CCRC to agree upon location and parameters of the proposed crossings and unapproved existing crossings.
 - 4) **UTILITY CROSSINGS:** SBRC acknowledges that the HCB's have had N&S review and now have a 90-day permit for installation of the storm sewer, electrical power and communication conduits passing under the railroad. SBRC acknowledged that they would accept those improvements as authorized by N&S upon their acquisition of the rail.
 - 5) **IL GARAGE DRIVE:** The proposed crossing was discussed. SBRC may allow the drive to be a temporary crossing while the coal service starts up, however, it will not be a safe crossing when passenger service begins. Consideration must be given to rerouting the exit along the west side of the HC Cemetery so occupants don't have to cross the rail line twice.
 - 6) **EXISTING NORTH DRIVE:** It was discussed and documented by Troyer that correspondence and applications for permitting this drive was submitted to Conrail, however the line was out of service and Conrail never responded to the application. Pavement was laid across the line in late fall prior to paving plants closing and remains in service.
 - 7) **ALTERNATE DRIVE CROSSINGS:** Gary Landrio placed onto the conference table a project site plan with colored alternate routes. A general discussion of the advantages and disadvantage of the alternate routes ensued. Brother Shaughnessy pointed out that the alternate paths indicated by SBRC were within their rail R/W, and questioned if SBRC was willing to allow additional parallel drives into the R/W. Gary Landrio agreed that that parallel drive encroachment would be feasible.
 - 8) **TRACK CLEARANCE:** If we are to place drives within the R/W, Gary Landrio has directed that we remain minimum 20'-0" clear in each direction from the centerline of the track for a clear area total of 40'-0" wide. We can encroach maximum 30'-0" in on each side.
 - 9) **MASTER AGREEMENT:** The discussion rolled into questions on SBRC's proposed value of these crossing. Gary Landrio proposed that SBRC and HCB enter into a "Master Agreement" that embodies and accepts the (2) "farm crossings", all existing and new underground utility crossings, and all existing and new parallel drives that encroach into the rail R/W. Gary proposes to draw up this agreement and the fee would be \$50,000.00 (Fifty-Thousand Dollars) to encompass all these issues. The money would be placed in an escrow account and be transferred to SBRC upon closing.

- 10) NORTH HOLY CROSS DRIVE ABANDONED RAIL R/W: It was discussed that there is some inconsistency in title to the abandoned rail R/W where Holy Cross Drive exists. Gary Landrio agreed that he would provide a "quit claim deed" or other instrument to release any ownership that SBRC would have on this area of land.
- 11) PLANNING: It was agreed that based upon the discussions, The Troyer Group would review existing planning and try to resolve the drives into only (2) crossings and an exit drive from the IL would pass within the R/W, on the east side of the tracks.
- 12) AGREEMENT PREPARATION: Gary Landrio will prepare a draft agreement for review by the Brothers.

END

Distribution:

All Attendees

Stephen J. Bardoczi, VP Project Development, Franciscan Sisters Service Corporation

Gene C. Hooton, Project Manager, Greystone

Tim Panzica, President, Panzica Construction, Cleveland

Tom Panzica, Project Manager, Panzica Building Corporation

Meeting Notes Prepared by Philip Panzica, R.A.,



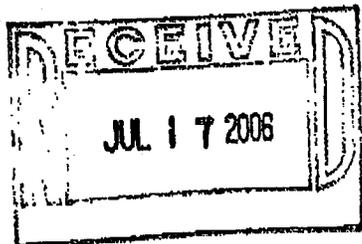
EXHIBIT J

BARNES & THORNBURG LLP

600 1st Source Bank Center
100 North Michigan
South Bend, IN 46601-1632 U.S.A.
(574) 233-1171
Fax (574) 237-1125

www.btlaw.com

Richard L. Mintz
(574) 237-1166
Email: dick.mintz@btlaw.com



July 14, 2006

Mr. Gary Landrio
Stone Consulting & Design, Inc.
324 Pennsylvania Avenue West
Post Office Box 306
Warren, Pennsylvania 16365

Dear Gary:

Enclosed you will find a Permanent Easement Agreement which encompasses our understandings. In order to "close the loop," I have made Norfolk Southern a party to the Agreement. It is my understanding that they have agreed in principle to accept any Agreements which you make with the Brothers. If you believe that obtaining their signature will unduly delay this matter, please let me know.

I will wait to hear from you.

Sincerely,

BARNES & THORNBURG LLP

Richard L. Mintz

RLM:jl
Enclosure

cc: Curtis A. Coffey, Ph.D., CPA

8BDS02 DMINTZ 341100v1

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT (this "Easement Agreement") is made and entered into by and among NORFOLK SOUTHERN CORPORATION, a Virginia corporation ("Norfolk Southern"), THE CHICAGO, LAKE SHORE AND SOUTH BEND RAILWAY COMPANY, an Indiana corporation ("Purchaser") and BROTHERS OF HOLY CROSS, INC., an Indiana non-profit corporation ("BOHC").

BACKGROUND

A. BOHC owns certain property located between the St. Joseph River and State Road 933 North (U.S. 31) in Notre Dame, Indiana, which serves as the site of Holy Cross College, Holy Cross Village and other uses furthering the charitable mission of BOHC (the "Campus");

B. A one hundred (100) foot wide railroad right-of-way which has been used by Norfolk Southern extends over and through the Campus, the center line of which enters the Campus (from crossing the St. Joseph River) at a point 1122 feet West of the Southeast corner of Section 35 in Township 38 North, Range 2 East, and thereafter curves Easterly and runs Northerly and Northeasterly across said Campus (the "Railway ROW");

C. In exchange for certain amounts to be paid and agreements to be performed by BOHC, Norfolk Southern has agreed to grant certain easement and other rights to BOHC all on the terms and conditions set forth in this Easement Agreement; and

D. Norfolk Southern and Purchaser have entered into discussions for the purchase and sale of any rights held by Norfolk Southern in various properties and rights of way, including without limitation, the Railway ROW and Purchaser desires to be a party to this Easement Agreement to (a) confirm its agreement with the terms hereof which shall be considered to run with the land, and (b) acknowledge that, in the event it purchases the Railway ROW, such Railway ROW will be subject to the terms hereof.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and in exchange for other good and valuable consideration, the parties hereby agree:

1. Background. The background provisions above are incorporated into the body of this Easement Agreement as if fully set forth herein.

2. Payment. Within two (2) business days of the full execution of this Agreement by all parties, BOHC agrees to pay Norfolk Southern the sum of Fifty Thousand Dollars (\$50,000) in cash or other immediately funds ("Funds"). Upon payment of such Funds to Norfolk Southern, BOHC may record this Easement Agreement with the Office of the Recorder of St. Joseph County, Indiana.

3. Railway ROW and Easement for Certain Uses.

(a) Railway ROW. Norfolk Southern represents and warrants that it owns fee simple title in and to the Railway ROW, which is a one hundred (100) foot wide strip of land (fifty (50) feet on each side of the centerline of such right of way) extending through the Campus as shown on Exhibit A attached hereto. For purposes of this Easement Agreement, the parties acknowledge and agree that (i) the first twenty (20) feet extending from the centerline from the Railway ROW (in both directions) toward the edge of such Railway ROW is referred to as the "Inside Strip," and (b) the remaining area of the Railway ROW extending from the outside edge of the Inside Strip to

the outside edge of the Railway ROW (which is 30' on each side of such ROW) is referred to as the "Outside Area".

(b) *Existing BOHC Facilities.* Norfolk Southern hereby consents to the location of and grants and conveys to BOHC, for the benefit of the Campus, a perpetual, non-exclusive easement over, across, under and through the Railway ROW, for the location, maintenance, repair and replacement of any facilities or improvements currently located within the Railway ROW, including without limitation, the following facilities shown on the print of drawings marked Site Plan Independent Living Appt., C1-101 Plan view dated 12/21/2005, attached hereto and made a part hereof as Exhibit B (hereinafter called "Facilities"):

- (i) Sta. 3+12 = Electric wires aerial;
- (ii) Sta. 3+38 to Sta. 12+94 = A longitudinal road on the west side of the tracks ultimately to be constructed between the north and south Holy Cross crossing of the railroad;
- (iii) Sta. 3+38 to Sta. 6+50 = A longitudinal road on the east side of the tracks;
- (iv) Sta. 5+58 = sanitary sewer buried;
- (v) Sta. 6+07 = 600 gallon dry well;
- (vi) Sta. 6+98 = new 2006 buried conduits;
- (vii) Sta. 11+79 = buried electrical conduct;
- (viii) Sta. 12+42 = buried 6" water line;
- (ix) Sta. 12+65 = buried natural gas line;
- (x) Sta. 14+75 = 24" storm sewer line

BOHC shall, at its expense, promptly make all necessary repairs it deems necessary to the Facilities and/or which interfere with the operations of Norfolk Southern along the Railway ROW. Upon completion of any such repairs or replacement of Facilities, to the extent that such repairs or replacement has damaged any property within the Railway ROW, BOHC shall repair and return such property to substantially the same condition as existed prior to the undertaking of the repair or replacement activity, all at BOHC's sole expense.

(c) *Easement for Improvements within Outside Area.* Norfolk Southern hereby grants and conveys to BOHC, and its successors in title to the Campus property immediately adjacent to the Railway ROW, a perpetual and non-exclusive easement for the installation, location, operation, maintenance, adjustment, replacement, repair, alteration, removal, and use of any non-structural improvements and equipment within the Outside Area, only, which do not unreasonably interfere with or cause a safety hazard related to actual operations within the Railway ROW.

(d) *Crossings.*

(i) *Existing Crossings.* Norfolk Southern hereby consents to the location of and grants and conveys unto BOHC, for the benefit of the Campus, a perpetual, non-exclusive easement over and across the two (2) existing 30 feet wide private road crossings, each of which cross the Railway ROW within the Campus as generally shown on Exhibit B attached hereto (the "Existing Crossings").

(ii) *Additional Crossing.* Norfolk Southern hereby grants and conveys to BOHC, and its successors in title to the Campus property immediately adjacent to the Railway ROW, a perpetual and non-exclusive easement for the installation, maintenance, replacement, removal, and use of one additional 30 foot wide private road crossing over

and across the Railway ROW at a point within the Campus to be reasonably determined by BOHC (the "New Crossing," and with the Existing Crossings, the "Crossings").

(iii) *Maintenance/Repair of Crossings.* Norfolk Southern will, for the accommodation of and at the expense of BOHC, perform the work of constructing, maintaining and removing (at the request of BOHC) the portion of the Crossings located within the Inside Strip. BOHC will pay Norfolk Southern, promptly upon bill rendered therefor, the actual expenditures incurred by Norfolk Southern in connection with the construction, maintenance and removal of the Crossings including, but not restricted to, the expenditures herein expressly described. BOHC will, at its expenses, construct, maintain and remove the Crossings (except the portion to be constructed, maintained and removed by Norfolk Southern as noted above) within the Outside Area, including all necessary drainage, in all respects in accordance with the requirements of Norfolk Southern looking to the safe and convenient operation and maintenance of the Railway ROW.

(iv) *Signaling.* In the event Norfolk Southern resumes operations along the Railway ROW through the Campus, and at the request of Norfolk Southern, BOHC will contribute up to \$30,000 for the installation of signal facilities and other Railroad facilities at each Crossing which are necessary or required by law at such Crossing; provided Norfolk Southern requires the installation and/or otherwise actually installs signal facilities at all similarly situated crossings along its railway right-of-way within South Bend.

(v) *Use.* No person other than BOHC, its agents, employees, patrons, guests or invitees or those guests of such agents, employees, patrons or invitees, shall be permitted to use the Crossings. BOHC hereby agrees that the Crossings shall be private crossings only for the use and convenience of BOHC and as those noted above, and shall not be, or be permitted to become, a highway for the use of the public. In the event the New Crossing is installed, BOHC will, at its expense, construct and maintain, at a point to be designated by the Superintendent of Norfolk Southern or his duly authorized representative, a signboard clearly indicating that the Crossings are for the private purposes of BOHC. In addition, BOHC will, at its sole expense, provide for the installation and maintenance of caution, traffic signs and barricades on its Campus, including automatic warning devices subject to Section 3(d)(iv) above, which are required by any authorized public authority to be so installed. Norfolk Southern's failure to require protective signs, barricades or automatic warning devices shall not affect BOHC's liability under the terms of this Easement Agreement.

(vi) *No Public Use.* It is specifically understood that the Crossings shall not be permitted to become a public grade crossing without the written consent of Norfolk Southern and unless arrangements satisfactory to Norfolk Southern are made for the installation and maintenance of protective devices, without cost or expense to Norfolk Southern. If a Crossing should at any time in the future become a public grade crossing, BOHC shall bear, or shall cause such public authority as may assume responsibility for said public grade crossing to bear, the cost of furnishing, installing and maintaining automatic signals, or such other protective devices deemed necessary by Norfolk Southern to protect said public grade crossing.

(vii) *Vegetation.* In order to contribute toward the safety of train and motor vehicle operations at the Crossings, BOHC will, at all times during which Norfolk Southern is operating along the Railway ROW, keep the vegetation on the Campus cut in

such a manner and to such extent as is necessary to permit a person approaching a Crossing from either direction to see approaching trains before such person reaches a position of danger on or near the Crossing.

(viii) *Easement for Utilities.* Norfolk Southern hereby dedicates, grants and conveys for the benefit of the Campus a perpetual, general easement for the purpose of the construction, installation and maintenance of utility facilities servicing the Campus, under each of the Crossings (each, a "Utility Easement Area"), for the purpose of installing, maintaining, repairing, replacing, reinstalling, operating, inspecting and keeping in working order the utility facilities servicing the Campus that are installed and run under each Utility Easement Area.

(e) *Improvements within Inside Strip.* The parties acknowledge and agree that, except as otherwise specifically provided in this Easement Agreement, so long as the Railway ROW is not abandoned, BOHC shall have no right to locate any improvements within the Inside Strip without the prior approval of Norfolk Southern.

4. Insurance.

(a) *Crossings.* BOHC shall procure and maintain during all such periods that (i) Norfolk Southern operates along the Railway ROW, and (ii) BOHC uses the Crossings, a policy of Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence for injury to or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide contractual liability coverage for liability assumed under this Easement Agreement and shall be of a form that does not deny coverage for operations conducted within 50 feet of any railroad hazard. In addition, said policy shall be endorsed to name Norfolk Southern as an additional insured and shall include a severability of interests provision.

(b) *Maintenance of Facilities, Utilities and Other BOHC Improvements.* BOHC shall procure and maintain during all such periods that (i) Norfolk Southern operates along the Railway ROW, and (ii) BOHC is obligated to perform any maintenance activities on the Facilities, utilities with the Utility Easement Area or other improvements installed by BOHC, BOHC, or its contractor if it employs one, shall furnish Norfolk Southern with an original Railroad Protective Liability Insurance Policy naming Norfolk Southern as the named insured and having a limit of not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate.

(c) *General.* All insurance required under this Section shall be underwritten by insurers and be of such form and content as are reasonably acceptable to Norfolk Southern. As evidence of said insurance, a certificate of insurance shall be furnished to Norfolk Southern upon request. The certificate of insurance shall state that thirty (30) days advance written notice will be given to Norfolk Southern of any material change in, or cancellation of such insurance.

5. Indemnification. BOHC hereby agrees to indemnify and save harmless Norfolk Southern, its officers, agents and employees, from and against any and all liability, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever occurring which arises in any manner from the installation, maintenance, operation, presence or removal or the failure to properly install, maintain, operate or remove the Facilities, other BOHC improvements or any utilities constructed by BOHC anywhere within the Railway ROW unless such losses, damages or injuries shall be caused solely by the negligence of Norfolk Southern.

6. Environmental Matters. BOHC assumes all responsibility for any environmental obligations imposed under applicable laws, regulations or ordinances relating to the installation of the Facilities and/or to any contamination of any property, water, air or groundwater arising or resulting from BOHC's permitted operations or uses of Norfolk Southern's property pursuant to this Easement Agreement. In addition, BOHC shall obtain any necessary permits to install any facilities or improvements permitted to be installed under this Easement Agreement. BOHC agrees to indemnify and hold harmless Norfolk Southern from and against any and all liability, fines, penalties, claims, demands, costs (including attorneys' fees), losses or lawsuits brought by any person, company or governmental entity relating to contamination of any property, water, air or groundwater due to the use or presence of the Facilities, utilities or improvements installed by BOHC. It is agreed that this indemnity provision extends to any cleanup costs related to BOHC's activities upon Norfolk Southern's property.

7. Right to Cure. In case of failure of BOHC to do the work as herein specified or if BOHC fails to take any corrective measures requested by Norfolk Southern in a timely manner or if an emergency situation is presented which, in Norfolk Southern's judgment, requires immediate repairs to the Facilities or any other BOHC improvements within the Railway ROW, Norfolk Southern, at BOHC's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

8. Changes. If Norfolk Southern shall make any changes, alterations in or additions to the line, grade, tracks, structures, roadbed, installations or works of railroad at or near the Facilities, BOHC shall, at its own cost and expense, upon thirty (30) days' notice in writing from Norfolk Southern, make such changes in the location and character of the Facilities or other improvements of BOHC within the Railway ROW as, in the opinion of the chief engineering officer of Norfolk Southern, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions made by Norfolk Southern (or its successor).

9. Cathodic Protection. BOHC will notify Norfolk Southern prior to the installation and placing in service of cathodic protection within the Railway ROW in order that tests may be conducted on any signal, communications and other electronic systems used by Norfolk Southern along the Railway ROW for possible interference. If the Facilities cause degradation of the signal, communications or other electronic facilities of Norfolk Southern, BOHC, at its expense, will relocate the cathodic protection and/or modify the Facilities to the satisfaction of Norfolk Southern so as to eliminate such degradation. Such modifications may include, without limiting the generality of the foregoing, providing additional shielding, reactances or other corrective measures deemed necessary by Norfolk Southern. This provision applies to the existing signal, communications and electronic equipment of Norfolk Southern and to any signal, communications or electronic equipment which may be installed in the future.

10. Labor. Norfolk Southern shall furnish, at the cost of BOHC, labor and materials to support its tracks and to protect its traffic during the installation, maintenance, repair, renewal or removal of any Facilities and the New Crossing.

11. Notice. BOHC shall give Norfolk Southern seventy-two (72) hours' advance notice (or less in case of emergencies) of any work to be performed by it within the Railway ROW. BOHC agrees to pay any costs incurred by Norfolk Southern (or its successors in interest to the Railway ROW) for the purpose of protection and inspection considered necessary by Norfolk Southern during installation, maintenance, operation, modification, replacement and/or removal of the Facilities or any other improvement within the Railway ROW.

12. Binding Nature. The easements herein granted and the covenants and restrictions herein contained shall be perpetual and shall run with the land and shall inure to the benefit of and be binding upon the parties hereto and their heirs, successors or assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, on the date or dates indicated below which Easement Agreement shall be effective on the date when signed by all parties.

Witness:

NORFOLK SOUTHERN CORPORATION

As to Norfolk Southern

By: _____
Its: _____

Witness:

**THE CHICAGO, LAKE SHORE AND
SOUTH BEND RAILWAY COMPANY**

As to Purchaser

By: _____
VP Engineering

Witness:

BROTHERS OF HOLY CROSS, INC.

As to BOHC

By: _____
Title: _____

EXHIBIT K

THIS AGREEMENT, made and entered into by and between

THE CHICAGO, LAKE SHORE AND SOUTH BEND RAILWAY COMPANY, an Indiana corporation, hereinafter styled "Railroad"; and

THE BROTHERS OF THE HOLY CROSS, an Indiana corporation, hereinafter styled "Licensee":

WITNESSETH:

THAT the PARTIES HERETO agree as follows:

1. THAT, for and in consideration of the premises, payment of an initial fee of ZERO DOLLARS (\$00.00) and also an annual fee of ZERO DOLLARS (\$0.00), payable annually in advance during the continuance of this Agreement, Railroad hereby grants unto Licensee, insofar as Railroad's title enables it so to do and without warranty, the right to construct, maintain, use and remove private road crossings, hereinafter called "Crossing," upon and across, at grade, the right of way or property and track (whether more than one track) of Railroad running between South Bend and Notre Dame, located at Milepost engineering Sta. 3+38 and 12+94, at or near Holy Crossing College, St. Joseph County, _____, located substantially as shown upon print of Drawing No. _____, dated June 9, 2006, attached hereto and made a part hereof.

2. Railroad will, for the accommodation of and at the expense of Licensee, perform the work of constructing, maintaining and removing the portion of the Crossing between the rails in said track and to the outside ends of the crossties on each side thereof, and shall revise, relocate and reconstruct signal facilities and other Railroad facilities in such manner as may be necessary to this project. Licensee will pay to Railroad, promptly upon bill rendered therefor, the actual expenditures incurred by Railroad in connection with the construction, maintenance and removal of the Crossing including, but not restricted to, the expenditures herein expressly described.

3. Licensee will, at the expense of Licensee, construct, maintain and remove the Crossing (except the portion to be constructed, maintained and removed by Railroad as aforesaid), including all necessary drainage, in all respects in accordance with the requirements of Railroad looking to the safe and convenient operation and maintenance of its line of Railroad.

4. No person other than Licensee, its agents, employees, patrons, or invitees, shall be permitted to use the Crossing. Licensee hereby agrees that the Crossing shall be a private crossing only for the use and convenience of Licensee, its agents, employees, patrons, or invitees and shall not be, or be permitted to become, a highway for the use of the public. To the end of preventing the use of the Crossing by the public, Licensee will, at its expense, construct and maintain, at a point to be designated by the Superintendent of Railroad or his duly authorized representative, a signboard clearly indicating that the Crossing is for the private purposes of Licensee.

5. In each instance when a vehicle approaches the Crossing, it shall stop and shall not proceed over said track of Railroad until the driver has ascertained that no train or other rail equipment of Railroad is approaching the Crossing. To that end, Licensee will, at Licensee's expense, provide for the installation and maintenance of such information, caution, traffic signs and barricades, including automatic warning devices, deemed necessary by Railroad or required by any authorized public authority. At Railroad's option, such protective devices may be installed and maintained by Railroad at the expense

of Licensee. Railroad's failure to require protective signs, barricades or automatic warning devices shall not affect Licensee's liability under the terms of this Agreement.

6. Licensee accepts the privilege hereby granted with full cognizance of the risk of loss of life, personal injury and property loss or damage that may be caused by Railroad operations at or in the vicinity of the Crossing and by the construction, maintenance, use or removal of the Crossing by the Licensee or others. The Licensee is willing to assume this risk and covenants that the privilege hereby granted shall be used and enjoyed at the sole risk of the Licensee, and that Railroad shall not have any responsibility whatever for any such loss, injury or damage. To that end, Licensee hereby agrees to indemnify and save harmless Railroad, its officers, agents and employees, from and against all liability, claims, loss, damage, expense (including attorneys' fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever, occurring or arising in any manner from Railroad operations at or in the vicinity of the Crossing and by the construction, maintenance, use or removal of the Crossing by the Licensee or others. The indemnity obligations imposed upon the Licensee by this paragraph shall be absolute and shall not be affected by the negligence, either primary or contributory, of the Railroad or its officers, agents and employees.

7. In order to contribute toward the safety of train and motor vehicle operations at the Crossing, Licensee will, at all times during the life of this Agreement, keep the vegetation on its property cut in such manner and to such extent as is necessary to permit a person approaching the Crossing from either direction to see approaching trains before such person reaches a position of danger on or near the Crossing. Licensee also will prevent the erection on its premises of any structures that would interfere with the view of approaching trains or other rail equipment operating on said track.

8. (a) Prior to entry on Railroad's property or use of the Crossing, Licensee shall procure and maintain during the life of this Agreement a policy of Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence for injury to or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide contractual liability coverage for liability assumed under this Agreement and shall be of a form that does not deny coverage for operations conducted within 50 feet of any railroad hazard. In addition, said policy shall be endorsed to name Railroad as an additional insured and shall include a severability of interests provision. As evidence of said insurance, a certificate of insurance shall be furnished to and approved by the VP Engineering, The Chicago, Lake Shore and South Bend Railway Company, P. O. Box 306, Warren, PA 16365-0306, prior to entry on Railroad's property or use of the Crossing. The certificate of insurance shall state that thirty (30) days advance written notice will be given to Railroad of any material change in, or cancellation of such insurance.

(b) The insurance coverage required herein shall in no way limit Licensee's liability under this Agreement.

9. It is specifically understood that the Crossing shall not be permitted to become a public grade crossing without the written consent of Railroad and unless arrangements satisfactory to the Railroad are made for the installation and maintenance of protective devices, without cost or expense to Railroad. If the Crossing should at any time in the future become a public grade crossing, Licensee shall bear, or shall cause such public authority as may assume responsibility for said public grade crossing to

bear, the cost of furnishing, installing and maintaining automatic signals, or such other protective devices deemed necessary by Railroad to protect said public grade crossing.

10. Licensee shall not assign this Agreement without the written consent of Railroad.

11. The word "Railroad" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railroad. Said term also shall include Railroad's officers, agents and employees, and any parent company, subsidiary or affiliate of Railroad and their officers, agents and employees.

12. Either party hereto may terminate this Agreement at any time hereafter by serving upon the other thirty (30) days' written notice of election so to do. If Licensee shall violate any of its covenants herein, Railroad may terminate this Agreement forthwith by written notice to Licensee of its election so to do. At or before the expiration of the time limited by any notice to Licensee of Railroad's election to terminate this Agreement, Licensee will discontinue use of the Crossing and will restore said right of way or property to the condition existing prior to the construction of the Crossing thereupon; or, in default thereof, in addition to any other legal remedy it may have, Railroad may close the Crossing and restore the condition of said right of way or property at the sole cost and expense of Licensee.

13. This Agreement shall take effect as of the ____ day of _____, 19__.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the ____ day of _____, 19__.

Witness:

By

As to Railroad.

VP Engineering

Witness:

By

As to Licensee

Title:

xc.wpd
Revised 6-8-06

EXHIBIT L

THIS AGREEMENT, made and entered into by and between **THE CHICAGO, LAKE SHORE AND SOUTH BEND RAILWAY COMPANY**, an Indiana corporation, hereinafter styled "Railroad"; and **BROTHERS OF THE HOLY CROSS**, an Indiana Corporation, hereinafter styled "Licensee":

WITNESSETH

WHEREAS, Licensee proposes to install, maintain and operate and several occupancies of the property located on, under and across the right of way or property and any tracks of Railroad, at Milepost 0.8, Main line, Line Code 3252, south of St. Mary's College, South Bend, St. Joseph County, Indiana including:

1. Sta. 3+12 = Electric wires aerial
2. Sta. 3+38 to Sta. 12+94 = A longitudinal road on the west side of the tracks ultimately to be constructed between the north and south Holy Cross crossing of the railroad.
3. Sta. 3+38 to Sta. 6+50 = A longitudinal road on the east side of the tracks
4. Sta. 5+58 = sanitary sewer buried
5. Sta. 6+07 = 600 gallon dry well
6. Sta. 6+98 = new 2006 buried conduits
7. Sta. 11+79 = buried electrical conduct
8. Sta. 12+42 = buried 6" water line
9. Sta. 12+65 = buried natural gas line
10. Sta. 14+75 = 24" storm sewer line

the same to be located in accordance with and limited to the installation shown on print of drawings marked Site Plan Independent Living Appt., C1-101 Plan view dated 12/21/2005, attached hereto and made a part hereof (hereinafter called "Facilities");

NOW, THEREFORE, for and in consideration of the premises, payment of a non-refundable, non-assignable initial fee of FORTY-NINE THOUSAND AND NO/100 DOLLARS (\$49,000), to cover the administrative fee (\$0), and the engineering fee (\$0), and a base rental payment (\$1,000), payable in advance of this Agreement, and of the covenants hereinafter made, and of the covenants hereinafter made, Railroad hereby permits and grants Licensee, insofar as Railroad has the right to do, without warranty and subject to all encumbrances, covenants and easements to which Railroad's title may be subject, the right to use and to occupy so much of Railroad's property as may be necessary for the Facilities, upon the following terms and conditions:

1. Licensee will construct and maintain the Facilities, at its expense, in such a manner as will not interfere with the operations of Railroad or endanger persons or property of Railroad, and in accordance with (a) plans and specifications (if any) shown on said print(s) and any other specifications prescribed by Railroad, (b) applicable governmental regulations or laws, and (c) applicable specifications adopted by the American Railroad Engineering Association when not in conflict with plans, specifications or regulations mentioned in (a) and (b) above. For the purposes of this Agreement, maintenance of the Facilities shall be deemed to mean replacement in kind. Any change to the character or capacity of the Facilities shall be considered an upgrade and will require execution of a new agreement.

2. Licensee hereby agrees to indemnify and save harmless Railroad, its officers, agents and employees, from and against any and all liability, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever occurring which arises in any manner from the installation, maintenance, operation, presence or removal or the failure to properly install, maintain, operate or remove the Facilities, unless such losses, damages or injuries shall be caused solely by the negligence of Railroad.

3. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations or ordinances relating to the installation of the Facilities and/or to any contamination of any property, water, air or groundwater arising or resulting from Licensee's permitted operations or uses of Railroad's property pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to install the Facilities. Licensee agrees to indemnify and hold harmless Railroad from and against any and all liability, fines, penalties, claims, demands, costs (including attorneys' fees), losses or lawsuits brought by any person, company or governmental entity relating to contamination of any property, water, air or groundwater due to the use or presence of the Facilities. It is agreed that this indemnity provision extends to any cleanup costs related to Licensee's activities upon Railroad's property and to any costs related to cleanup of the Facilities or to other property caused by the use of the Facilities.

4.(a). Without limiting in any manner the liability and obligations assumed by Licensee under any other provision of this Agreement, and as additional protection to Railroad, Licensee shall, at its expense, pay the Risk Financing Fee set forth in subparagraph (iii) below and shall procure and maintain with insurance companies satisfactory to Railroad, the insurance policies described in subparagraphs (i) and (ii).

- (i) Prior to commencement of installation or maintenance of the Facilities or entry on Railroad's property, Licensee, and its contractor if it employs one, shall procure and maintain for the course of said installation and maintenance, a general liability insurance policy naming Railroad as an additional insured, and containing products and completed operations and contractual liability coverage, with a combined single limit of not less than \$1,000,000 for each occurrence.
- (ii) Prior to commencement of any subsequent maintenance of the Facilities during the term of this Agreement, Licensee, or its contractor if it employs one, shall furnish Railroad with an original Railroad Protective Liability Insurance Policy naming Railroad as the named insured and having a limit of not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate.
- (iii) Upon execution of this Agreement, Licensee shall pay Railroad a Risk Financing Fee of \$0.00 per installation to provide for such supplemental insurance (which may be self-insurance) as Railroad, in its sole discretion, deems to be necessary or appropriate.

(b) All insurance required under preceding subsection (a) shall be underwritten by insurers and be of such form and content as may be acceptable to Railroad. Prior to commencement of installation or maintenance of the Facilities or any entry on Railroad's property, Licensee, or its contractor if it employs one, shall furnish to Railroad's Risk Manager, P. O. Box 306, Warren, PA 16365-3510 (or such other representative and/or address as subsequently given by Railroad to Licensee in writing), for approval, the original policy described in subsection (a)(ii) and a certificate of insurance evidencing the existence of a policy with the coverage described in subsection (a)(i).

5. The details of the Facilities to be installed and maintained shall be at the option of Licensee, and subject to the approval of the chief engineering officer of Railroad. In case of failure of Licensee to do the work as herein specified, Railroad reserves the right to remove the Facilities from Railroad's premises at the expense of Licensee, and to terminate this Agreement upon ten (10) days' written notice.

6. If Railroad shall make any changes, alterations in or additions to the line, grade, tracks, structures, roadbed, installations or works of Railroad at or near the Facilities, Licensee shall, at its own cost and expense, upon thirty (30) days' notice in writing from Railroad, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Railroad, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of Railroad.

7. Licensee will notify Railroad prior to the installation and placing in service of cathodic protection in order that tests may be conducted on Railroad's signal, communications and other electronic systems for possible interference. If the Facilities cause degradation of the signal, communications or other electronic facilities of Railroad, Licensee, at its expense, will relocate the cathodic protection and/or modify the Facilities to the satisfaction of Railroad so as to eliminate such degradation. Such modifications may include, without limiting the generality of the foregoing, providing additional shielding, reactances or other corrective measures deemed necessary by Railroad. This provision applies to the existing signal, communications and electronic equipment of Railroad and to any signal, communications or electronic equipment which Railroad may install in the future.

8. If Licensee fails to take any corrective measures requested by Railroad in a timely manner or if an emergency situation is presented which, in the Railroad's judgment, requires immediate repairs to the facilities, Railroad, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

9. Notwithstanding any other provision of this Agreement, it is understood, agreed and covenanted that Licensee accepts this Agreement as a mere license and assumes all risk of damage to its property by reason of its occupation of the premises herein described caused by any defects therein or business conducted thereon, whether caused by the negligence of Railroad, its officers, agents or employees, or otherwise, and Licensee hereby indemnifies Railroad, its officers, agents, and employees, from and against any such liability for said damage.

10. Railroad shall furnish, at the cost of Licensee, labor and materials to support its tracks and to protect its traffic during the installation, maintenance, repair, renewal or removal of the Facilities.

11. It is further agreed between the parties that the premises shall be used by Licensee only for the Facilities and for no other purpose without the written permission of the chief engineering officer of Railroad.

12. Licensee shall give Railroad seventy-two (72) hours' advance notice (or less in case of emergencies) of any work to be performed on the premises of Railroad. Licensee agrees to pay any costs incurred by Railroad for the purpose of protection and inspection considered necessary by Railroad during installation, maintenance, operation, modification, replacement and/or removal of the Facilities.

13. Licensee shall not assign this Agreement without the written consent of Railroad.

14. The word "Railroad" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railroad. Said term also shall include Railroad's officers, agents and employees, and any parent company, subsidiary or affiliate of Railroad and their officers, agents and employees.

15. This Agreement may be terminated by either party upon sixty (60) days' written notice to the other party. During said sixty day period, Licensee shall remove the Facilities from Railroad's premises and restore said premises to a condition satisfactory to Railroad's chief engineering officer. If Licensee fails to remove the Facilities within the aforesaid sixty day period, Railroad may elect: (a) to become the owner of the Facilities without any claim or consideration whatsoever therefor by or to Licensee, its successors or assigns, or (b) to remove the Facilities and all property of Licensee from the premises of Railroad at the expense of Licensee. Licensee agrees to reimburse Railroad for any and all costs of such removal. No termination of this Agreement shall affect any liability incurred by either party hereto prior to the effective date of such termination.

16. The rent provided in this Agreement as the current base rent shall, on an annual basis, be changed by the same percentage increase as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)(1967 = 100)" specified for "All Items - United States" compiled by the Bureau of Labor Statistics of the United States Department of Labor (the "Index"). In no event, however, shall the rent be less than the base rent payable as of the effective date of this Lease.

The current base rent payable shall be changed in accordance with the following:

- (a) The current base rent shall be adjusted annually commencing June 1, 2007.
- (b) Each adjustment shall be made with reference to the price index for the fourth month immediately preceding the effective date of each adjustment (Current Price Index).

- (c) Each such adjustment shall be made by determining the percentage change of the then Current Price Index over the price Index for the full calendar month of the effective date of this Lease ("Base Price Index").
- (d) Such percentage shall be computed by (I) obtaining the difference between the Current Price Index and the Base Price Index and (II) dividing such difference by the Base Price Index.
- (e) The percentage thus determined shall be multiplied by the then applicable current base rent hereinabove set forth, and the product thus determined shall represent the change payable in addition to the current base rent until a subsequent adjustment shall be made under this section.

In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage change shall be made with the use of such factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as shall be reasonably determined by the landlord.

17. This Agreement shall take effect as of the ____ day of _____, 20____, and shall expire ten years from this date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the ____ day of _____, 20____.

Witness:

THE CHICAGO, LAKE SHORE AND SOUTH BEND RAILWAY COMPANY

As to Railroad

By: _____
VP Engineering

Witness:

BROTHERS OF THE HOLY CROSS

As to Licensee

By: _____
Title: _____

Activity Number
Revised 9-18-01