



## Wisconsin Department of Transportation

www.dot.state.wi.us

Scott McCallum  
Governor

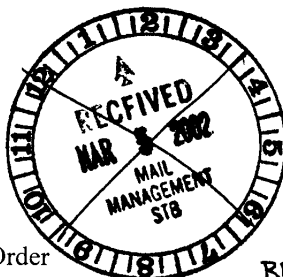
Gene E. Kussart  
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March 1, 2002

Office of the Secretary  
Surface Transportation Board  
1925 "K" Street, N.W.  
Washington, D.C. 20423-001



Re: Petition For Declaratory Order

RE: FD-34181

Dear Sir:

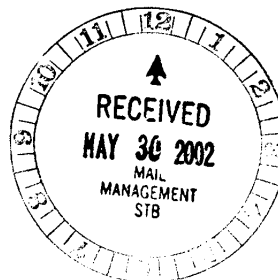
On behalf of the State of Wisconsin Department of Transportation ("WisDOT"), I am hereby submitting to the Surface Transportation Board ("STB") the enclosed original and ten (10) copies of the Petition for Declaratory Order (the "Petition"), along with supporting documentation in the form of a deed, easement and operating agreement (collectively the "Transaction Agreement Documents," as further defined in the Petition). WisDOT requests a Declaratory Order from STB stating that it does not have jurisdiction over the transaction set forth in the Transaction Agreement Documents.

The Petition is being filed by a state, and WisDOT respectfully requests waiver of the filing fees pursuant to 49 C.F.R. 1002.2(e)(1). Please process the Petition and contact me if you require additional information or have any questions about this submission. WisDOT looks forward to receiving STB's ruling on this matter.

Sincerely,

Matthew L. Schemmel  
Assistant General Counsel

CC: Ron Adams  
John Sobotik  
Vicki Schaefer  
Frank Huntington



# FILED FEE RECEIVED

MAY 30 2002

MAY 30 2002

ENTERED  
Office of the Secretary

MAY 30 2002

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Public Record

DOT3 2002

SURFACE TRANSPORTATION BOARD SURFACE TRANSPORTATION BOARD

**UNITED STATES SURFACE TRANSPORTATION BOARD  
PETITION FOR DECLARATORY ORDER**

**I. INTRODUCTION**

The State of Wisconsin Department of Transportation ("WisDOT") hereby submits to the Surface Transportation Board ("STB") a Petition for Declaratory Order (the "Petition") or other appropriate written notification stating that the STB does not have jurisdiction over the transaction set forth in the Transaction Agreement Documents, as defined in this Petition. In support of its Petition, WisDOT submits (1) a deed from the Wisconsin and Southern Railroad Company ("WSOR") to WisDOT, dated February 19, 2002 (the "Deed"), (2) an easement from WisDOT to WSOR (the "Easement") (the Deed and Easement collectively attached hereto as Exhibit 1), and (3) an operating agreement between WSOR and the Wisconsin River Rail Transit Commission ("WRRTC") (the "Operating Agreement", attached hereto as Exhibit 2) (the Deed, Easement and Operating Agreement collectively as the "Transaction Agreement Documents").

**II. THE SUBJECT TRANSACTION**

Pursuant to the terms and conditions of the Transaction Agreement Documents, WisDOT shall acquire certain specified real estate and improvements thereon from WSOR, as set forth in the Deed's legal description (the "Real Estate"), without acquiring the common carrier authority on the segment of operating railroad (the "Line") running upon the Real Estate. WisDOT has intentionally and specifically structured the transaction to comport with the terms and conditions of Maine, DOT-Acquisition Exemption, Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991) ("Maine DOT") and Brotherhood of Maintenance of Way Employees, et al. v. CP Rail Systems, et al., STB Finance Docket No. 32835 (1997) ("BMWE"). Specifically, WisDOT has structured the transaction to ensure that WisDOT does not assume any common carrier liability by ensuring that the railroad company conveying the Real Estate to WisDOT shall continue to operate the railroad on the Line pursuant to a perpetual easement from WisDOT to WSOR and existing operating agreement between WSOR and WRRTC. As a result, it is WisDOT's opinion that the conveyance of the Real Estate is not the acquisition of a "railroad line" within the intent and meaning of 49 USCS § 10901, and that the transaction is therefore outside the STB's jurisdiction.

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<sup>1</sup> WRRTC is a municipal entity and consortium of interested Wisconsin counties, created under the provisions Wisconsin Statutes Section 66.301, which was established, in part, to oversee the preservation of rail service on certain rail lines acquired by the State of Wisconsin. WRRTC was created to undertake rail preservation activities for the State, because the State of Wisconsin was, prior to an April 1992 amendment, constitutionally prohibited from the acquisition, improvement or construction of railways or other railway facilities (or to be a party to any such works) and from borrowing money to invest in rail line improvements and rehabilitation. See, Article VIII, Section 10, Wisconsin Constitution.

WisDOT currently has an option with WSOR to purchase the Real Estate (the "Option"). The Option expires on June 30, 2051. The Option includes the ability to acquire both real estate and any improvements thereon, including the actual tracks themselves, but does not include acquisition of the common carrier authority to provide rail service on the Line. WisDOT does not intend to record the Transaction Agreement Documents unless and until it receives the requested Declaratory Order from STB. Pursuant to the terms on the face of the Deed, if STB determines that it does have jurisdiction over the transaction, WisDOT shall not record the Transaction Agreement Documents and WisDOT's Option shall be deemed unsatisfied.

WisDOT has acquired a number of rail lines, primarily during the course of the bankruptcy proceedings involving the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Generally, the rail lines currently owned by the State of Wisconsin were acquired after they had been authorized for abandonment by the Interstate Commerce Commission and/or Surface Transportation Board. Neither WisDOT nor WRTC provides, nor is either equipped to provide, common carrier, "for-hire" rail freight service. It has always been WisDOT's and WRTC's intention to preserve service over light density or abandoned rail lines without incurring a common carrier obligation, and these parties have attempted to fashion their previous rail line transactions to avoid the imposition of this obligation. In the instant case, WisDOT has granted back to WSOR the perpetual easement to operate the Line subject to the terms and conditions of the Operating Agreement so that any such common carrier liabilities shall remain with WSOR after the exercise of WisDOT's Option and the recording of the Transaction Agreement Documents.

### III. CONCLUSION

WisDOT, by following the mandates of Maine DOT and BMWE, hereby seeks to avoid the imposition of common carrier liability in this case and respectfully requests the STB to issue a Declaratory Order or other appropriate written notification stating that STB does not have jurisdiction over the subject transaction.

DATED: February 26, 2002

Respectfully Submitted



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Matthew L. Schemmel  
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Wisconsin Department of Transportation  
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DOCUMENT NO.

QUIT CLAIM DEED  
STATE OF WISCONSIN

THIS SPACE RESERVED FOR RECORDING DATA

*Exhibit 1*

**Wisconsin and Southern Railroad Company, Inc.** (the "Grantor"), hereby **quit-claims to The State of Wisconsin, Department of Transportation** (the "Grantee"), the following tract of land in Dane County, State of Wisconsin:

All those lands known as the WSOR Madison -Middleton Rail corridor in the county of Dane, Wisconsin, more particularly described as all the railroad property (land and improved property) located between railroad milepost 138.58 (engineering station 5055+50), which is approximately 24 feet northwesterly of the west line of North Shore Drive in the City of Madison, in Government Lot 2, Section 23, Township 7 North, Range 9 East, and railroad milepost 146.72 (engineering station 5485+80) being the east line of the NW1/4, SW1/4, Section 10, Township 7 North, Range 8 East in the Township of Middleton.

Also including all railroad property (land and improved property) located between railroad milepost 167.53 (engineering station 652+70-near Hamilton Street) and railroad milepost 168.00 (engineering station 677+52.5-near W. Main Street), both points located in the City of Madison, as more particularly described on the attached Exhibit A (the "Corridor").

## RETURN TO

Matthew Schemmel, WisDOT  
P.O. Box 7910  
Madison, WI 53707

Grantor hereby reserves a rail freight easement in the Corridor, as set forth in the attached Exhibit B and made a part hereof by this reference (the "Easement").

PINS: 60-0709-173-0098-4  
60-0709-184-1419-8

Any railroad common carrier obligations and liabilities related to operation of a railroad line over the Corridor described herein and in the Easement remain the property, obligation and liability of Grantor, its successors, trustees, administrators and assigns.

Grantee may, in the sole exercise of Grantee's discretion, decline to accept or record this deed pending a determination by the United States Surface Transportation Board ("STB") as to whether STB has jurisdiction to approve or exempt this conveyance or whether acceptance of the deed imposes any common carrier obligations and/or liability upon Grantee. In the event the STB decides that it has jurisdiction to approve or exempt the conveyance or that acceptance of the deed would result in common carrier obligations and/or liability to Grantee, Grantee may, in the sole exercise of Grantee's discretion, decline to accept and record this deed, and in such case, the option to purchase the Corridor granted by Grantor to Grantee, and recorded October 5, 1995, in Volume 30999 of Records, page 2, official records of Dane County, Wisconsin, as document number 2709127, shall remain in effect and be considered unsatisfied.

**THIS CONVEYANCE IS EXEMPT FROM THE TRANSFER FEE PURSUANT TO SEC. 77.25**

In Witness Whereof, the said grantor has hereunto set its hand and seal this 19<sup>th</sup> day of February, 2002.

Wisconsin and Southern Railroad Company

By: William C. Gardner

William Gardner, President

By: Lucy Stone Gardner

Lucy Stone Gardner, Secretary

State of Wisconsin,

Dane County.

On the above date, this instrument was acknowledged before me by William Gardner

and Lucy Stone Gardner, as corporate officers of Wisconsin and Southern Railroad Company

Signature, Notary Public, State of Wisconsin

(Print of Type Name, Notary Public, State of Wisconsin)

(Date Commission Expires)

This instrument drafted by John Sobotik, Wis. Dept. of Transportation

## Property Legal Description - Exhibit A

All land and improved property, including but not limited to rails, ties, spikes, joint bars and fastenings, turnouts and switches, bridges, trestles, culverts, buildings, and all other track material on property located in the Cities of Madison and Middleton and the Village of Shorewood, Dane County, Wisconsin, described as:

Commencing at a point on the centerline of the Grantor's main track approximately 465 feet southeasterly of the southeasterly line of West Wilson Street in the City of Madison, which point is also known as Milepost 138.58 and additionally known as railroad engineer's survey station 5055+50, and extending in a westerly direction a distance of approximately 8.15 miles in and through Dane County and terminating at a point on the west line of the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Section 10, Township 7 North, Range 8 East, in the City of Middleton, which point is also known as Milepost 146.72 and additionally known as railroad engineer's survey station 5485+80; also commencing at a point on the centerline of the Grantor's former main track, which point is located on the northerly right of way line of South Blair Street, and extending in a southwesterly direction in and through the said City of Madison and terminating at a point approximately 50 feet southeasterly of the southeasterly line of Main Street, Plat of Madison, also known as Milepost 168.00, and additionally known as railroad engineer's survey station 677+52.5.

The above-described property is located in Sections 17, 18, 19, 20, 21, 22, 23 and 24 of Township 7 North, Range 9 East, City of Madison and Sections 16 and 17 of Township 7 North, Range 9 East, Village of Shorewood and Sections 10, 11, 12 and 13 of Township 7 North, Range 8 East, City of Middleton and Section 13 of Township 7 North, Range 8 East, City of Madison, all in Dane County, Wisconsin, and has been more fully described as the result of surveys as follows:

Commencing at the north quarter corner of Section 21, Township 7 North, Range 9 East; thence South 00 degrees 07 minutes 01 second East, 454.23 feet along the north-south quarter line of Section 21 to the point of beginning; thence South 72 degrees 41 minutes 00 seconds East, 314.16 feet to a point of curvature; thence along a curve to the left through a central angle of 23 degrees 59 minutes 59 seconds, an arc distance of 1179.25 feet, a radius of 2815.29 feet and a chord bearing South 84 degrees 41 minutes 00 seconds East, 1170.64 feet; thence North 83 degrees 19 minutes 00 seconds East, 1406.88 feet; thence North 78 degrees 07 minutes 00 seconds East, 341.40 feet to a point of curvature; thence along a curve to the right through a central angle of 05 degrees 12 minutes 00 seconds, an arc distance of 523.00 feet, a radius of 5762.58 feet and a chord bearing North 80 degrees 42 minutes 49 seconds East, 522.82 feet; thence North 83 degrees 19 minutes 00 seconds East, 263.99 feet to a point of curvature; thence along a curve to the right through a central angle of 03 degrees 57 minutes 15 seconds, an arc distance of 397.70 feet, a radius of 5762.58 feet and a chord bearing North 85 degrees 17 minutes 30 seconds East, 397.62 feet; thence North 87 degrees 16 minutes 00 seconds East, 618.39 feet to a point of curvature; thence along a curve to the right through a central angle of 29 degrees 59 minutes 59 seconds, an arc distance of 562.73 feet, a radius of 1074.74 feet and a chord bearing South 77 degrees 44 minutes 00 seconds East, 556.32 feet; thence South 62 degrees 44 minutes 00 seconds East, 274.77 feet; thence South 65 degrees 36 minutes 00 seconds East, 2362.38 feet; thence South 74 degrees 46 minutes 08 seconds East, 207.10 feet; thence South 65 degrees 36 minutes 00 seconds East, 1193.09 feet; thence continuing South 65 degrees 36 minutes

00 seconds East, 71.91 feet; thence South 01 degree 00 minutes 26 seconds West, 22.65 feet; thence South 67 degrees 30 minutes 42 seconds East, 1413.04 feet; thence South 62 degrees 16 minutes 43 seconds East, 142.60 feet; thence South 60 degrees 26 minutes 51 seconds East, 84.72 feet; thence South 60 degrees 17 minutes 35 seconds East, 50.13 feet; thence South 59 degrees 47 minutes 02 seconds East, 50.47 feet; thence South 58 degrees 06 minutes 14 seconds East, 50.71 feet; thence South 56 degrees 28 minutes 48 seconds East, 50.79 feet; thence South 54 degrees 26 minutes 05 seconds East, 52.41 feet; thence South 59 degrees 11 minutes 18 seconds East, 68.39 feet; thence South 43 degrees 59 minutes 52 seconds East, 130.58 feet; thence South 74 degrees 10 minutes 13 seconds East, 155.19 feet; thence South 83 degrees 32 minutes 57 seconds East, 85.38 feet to a point of curvature; thence along a curve to the left through a central angle of 15 degrees 37 minutes 06 seconds, an arc distance of 377.92 feet, a radius of 1386.39 feet and a chord bearing South 89 degrees 59 minutes 07 seconds East, 376.75 feet; thence North 80 degrees 18 minutes 53 seconds East, 115.93 feet to a point of curvature; thence along a curve to the left through a central angle of 07 degrees 50 minutes 52 seconds, an arc distance of 189.89 feet, a radius of 1386.39 feet and a chord bearing North 74 degrees 04 minutes 59 seconds East, 189.74 feet; thence South 43 degrees 51 minutes 47 seconds East, 19.68 feet to a point of curvature; thence along a curve to the left through a central angle of 20 degrees 08 minutes 51 seconds, an arc distance of 493.84 feet, a radius of 1404.39 feet and a chord bearing North 59 degrees 45 minutes 31 seconds East, 491.30 feet to a point of compound curvature; thence along a curve to the left through a central angle of 04 degrees 16 minutes 13 seconds, an arc distance of 569.46 feet, a radius of 7640.40 feet and a chord bearing North 49 degrees 03 minutes 21 seconds East, 569.33 feet; thence North 45 degrees 50 minutes 11 seconds East, 14.96 feet; thence continuing North 45 degrees 50 minutes 11 seconds East, 420.06 feet to a point of curvature; thence along a curve to the left through a central angle of 02 degrees 54 minutes 00 seconds, an arc distance of 289.24 feet, a radius of 5714.65 feet and a chord bearing North 44 degrees 23 minutes 11 seconds East, 289.21 feet; thence North 42 degrees 56 minutes 11 seconds East, 348.97 feet; thence South 44 degrees 27 minutes 13 seconds East, 5.64 feet; thence North 42 degrees 56 minutes 11 seconds East, 132.50 feet; thence North 44 degrees 27 minutes 13 seconds West, 5.64 feet; thence North 42 degrees 56 minutes 11 seconds East, 1587.55 feet; thence North 37 degrees 18 minutes 02 seconds East, 6.39 feet; thence South 47 degrees 05 minutes 15 seconds East, 33.96 feet; said point being South 50 degrees 08 minutes 54 seconds West of and 273.33 feet from a meander corner for the north quarter corner of Section 24, Township 7 North, Range 9 East; thence North 42 degrees 55 minutes 32 seconds East, 158.65 feet to a point of curvature; thence along a curve to the left through a central angle of 04 degrees 45 minutes 04 seconds, an arc distance of 164.26 feet, a radius of 1980.88 feet and a chord bearing North 40 degrees 31 minutes 16 seconds East, 164.21 feet; thence North 37 degrees 17 minutes 48 seconds East, 66.77 feet to a point of curvature; thence along a curve to the left through a central angle of 10 degrees 48 minutes 01 second, an arc distance of 373.39 feet, a radius of 1980.88 feet and a chord bearing North 30 degrees 51 minutes 38 seconds East, 372.84 feet; thence North 72 degrees 36 minutes 24 seconds East, 59.47 feet to a point of curvature; thence along a curve to the right through a central angle of 08 degrees 06 minutes 47 seconds, an arc distance of 286.72 feet, a radius of 2024.89 feet and a chord bearing South 28 degrees 22 minutes 21 seconds West, 286.48 feet; thence South 39 degrees 07 minutes 36 seconds West, 140.87 feet; thence South 38 degrees 14 minutes 36 seconds West, 66.62 feet to a point of curvature; thence along a curve to the

right through a central angle of 04 degrees 37 minutes 58 seconds, an arc distance of 162.72 feet, a radius of 2012.39 feet and a chord bearing South 40 degrees 35 minutes 56 seconds West, 162.67 feet; thence South 42 degrees 54 minutes 12 seconds West, 2557.83 feet; thence North 47 degrees 05 minutes 48 seconds West, 31.50 feet; thence South 42 degrees 54 minutes 12 seconds West, 83.24 feet, said point being North 08 degrees 07 minutes 41 seconds East of and 102.32 feet from a meander corner for the west quarter corner of Section 24, Township 7 North, Range 9 East; thence South 45 degrees 50 minutes 11 seconds West, 304.23 feet; thence continuing South 45 degrees 50 minutes 11 seconds West, 66.00 feet; thence continuing South 45 degrees 50 minutes 11 seconds West, 15.61 feet to a point of curvature; thence along a curve to the right through a central angle of 04 degrees 16 minutes 09 seconds, an arc distance of 572.87 feet, a radius of 7688.40 feet and a chord bearing South 49 degrees 03 minutes 07 seconds West, 572.73 feet to a point of compound curvature; thence along a curve to the right through a central angle of 28 degrees 06 minutes 14 seconds, an arc distance of 712.40 feet, a radius of 1452.39 feet and a chord bearing South 63 degrees 45 minutes 42 seconds West, 705.28 feet; thence South 81 degrees 40 minutes 24 seconds West, 209.47 feet to a point of curvature; thence along a curve to the right through a central angle of 14 degrees 18 minutes 54 seconds, an arc distance of 362.87 feet, a radius of 1452.39 feet and a chord bearing North 87 degrees 19 minutes 35 seconds West, 361.93 feet; thence South 45 degrees 49 minutes 36 seconds West, 61.62 feet to a point of curvature; thence along a curve to the right through a central angle of 01 degree 23 minutes 10 seconds, an arc distance of 52.85 feet, a radius of 2184.66 feet and a chord bearing South 41 degrees 48 minutes 23 seconds East, 52.85 feet; thence South 34 degrees 47 minutes 43 seconds East, 95.30 feet; thence South 33 degrees 10 minutes 35 seconds East, 118.46 feet; thence South 33 degrees 07 minutes 04 seconds East, 67.21 feet; thence South 32 degrees 40 minutes 27 seconds East, 101.40 feet; thence South 34 degrees 49 minutes 08 seconds East, 317.20 feet; thence continuing South 34 degrees 49 minutes 08 seconds East, 30.01 feet; thence South 56 degrees 20 minutes 30 seconds West, 55.85 feet; thence North 33 degrees 39 minutes 30 seconds West, 44.73 feet; thence continuing North 33 degrees 39 minutes 30 seconds West, 334.95 feet to a point of curvature; thence along a curve to the left through a central angle of 01 degree 11 minutes 39 seconds, an arc distance of 60.24 feet, a radius of 2890.56 feet and a chord bearing North 30 degrees 38 minutes 58 seconds West, 60.24 feet; thence North 31 degrees 54 minutes 17 seconds West, 67.50 feet to a point of curvature; thence along a curve to the left through a central angle of 05 degrees 16 minutes 46 seconds, an arc distance of 266.34 feet, a radius of 2890.56 feet and a chord bearing North 35 degrees 13 minutes 27 seconds West, 266.25 feet; thence North 38 degrees 47 minutes 23 seconds West, 66.29 feet to a point of curvature; thence along a curve to the left through a central angle of 10 degrees 30 minutes 05 seconds, an arc distance of 265.58 feet, a radius of 1449.01 feet and a chord bearing North 45 degrees 16 minutes 51 seconds West, 265.21 feet; thence North 53 degrees 44 minutes 49 seconds West, 66.97 feet; thence North 54 degrees 26 minutes 05 seconds West, 42.31 feet; thence North 56 degrees 28 minutes 48 seconds West, 49.19 feet; thence North 58 degrees 06 minutes 14 seconds West, 49.27 feet; thence North 59 degrees 47 minutes 02 seconds West, 49.51 feet; thence North 60 degrees 17 minutes 35 seconds West, 49.84 feet; thence North 60 degrees 26 minutes 51 seconds West, 100.04 feet, said point being North 77 degrees 48 minutes 39 seconds East of and 83.07 feet from the center of Section 23, Township 7 North, Range 9 East; thence North 63 degrees 13 minutes 06 seconds West, 143.43 feet; thence North 67 degrees 30 minutes 42 seconds West, 1370.94 feet; thence South 01 degree 00 minutes 26 seconds West, 67.44 feet; thence North 65 degrees 36

minutes 00 seconds West, 71.91 feet; thence continuing North 65 degrees 36 minutes 00 seconds West, 1209.76 feet; thence North 24 degrees 19 minutes 11 seconds East, 40.00 feet; thence North 65 degrees 36 minutes 00 seconds West, 179.26 feet; thence North 77 degrees 00 minutes 14 seconds West, 35.40 feet; thence North 65 degrees 36 minutes 00 seconds West, 2394.89 feet; thence North 62 degrees 44 minutes 00 seconds West, 276.43 feet to a point of curvature; thence along a curve to the left through a central angle of 29 degrees 59 minutes 59 seconds, an arc distance of 528.17 feet, a radius of 1008.74 feet and a chord bearing North 77 degrees 44 minutes 00 seconds West, 522.16 feet; thence South 87 degrees 16 minutes 00 seconds West, 618.39 feet to a point of curvature; thence along a curve to the left through a central angle of 03 degrees 57 minutes 15 seconds, an arc distance of 393.15 feet, a radius of 5696.58 feet and a chord bearing South 85 degrees 17 minutes 30 seconds West, 393.07 feet; thence South 83 degrees 19 minutes 00 seconds West, 263.35 feet to a point of curvature; thence along a curve to the left through a central angle of 05 degrees 12 minutes 23 seconds, an arc distance of 517.64 feet, a radius of 5696.58 feet and a chord bearing South 80 degrees 43 minutes 00 seconds West, 517.46 feet; thence South 78 degrees 07 minutes 00 seconds West, 708.51 feet; thence South 83 degrees 19 minutes 00 seconds West, 673.36 feet; thence North 02 degrees 40 minutes 00 seconds West, 17.50 feet; thence South 83 degrees 19 minutes 00 seconds West, 185.00 feet; thence South 87 degrees 20 minutes 00 seconds West, 215.00 feet; thence South 02 degrees 40 minutes 00 seconds East, 4.50 feet; thence South 87 degrees 19 minutes 43 seconds West, 272.90 feet to a point of curvature; thence along a curve to the right through a central angle of 20 degrees 04 minutes 00 seconds, an arc distance of 1003.34 feet, a radius of 2864.79 feet and a chord bearing North 82 degrees 44 minutes 09 seconds West, 998.22 feet; thence North 72 degrees 41 minutes 00 seconds West, 549.61 feet; thence North 69 degrees 34 minutes 00 seconds West, 542.59 feet; thence North 72 degrees 41 minutes 00 seconds West, 1892.52 feet; thence South 01 degree 21 minutes 25 seconds West, 30.68 feet; thence North 72 degrees 41 minutes 00 seconds West, 17.17 feet, said point being North 01 degree 20 minutes 41 seconds East of and 274.33 feet from the southeast corner of Section 17, Township 7 North, Range 9 East; thence continuing North 72 degrees 41 minutes 00 seconds West, 369.20 feet to a point of curvature; thence along a curve to the left through a central angle of 23 degrees 33 minutes 49 seconds, an arc distance of 2336.04 feet, a radius of 5680.15 feet and a chord bearing North 84 degrees 27 minutes 55 seconds West, 2319.61 feet; thence North 00 degrees 14 minutes 10 seconds West, 24.63 feet to a point of curvature; thence along a curve the left through a central angle of 05 degrees 15 minutes 36 seconds, an arc distance of 523.71 feet, a radius of 5704.65 feet and a chord bearing South 81 degrees 08 minutes 56 seconds West, 523.52 feet; thence South 00 degrees 14 minutes 10 seconds East, 24.98 feet to a point of curvature; thence along a curve to the left through a central angle of 06 degrees 21 minutes 28 seconds, an arc distance of 630.29 feet, a radius of 5680.15 feet and a chord bearing South 75 degrees 17 minutes 27 seconds West, 629.97 feet; thence South 72 degrees 06 minutes 43 seconds West, 2436.69 feet to a point of curvature; thence along a curve to the right through a central angle of 69 degrees 25 minutes 49 seconds, an arc distance of 3035.76 feet, a radius of 2505.20 feet and a chord bearing North 73 degrees 10 minutes 22 seconds West, 2853.40 feet; thence North 38 degrees 27 minutes 28 seconds West, 736.15 feet to a point of curvature; thence along a curve to the left through a central angle of 10 degrees 47 minutes 00 seconds, an arc distance of 1069.02 feet, a radius of 5680.15 feet and a chord bearing North 43 degrees 50 minutes 58 seconds West, 1067.44 feet; thence North 49 degrees 14 minutes 28 seconds West, 2990.31 feet to a point of curvature; thence

along a curve to the left through a central angle of 08 degrees 50 minutes 32 seconds, an arc distance of 876.61 feet, a radius of 5680.15 feet and a chord bearing North 53 degrees 39 minutes 44 seconds West, 875.74 feet; thence North 58 degrees 05 minutes 00 seconds West, 3053.40 feet, said point being North 01 degree 53 minutes 40 seconds East of and 177.57 feet from a meander corner for the southwest corner of Section 12, Township 7 North, Range 8 East; thence continuing North 58 degrees 05 minutes 00 seconds West, 935.11 feet to a point of curvature; thence along a curve to the left through a central angle of 02 degrees 44 minutes 38 seconds, an arc distance of 271.98 feet, a radius of 5679.50 feet and a chord bearing North 58 degrees 31 minutes 58 seconds West, 271.95 feet to a point of compound curvature; thence along a curve to the left through a central angle of 03 degrees 22 minutes 06 seconds, an arc distance of 336.83 feet, a radius of 5729.58 feet and a chord bearing North 58 degrees 47 minutes 32 seconds West, 336.78 feet to a point of compound curvature; thence along a curve to the left through a central angle of 01 degree 19 minutes 08 seconds, an arc distance of 131.12 feet, a radius of 5696.00 feet and a chord bearing North 63 degrees 57 minutes 11 seconds West, 131.12 feet to a point of compound curvature; thence along a curve to the left through a central angle of 06 degrees 31 minutes 46 seconds, an arc distance of 369.34 feet, a radius of 3241.04 feet and a chord bearing North 69 degrees 10 minutes 03 seconds West, 369.14 feet; thence North 18 degrees 35 minutes 57 seconds East, 11.00 feet to a point of curvature; thence along a curve to the left through a central angle of 02 degrees 11 minutes 04 seconds, an arc distance of 123.98 feet, a radius of 3252.04 feet and a chord bearing North 73 degrees 31 minutes 15 seconds West, 123.97 feet to a point of compound curvature; thence along a curve to the left through a central angle of 00 degrees 51 minutes 29 seconds, an arc distance of 42.58 feet, a radius of 2842.79 feet and a chord bearing North 75 degrees 04 minutes 56 seconds West, 42.58 feet; thence South 11 degrees 23 minutes 29 seconds West, 2.00 feet to a point of curvature; thence along a curve to the left through a central angle of 09 degrees 23 minutes 54 seconds, an arc distance of 465.98 feet, a radius of 2840.79 feet and a chord bearing North 80 degrees 12 minutes 30 seconds West, 465.45 feet; thence North 84 degrees 54 minutes 25 seconds West, 202.17 feet; thence South 01 degree 05 minutes 33 seconds West, 10.67 feet; thence North 84 degrees 54 minutes 37 seconds West, 590.69 feet; thence South 01 degree 08 minutes 48 seconds West, 16.54 feet; thence North 84 degrees 54 minutes 37 seconds West, 725.52 feet; thence North 85 degrees 05 minutes 56 seconds West, 3618.38 feet to a point of curvature; thence along a curve to the left through a central angle of 08 degrees 04 minutes 29 seconds, an arc distance of 800.51 feet, a radius of 5680.15 feet and a chord bearing North 89 degrees 08 minutes 11 seconds West, 799.85 feet; thence South 86 degrees 49 minutes 35 seconds West, 468.74 feet; thence North 00 degrees 55 minutes 17 seconds East, 99.25 feet; thence North 86 degrees 49 minutes 35 seconds East, 461.66 feet to a point of curvature; thence along a curve to the right through a central angle of 08 degrees 04 minutes 29 seconds, an arc distance of 814.46 feet, a radius of 5779.15 feet and a chord bearing South 89 degrees 08 minutes 11 seconds East, 813.79 feet; thence South 85 degrees 05 minutes 56 seconds East, 2293.19 feet, said point being South 00 degrees 07 minutes 50 seconds East of and 329.39 feet from the east quarter corner of Section 10, Township 7 North, Range 8 East; thence continuing South 85 degrees 05 minutes 56 seconds East, 1325.36 feet; thence South 84 degrees 54 minutes 37 seconds East, 718.86 feet; thence South 01 degree 08 minutes 48 seconds West, 16.54 feet; thence South 84 degrees 54 minutes 37 seconds East, 48.62 feet; thence South 00 degrees 20 minutes 03 seconds West, 8.03 feet; thence South 84 degrees 54 minutes 37 seconds East, 541.90 feet; thence North 01 degree 05 minutes 33 seconds East, 1.65 feet; thence South 84 degrees

54 minutes 25 seconds East, 205.59 feet to a point of curvature; thence along a curve to the right through a central angle of 10 degrees 15 minutes 17 seconds, an arc distance of 517.20 feet, a radius of 2889.79 feet and a chord bearing South 79 degrees 46 minutes 48 seconds East, 516.51 feet to a point of compound curvature; thence along a curve to the right through a central angle of 08 degrees 43 minutes 19 seconds, an arc distance of 502.19 feet, a radius of 3299.04 feet and a chord bearing South 70 degrees 15 minutes 08 seconds East, 501.71 feet to a point of compound curvature; thence along a curve to the right through a central angle of 02 degrees 23 minutes 04 seconds, an arc distance of 239.46 feet, a radius of 5754.00 feet and a chord bearing South 63 degrees 25 minutes 37 seconds East, 239.44 feet; thence North 01 degree 26 minutes 56 seconds East, 27.32 feet to a point of curvature; thence along a curve to the right through a central angle of 05 degrees 11 minutes 09 seconds, an arc distance of 523.02 feet, a radius of 5778.50 feet and a chord bearing South 59 degrees 45 minutes 43 seconds East, 522.84 feet; thence South 58 degrees 05 minutes 00 seconds East, 3987.71 feet to a point of curvature; thence along a curve to the right through a central angle of 08 degrees 50 minutes 32 seconds, an arc distance of 891.88 feet, a radius of 5779.15 feet and a chord bearing South 53 degrees 39 minutes 44 seconds East, 891.00 feet; thence South 49 degrees 14 minutes 28 seconds East, 2487.00 feet, said point being South 01 degree 37 minutes 50 seconds West of and 342.61 feet from the west quarter corner of Section 14, Township 7 North, Range 8 East; thence continuing South 49 degrees 14 minutes 28 seconds East, 503.30 feet to a point of curvature; thence along a curve to the right through a central angle of 10 degrees 47 minutes 00 seconds, an arc distance of 1087.66 feet, a radius of 5779.15 feet and a chord bearing South 43 degrees 50 minutes 58 seconds East, 1086.06 feet; thence South 38 degrees 27 minutes 28 seconds East, 736.15 feet to a point of curvature; thence along a curve to the left through a central angle of 69 degrees 25 minutes 49 seconds, an arc distance of 2915.80 feet, a radius of 2406.20 feet and a chord bearing South 73 degrees 10 minutes 22 seconds East, 2740.64 feet; thence North 72 degrees 06 minutes 43 seconds East, 1056.75 feet, said point being South 89 degrees 55 minutes 21 seconds East of and 184.09 feet from the southwest corner of Section 17, Township 7 North, Range 9 East; thence continuing North 72 degrees 06 minutes 43 seconds East 1379.94 feet to a point of curvature; thence along a curve to the right through a central angle of 35 degrees 12 minutes 17 seconds, an arc distance of 3550.92 feet, a radius of 5779.15 feet and a chord bearing North 89 degrees 42 minutes 52 seconds East, 3495.33 feet; thence South 72 degrees 41 minutes 00 seconds East, 1733.24 feet; thence South 17 degrees 19 minutes 15 seconds West, 24.50 feet; thence South 72 degrees 41 minutes 00 seconds East, 1410.09 feet to the north-south quarter line of Section 21, Township 7 North, Range 9 East; thence North 00 degrees 07 minutes 01 second West, along said north-south quarter line, 25.68 feet to the point of beginning.

Excepting therefrom is all that property described in a quit claim deed from the Wisconsin & Southern Railroad Co., a Wisconsin railroad corporation, to the Union Pacific Railroad Company, a Utah corporation, recorded in the office of the Dane County Register of Deeds on September 16, 1996, as Document 2796076.

## **Exhibit B**

### **EASEMENT**

#### **1. Reservation of Easement:**

- 1.1 Wisconsin and Southern Railroad Company ("WSOR"), its successors, administrators, trustees and assigns, reserves from the Corridor conveyed to the Wisconsin Department of Transportation ("WisDOT") as defined and described in the deed and more particularly in Exhibit A to the deed, which description is incorporated herein by reference, a rail freight easement for the purpose of providing common carrier freight rail service on the Corridor (the "Easement"). The Easement includes the non-exclusive right for WSOR to operate its trains, locomotives, rail cars and rail equipment over the Corridor. It is expressly understood and intended that the Corridor shall be subject to use by third parties for purposes that include, but are not limited to passenger rail service, "light-rail" or commuter rail service, and other public and private purposes. It is further expressly understood and intended that portions of the Corridor may be used by WisDOT or WisDOT's permittees for highway, bicycle, pedestrian ways or other transportation facilities, provided such uses do not unreasonably interfere with WSOR rail operations.
- 1.2 The conveyance by WSOR to WisDOT set forth in the deed excludes any and all rights and obligations of WSOR under federal law to provide, directly or indirectly, common carrier rail freight service. WSOR retains all such rights and obligations to provide freight rail service to all shippers and shippers facilities located on the Corridor.
- 1.3 The Easement does not reserve to WSOR any interest in the property acquired by the Village of Shorewood Hills by virtue of that Award of Compensation dated August 24, 1998, and recorded in the office of the Register of Deeds for Dane County, Wisconsin, on August 24, 1998, as document number 3010617.

#### **2. Term and Termination:**

- 2.1 The term of this Easement shall commence as of the date and time of the recording of the deed and this Easement.
- 2.2 Except as otherwise provided in the deed and this Easement Agreement, the term of this Easement Agreement and the reserved rail freight easement contained herein shall be perpetual, in recognition of WSOR's continuing common carrier rail freight obligations on the Corridor.
- 2.3 All rights and interests reserved by WSOR in this Easement, including without limitation the rail freight easement reserved herein, shall terminate, be extinguished and vest in WisDOT upon the happening of all of the following: (a) termination by WSOR, pursuant to an order of the United States Surface Transportation Board (the "STB") of common carrier rail freight services on the Corridor (the "STB Termination Order"); (b) recording in the office of the Register of Deeds for Dane County, Wisconsin of a copy of the STB Termination Order; and (c) recording by WisDOT in the office of the Register of Deeds of a notice terminating the Easement.

#### **3. Compensation:**

- 3.1 Except as otherwise provided herein, WSOR and WisDOT shall have no obligation to compensate each other in connection with this Easement, including, without limitation, any payment in connection with WSOR's maintenance, dispatching, use or operation of the Corridor or any other portion of the Corridor, as set forth in Section 4.

4. Maintenance and Operation:

- 4.1 As part of the rights and interests reserved by WSOR in this Easement, WSOR and its successors, administrators, trustees and assigns, shall be bound by all terms and conditions, including but not limited to the obligation for maintenance and operation of the Corridor and any costs and expenses, including damages of any kind, incurred as a result thereof, of the operating agreement between WSOR and the Wisconsin River Rail Transit Commission (the "Commission"), number 0491-50-39(C), dated September 22, 1995 (the "Operating Agreement").

Exhibit 2

MIDDLETON - MADISON

OPERATING AGREEMENT

BY AND BETWEEN

WISCONSIN RIVER RAIL TRANSIT COMMISSION

AND

WISCONSIN & SOUTHERN RAILROAD CO.

OPERATING AGREEMENT NO. 0491-50-39(C)

SEPTEMBER 1995

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MIDDLETON-MADISON OPERATING AGREEMENT  
BY AND BETWEEN  
WISCONSIN RIVER RAIL TRANSIT COMMISSION  
AND  
WISCONSIN & SOUTHERN RAILROAD CO.

AGREEMENT NO. 0491-50-39(C)

This Agreement made and entered into this 22<sup>nd</sup> day of SEPTEMBER, 1995, by and between Wisconsin River Rail Transit Commission, a municipal corporation established in accordance with Sec. 66.30 Wis. Stats., ("Commission") and Wisconsin and Southern Railroad, a railroad company organized and existing under the laws of the State of Wisconsin and fully empowered to act as a railroad company in Wisconsin, having its principal office at 5300 N. 33rd Street, City of Milwaukee, County of Milwaukee, and State of Wisconsin ("Operator").

WHEREAS, Commission is created by Iowa, Grant, Crawford, Sauk, Dane, Rock, Walworth and Waukesha Counties for the purpose of providing for the continuance of rail service on the Rail Line with authority to acquire the use of the Rail Line by purchase, lease or otherwise, and to provide for the operation of freight rail service thereon by contract or otherwise; and

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

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

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

ARTICLE 1.0 - DEFINITIONS.

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

- a. "ICC" means the Interstate Commerce Commission or its successors, if any.
- b. "WisDOT" means the Wisconsin Department of Transportation.
- c. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.
- d. "Commission" means the Wisconsin River Rail Transit Commission.

a period of ten (10) years and shall be exercised at least one (1) year but no more than two (2) years prior to the expiration of the then current term, said renewal notice to be exercised in writing to the Commission with notice to WisDOT. All terms and conditions of this Agreement shall apply to the renewal periods unless amended by mutual agreement.

#### Section 2.3 - Reservations.

(a) Operator shall not sell or lease or grant easements, licenses or permits on land, improved property or both without first obtaining approval in writing from Commission and WisDOT of the terms of the sale, lease, easement, license, or permit. Approval shall not be unreasonably withheld.

(b) Commission reserves the right to contract for the use of the rail line or portions thereof for commuter passenger service. Such contract may be with Operator or a governmental unit or Commission may provide that service itself; provided, however, that Commission may alternatively contract, directly or indirectly, with an entity other than Operator or a governmental unit if it notifies Operator, in writing, of its intention to do so and offers Operator an option to provide the same service on the rail line portion proposed to be operated over by such other entity, upon the same terms and conditions, which option may be exercised by Operator within thirty (30) days following receipt of the foregoing notice. Neither Operator nor any other operator may provide commuter passenger service over any portion of the rail line without first entering into a separate agreement authorizing that service. Before commuter passenger service may begin, Commission must sign the authorizing agreement, and WisDOT must approve it. Further, it is a condition of this reservation that Commission may contract with a third party respecting the provision of commuter passenger service only if reasonable advance notice is given to Operator and Operator is afforded the opportunity of participation in the negotiating and establishing of the conditions of the co-use of these facilities. The granting of such co-use is on the further condition that any upgrading or changing of the rail line or other facilities to accommodate the co-use shall be first approved by WisDOT and shall not involve any additional cost to Operator and that a reasonable division of costs for the servicing, maintaining and repairing of the trackage and other facilities for the co-use shall be established. It is a further condition that such a joint use shall not unreasonably restrict the use of the particular facilities by Operator to meet its common carrier obligations. This joint use may involve testing or trial operations as well as permanent operations.

### ARTICLE 3.0 - RAILROAD OPERATIONS.

#### Section 3.1 - Authority to Operate.

In order for Operator to exercise its rights under this Agreement, Operator shall maintain the requisite operating authority from the Interstate Commerce Commission for the railroad operations described under this Agreement and shall keep such authority in full force and effect throughout the term of this Agreement. Operator shall make all required filings and reports to the ICC.

to or subsequent to the commencement date of this Agreement, Operator will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

#### ARTICLE 4.0 - LIABILITY AND INSURANCE.

##### Section 4.1 - Hold Harmless.

Except to the extent that the same arises from or is related to co-uses permitted by Commission or WisDOT pursuant to Section 2.3(b) above, Operator shall save and hold Commission and WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of Operator, or its agents, servants, subcontractors, officers or employees, including, without limiting the applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to Commission, its officers, employees, agents, subcontractors or frequenters, or to any other person whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of Commission or WisDOT) under Federal or state statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the applicability of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. Operator shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

##### Section 4.2 - Insurance.

(a) Required Coverage. During the term of this Agreement, Operator shall maintain, at its own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$10,000,000 per occurrence, or other form approved by WisDOT. WisDOT and Commission and their officers, employees, and agents shall be named as additional insureds under such policies. Operator agrees to maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Operator further agrees to carry fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All such insurances shall cover Commission and WisDOT to the extent of the ownership of both or either in any of said properties and to include under such coverage buildings and trackage hereunder, even though some of said buildings or structures might not be included in the property used by the Operator, except that

claim reserves, as determined from General Ledger Trial Balance sheets filed with Commission and WisDOT within 45 days after the end of each quarter beginning with the quarter ending September 30, 1994, is less than 1.1 to 1, as determined by WisDOT, Commission shall have the right to terminate this Agreement by fifteen (15) days written notice to Operator. If, upon receipt of such notice of termination, Operator shall desire to continue this Agreement in effect, Commission or Operator shall have the right to do so by (i) purchasing, at its own cost and expense, such insurance as WisDOT and Commission shall deem necessary in their reasonable judgment or by (ii) causing the equity owners of Operator to contribute such additional amounts to the capital of Operator as are required to increase such ratio to 1.1 to 1.

(f) Review and Modification of Liability Insurance. (i) The coverage limits of Operator's Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review by Commission and WisDOT no more than once every twelve months. Modifications to self-insured retention amounts shall be governed by Section 4.2(c) herein. Modifications increasing coverage limits shall be effective upon notice by Commission or WisDOT to Operator. Any modifications decreasing coverage limits may not in any event reduce the requisite insurance coverage below that required under Section 4.2(a) above and shall be effective only upon WisDOT approval and upon amendment to this Agreement. Review of liability insurance shall be conducted by Commission, Operator, and WisDOT no less than 30 days prior to the expiration date of the policy then in force, except that a special review may be conducted in the event Operator experiences a cancellation of or a modification or a refusal to renew its liability insurance.

## ARTICLE 5.0 - TERMINATION OR SUSPENSION.

### Section 5.1 - Declaration of Default.

(a) Default. A condition of default exists (1) when either party to this Agreement fails to abide by or perform in a material respect any one or more of its terms and conditions, (2) when Operator's insurance coverage lapses, is suspended, is canceled, or fails to satisfy all the terms and conditions of Section 4.2 of this Agreement or any amendment thereto, or (3) when Operator files for protection under any bankruptcy statute.

(b) Notice of Default. A declaration of default shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 9.2 below. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice of default or the date required insurance coverage ceased or the date of filing for bankruptcy protection, whichever occurs first.

### Section 5.2 - Termination for Default.

In the event of any default described in Section 5.1 above, the non-defaulting party shall have the right to and at its option may, after first giving the required notice to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof or concurrent breach, terminate this Agreement, unless the breach is cured within the period set forth in Section 5.3 below, and the exercise of such right shall not impair any other rights of

Commission to Operator. If all the obligations of Operator hereunder shall not have been and shall not continue to be duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Operator, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within ten (10) days after proceedings shall have been commenced, it may be declared cause for default. Arrangements may be made in such event by Commission with the trustee or bankruptcy court for continuation under such terms as agreed to by Commission.

#### Section 5.7 - Transfer of Property Upon Bankruptcy Default.

If this Agreement shall terminate pursuant to Section 5.6, Operator shall tender title and possession of the Rail Line Land and Improved property to WisDOT. Land and improved property so tendered shall be in the same or better operating order, repair, and condition as exists upon completion of the state-assisted rehabilitation project of 1995 on the Rail Line, reasonable wear and tear in service excepted, shall meet the standards of all applicable laws and shall have removed therefrom at Operator's expense any addition, modification, or improvement owned by Operator and for which Commission or WisDOT has not made a specific request for it to remain with the property.

#### Section 5.8 - Vacating the Rail Property.

Upon determination by Commission or WisDOT that the remedial action has not removed the default condition, it may provide written notice to Operator to vacate the rail line, and Operator shall vacate the rail line within 10 days of deliver of such notice. Commission shall arrange with Operator for an inventory of the rail line to be conducted within this 10 day period. If Operator does not remove any of its equipment within the 10 day period, Commission or WisDOT shall have the option to remove it at Operator's expense.

#### Section 5.9 - Obligations of Operator in the Event of Termination.

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

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

(b) To the best of its knowledge, the execution of this Agreement and the providing of the freight rail service it is obligated to provide will not violate any statute, rule, regulation, order, writ, injunction or other decree of any court, administrative agency or governmental body.

(c) In the event that termination occurs and Commission requires Operator to do so, Operator will support Commission efforts to provide a replacement freight service, without obligation by Operator to expend additional funds to do so.

#### Section 6.2 - Commission.

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

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

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

#### ARTICLE 7.0 - TAXES.

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

#### ARTICLE 8.0 - OTHER COMMITMENTS.

##### Section 8.1 - Handicapped.

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

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

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

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

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

#### ARTICLE 9.0 - GENERAL PROVISIONS.

##### Section 9.1 - Choice of Law.

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

##### Section 9.2 - Notice.

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

Director, Bureau of Railroads and Harbors  
Wisconsin Department of Transportation  
P.O. Box 7914  
Madison, Wisconsin 53707

Chairman  
Wisconsin River Rail Transit Commission  
426 Karrmann Library  
Platteville, Wisconsin 53818

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

IN WITNESS WHEREOF, the Wisconsin River Rail Transit Commission, by its Board of Commissioners, has caused this Agreement to be signed by Richard Scullion, its Chairman, and MARION E. MARTIN, its Secretary, this 22<sup>nd</sup> day of SEPTEMBER, 1995.

ASSISTANT

WITNESS:

L. Frank Huntington

WISCONSIN RIVER RAIL TRANSIT  
COMMISSION

Richard Scullion  
Richard Scullion, Chairman

Marion E. Martin  
MARION E. MARTIN Secretary (ASSISTANT)

IN WITNESS WHEREOF, the Wisconsin and Southern Railroad Co., by its Board of Directors, has caused this Agreement to be signed by William E. Gardner, its President, this 22<sup>nd</sup> day of SEPTEMBER, 1995.

WITNESS:

Ray Lee

WISCONSIN AND SOUTHERN  
RAILROAD CO.

William E. Gardner  
William E. Gardner, President

APPENDIX A  
OPERATING AGREEMENT NO. 0491-50-39(C)

RAILROAD TRACK AND STRUCTURES MAINTENANCE STANDARDS  
ON STATE-ASSISTED RAIL LINES

The following standards shall be used to determine Operator's compliance with its obligation to maintain subject property under Section 3.2(a) of this Agreement.

(The citations listed under the minimum standards column refer to Code of Federal Regulation sections and subsections generally known as Federal Railroad Administration Safety Standards. Citations labeled AREA refer to the American Railroad Engineers Association Manual for Railway Engineering.)

| <u>MAINTENANCE ITEM</u>     | <u>MINIMUM STANDARD</u>                                                                                                     |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| 1.0 <u>Track Components</u> |                                                                                                                             |
| 1.1 Cross Ties              | Federal Railroad Administration (FRA) Class II 213.109.                                                                     |
| 1.2 Switch Ties             | No consecutive defective ties FRA 213.109(c)(1)-(4).                                                                        |
| 1.3 Rail                    | FRA 213.113-213.115 plus no torched cut rail or torched bolt holes, and no rails shorter than 12 feet.                      |
| 1.4 Joint Bars              | FRA Class II 213.121.                                                                                                       |
| 1.5 Tie Plates              | At such time as ties are renewed or rail is replaced, effective tie plates shall be installed.                              |
| 1.6 Track Spikes            | Minimum of 2 spikes per tie plate on ties renewed or ties under rail replaced.                                              |
| 1.7 Track Bolts             | FRA Class II 213.121(d) plus proper size bolts.                                                                             |
| 1.8 Ballast                 | FRA 213.103.                                                                                                                |
| 1.9 Rail Anchors            | No missing anchors, according to the anchoring pattern established by the rehabilitation, on ties renewed or rail replaced. |

MAINTENANCE ITEM

MINIMUM STANDARD

6.0 Miscellaneous

- |                           |                                                                                                                                             |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 6.1 Track Zone Vegetation | FRA 213.37 and documentation of herbicide application once every 24 months.                                                                 |
| 6.2 Brush                 | Wis. Admin. Code TC 3.15(2) & (5); Wis. ss 195.28(6); FRA 213.37 and no brush over 24" in height within 15 feet of the centerline of track. |
| 6.3 Fence Maintenance     | No outstanding order from OCR.                                                                                                              |
| 6.4 Sidings               | FRA Class I.                                                                                                                                |

7.0 Track Inspections

- |                                 |              |
|---------------------------------|--------------|
| 7.1 Track Inspection Frequency  | FRA 213.233. |
| 7.2 Turnout and Track Crossings | FRA 213.235. |
| 7.3 Inspection Records          | FRA 213.241. |

8.0 Buildings

Buildings and other structures shall be maintained as required by local and state building codes without regard to the status of rehabilitation of the rail line.

9.0 Bridges

Bridges shall be maintained in compliance with AREA Chapter 7, Part 3.



## Wisconsin Department of Transportation

www.dot.state.wi.us

Scott McCallum  
Governor

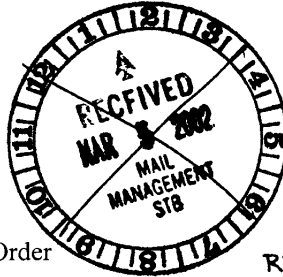
Gene E. Kussart  
Secretary

Office of General Counsel  
4802 Sheboygan Ave., Rm. 115B  
P.O. Box 7910  
Madison, WI 53707-7910

Telephone: 608-266-8810  
FAX: 608-267-6734  
E-mail: ogc.exec@dot.state.wi.us

March 1, 2002

Office of the Secretary  
Surface Transportation Board  
1925 "K" Street, N.W.  
Washington, D.C. 20423-001



Re: Petition For Declaratory Order

RE: FD-34181

Dear Sir:

On behalf of the State of Wisconsin Department of Transportation ("WisDOT"), I am hereby submitting to the Surface Transportation Board ("STB") the enclosed original and ten (10) copies of the Petition for Declaratory Order (the "Petition"), along with supporting documentation in the form of a deed, easement and operating agreement (collectively the "Transaction Agreement Documents," as further defined in the Petition). WisDOT requests a Declaratory Order from STB stating that it does not have jurisdiction over the transaction set forth in the Transaction Agreement Documents.

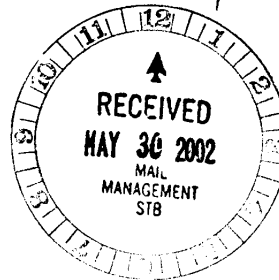
The Petition is being filed by a state, and WisDOT respectfully requests waiver of the filing fees pursuant to 49 C.F.R. 1002.2(e)(1). Please process the Petition and contact me if you require additional information or have any questions about this submission. WisDOT looks forward to receiving STB's ruling on this matter.

Sincerely,

Matthew L. Schemmel  
Assistant General Counsel

CC: Ron Adams  
John Sobotik  
Vicki Schaefer  
Frank Huntington

DID# 0101958001



# FILED FEE RECEIVED

MAY 30 2002

MAY 30 2002

ENTERED  
Office of the Secretary

MAY 30 2002

DOT3 2002 SURFACE TRANSPORTATION BOARD SURFACE TRANSPORTATION BOARD

Part of  
Public Record

**UNITED STATES SURFACE TRANSPORTATION BOARD**  
**PETITION FOR DECLARATORY ORDER**

**I. INTRODUCTION**

The State of Wisconsin Department of Transportation ("WisDOT") hereby submits to the Surface Transportation Board ("STB") a Petition for Declaratory Order (the "Petition") or other appropriate written notification stating that the STB does not have jurisdiction over the transaction set forth in the Transaction Agreement Documents, as defined in this Petition. In support of its Petition, WisDOT submits (1) a deed from the Wisconsin and Southern Railroad Company ("WSOR") to WisDOT, dated February 19, 2002 (the "Deed"), (2) an easement from WisDOT to WSOR (the "Easement") (the Deed and Easement collectively attached hereto as Exhibit 1), and (3) an operating agreement between WSOR and the Wisconsin River Rail Transit Commission ("WRRTC")<sup>1</sup> (the "Operating Agreement", attached hereto as Exhibit 2) (the Deed, Easement and Operating Agreement collectively as the "Transaction Agreement Documents").

**II. THE SUBJECT TRANSACTION**

Pursuant to the terms and conditions of the Transaction Agreement Documents, WisDOT shall acquire certain specified real estate and improvements thereon from WSOR, as set forth in the Deed's legal description (the "Real Estate"), without acquiring the common carrier authority on the segment of operating railroad (the "Line") running upon the Real Estate. WisDOT has intentionally and specifically structured the transaction to comport with the terms and conditions of Maine, DOT-Acquisition Exemption, Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991) ("Maine DOT") and Brotherhood of Maintenance of Way Employees, et al. v. CP Rail Systems, et al., STB Finance Docket No. 32835 (1997) ("BMW"). Specifically, WisDOT has structured the transaction to ensure that WisDOT does not assume any common carrier liability by ensuring that the railroad company conveying the Real Estate to WisDOT shall continue to operate the railroad on the Line pursuant to a perpetual easement from WisDOT to WSOR and existing operating agreement between WSOR and WRRTC. As a result, it is WisDOT's opinion that the conveyance of the Real Estate is not the acquisition of a "railroad line" within the intent and meaning of 49 USCS § 10901, and that the transaction is therefore outside the STB's jurisdiction.

---

<sup>1</sup> WRRTC is a municipal entity and consortium of interested Wisconsin counties, created under the provisions Wisconsin Statutes Section 66.301, which was established, in part, to oversee the preservation of rail service on certain rail lines acquired by the State of Wisconsin. WRRTC was created to undertake rail preservation activities for the State, because the State of Wisconsin was, prior to an April 1992 amendment, constitutionally prohibited from the acquisition, improvement or construction of railways or other railway facilities (or to be a party to any such works) and from borrowing money to invest in rail line improvements and rehabilitation. See, Article VIII, Section 10, Wisconsin Constitution.

WisDOT currently has an option with WSOR to purchase the Real Estate (the "Option"). The Option expires on June 30, 2051. The Option includes the ability to acquire both real estate and any improvements thereon, including the actual tracks themselves, but does not include acquisition of the common carrier authority to provide rail service on the Line. WisDOT does not intend to record the Transaction Agreement Documents unless and until it receives the requested Declaratory Order from STB. Pursuant to the terms on the face of the Deed, if STB determines that it does have jurisdiction over the transaction, WisDOT shall not record the Transaction Agreement Documents and WisDOT's Option shall be deemed unsatisfied.

WisDOT has acquired a number of rail lines, primarily during the course of the bankruptcy proceedings involving the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Generally, the rail lines currently owned by the State of Wisconsin were acquired after they had been authorized for abandonment by the Interstate Commerce Commission and/or Surface Transportation Board. Neither WisDOT nor WRTC provides, nor is either equipped to provide, common carrier, "for-hire" rail freight service. It has always been WisDOT's and WRTC's intention to preserve service over light density or abandoned rail lines without incurring a common carrier obligation, and these parties have attempted to fashion their previous rail line transactions to avoid the imposition of this obligation. In the instant case, WisDOT has granted back to WSOR the perpetual easement to operate the Line subject to the terms and conditions of the Operating Agreement so that any such common carrier liabilities shall remain with WSOR after the exercise of WisDOT's Option and the recording of the Transaction Agreement Documents.

### III. CONCLUSION

WisDOT, by following the mandates of Maine DOT and BMWE, hereby seeks to avoid the imposition of common carrier liability in this case and respectfully requests the STB to issue a Declaratory Order or other appropriate written notification stating that STB does not have jurisdiction over the subject transaction.

DATED: February 26, 2002

Respectfully Submitted



Matthew L. Schemmel  
Assistant General Counsel  
Wisconsin Department of Transportation  
Office of General Counsel  
4802 Sheboygan Avenue, Room 115B  
P.O. Box 7910  
Madison, Wisconsin 53707-7910  
(608) 266-8752  
e-mail: Matthew.Schemmel@dot.state.wi.us

DOCUMENT NO.

QUIT CLAIM DEED  
STATE OF WISCONSIN

THIS SPACE RESERVED FOR RECORDING DATA

Exhibit 1

**Wisconsin and Southern Railroad Company, Inc.** (the "Grantor"), hereby **quit-claims** to **The State of Wisconsin, Department of Transportation** (the "Grantee"), the following tract of land in Dane County, State of Wisconsin:

All those lands known as the WSOR Madison -Middleton Rail corridor in the county of Dane, Wisconsin, more particularly described as all the railroad property (land and improved property) located between railroad milepost 138.58 (engineering station 5055+50), which is approximately 24 feet northwesterly of the west line of North Shore Drive in the City of Madison, in Government Lot 2, Section 23, Township 7 North, Range 9 East, and railroad milepost 146.72 (engineering station 5485+80) being the east line of the NW1/4, SW1/4, Section 10, Township 7 North, Range 8 East in the Township of Middleton.

Also including all railroad property (land and improved property) located between railroad milepost 167.53 (engineering station 652+70-near Hamilton Street) and railroad milepost 168.00 (engineering station 677+52.5-near W. Main Street), both points located in the City of Madison, as more particularly described on the attached Exhibit A (the "Corridor").

Grantor hereby reserves a rail freight easement in the Corridor, as set forth in the attached Exhibit B and made a part hereof by this reference (the "Easement").

## RETURN TO

Matthew Schemmel, WisDOT  
P.O. Box 7910  
Madison, WI 53707

PINs: 60-0709-173-0098-4  
60-0709-184-1419-8

Any railroad common carrier obligations and liabilities related to operation of a railroad line over the Corridor described herein and in the Easement remain the property, obligation and liability of Grantor, its successors, trustees, administrators and assigns.

Grantee may, in the sole exercise of Grantee's discretion, decline to accept or record this deed pending a determination by the United States Surface Transportation Board ("STB") as to whether STB has jurisdiction to approve or exempt this conveyance or whether acceptance of the deed imposes any common carrier obligations and/or liability upon Grantee. In the event the STB decides that it has jurisdiction to approve or exempt the conveyance or that acceptance of the deed would result in common carrier obligations and/or liability to Grantee, Grantee may, in the sole exercise of Grantee's discretion, decline to accept and record this deed, and in such case, the option to purchase the Corridor granted by Grantor to Grantee, and recorded October 5, 1995, in Volume 30999 of Records, page 2, official records of Dane County, Wisconsin, as document number 2709127, shall remain in effect and be considered unsatisfied.

**THIS CONVEYANCE IS EXEMPT FROM THE TRANSFER FEE PURSUANT TO SEC. 77.25**

In Witness Whereof, the said grantor has hereunto set its hand and seal this 19<sup>th</sup> day of February, 2002.

Wisconsin and Southern Railroad Company

By: William Gardner

William Gardner, President

By: Lucy Stone Gardner

Lucy Stone Gardner, Secretary

State of Wisconsin,

Dane County.

On the above date, this instrument was acknowledged before me by William Gardner

and Lucy Stone Gardner, as corporate officers of Wisconsin and Southern Railroad Company

Signature, Notary Public, State of Wisconsin

(Print or Type Name, Notary Public, State of Wisconsin)

(Date Commission Expires)

This instrument drafted by John Sobotik, Wis. Dept. of Transportation

## Property Legal Description - Exhibit A

All land and improved property, including but not limited to rails, ties, spikes, joint bars and fastenings, turnouts and switches, bridges, trestles, culverts, buildings, and all other track material on property located in the Cities of Madison and Middleton and the Village of Shorewood, Dane County, Wisconsin, described as:

Commencing at a point on the centerline of the Grantor's main track approximately 465 feet southeasterly of the southeasterly line of West Wilson Street in the City of Madison, which point is also known as Milepost 138.58 and additionally known as railroad engineer's survey station 5055+50, and extending in a westerly direction a distance of approximately 8.15 miles in and through Dane County and terminating at a point on the west line of the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Section 10, Township 7 North, Range 8 East, in the City of Middleton, which point is also known as Milepost 146.72 and additionally known as railroad engineer's survey station 5485+80; also commencing at a point on the centerline of the Grantor's former main track, which point is located on the northerly right of way line of South Blair Street, and extending in a southwesterly direction in and through the said City of Madison and terminating at a point approximately 50 feet southeasterly of the southeasterly line of Main Street, Plat of Madison, also known as Milepost 168.00, and additionally known as railroad engineer's survey station 677+52.5.

The above-described property is located in Sections 17, 18, 19, 20, 21, 22, 23 and 24 of Township 7 North, Range 9 East, City of Madison and Sections 16 and 17 of Township 7 North, Range 9 East, Village of Shorewood and Sections 10, 11, 12 and 13 of Township 7 North, Range 8 East, City of Middleton and Section 13 of Township 7 North, Range 8 East, City of Madison, all in Dane County, Wisconsin, and has been more fully described as the result of surveys as follows:

Commencing at the north quarter corner of Section 21, Township 7 North, Range 9 East; thence South 00 degrees 07 minutes 01 second East, 454.23 feet along the north-south quarter line of Section 21 to the point of beginning; thence South 72 degrees 41 minutes 00 seconds East, 314.16 feet to a point of curvature; thence along a curve to the left through a central angle of 23 degrees 59 minutes 59 seconds, an arc distance of 1179.25 feet, a radius of 2815.29 feet and a chord bearing South 84 degrees 41 minutes 00 seconds East, 1170.64 feet; thence North 83 degrees 19 minutes 00 seconds East, 1406.88 feet; thence North 78 degrees 07 minutes 00 seconds East, 341.40 feet to a point of curvature; thence along a curve to the right through a central angle of 05 degrees 12 minutes 00 seconds, an arc distance of 523.00 feet, a radius of 5762.58 feet and a chord bearing North 80 degrees 42 minutes 49 seconds East, 522.82 feet; thence North 83 degrees 19 minutes 00 seconds East, 263.99 feet to a point of curvature; thence along a curve to the right through a central angle of 03 degrees 57 minutes 15 seconds, an arc distance of 397.70 feet, a radius of 5762.58 feet and a chord bearing North 85 degrees 17 minutes 30 seconds East, 397.62 feet; thence North 87 degrees 16 minutes 00 seconds East, 618.39 feet to a point of curvature; thence along a curve to the right through a central angle of 29 degrees 59 minutes 59 seconds, an arc distance of 562.73 feet, a radius of 1074.74 feet and a chord bearing South 77 degrees 44 minutes 00 seconds East, 556.32 feet; thence South 62 degrees 44 minutes 00 seconds East, 274.77 feet; thence South 65 degrees 36 minutes 00 seconds East, 2362.38 feet; thence South 74 degrees 46 minutes 08 seconds East, 207.10 feet; thence South 65 degrees 36 minutes 00 seconds East, 1193.09 feet; thence continuing South 65 degrees 36 minutes

00 seconds East, 71.91 feet; thence South 01 degree 00 minutes 26 seconds West, 22.65 feet; thence South 67 degrees 30 minutes 42 seconds East, 1413.04 feet; thence South 62 degrees 16 minutes 43 seconds East, 142.60 feet; thence South 60 degrees 26 minutes 51 seconds East, 84.72 feet; thence South 60 degrees 17 minutes 35 seconds East, 50.13 feet; thence South 59 degrees 47 minutes 02 seconds East, 50.47 feet; thence South 58 degrees 06 minutes 14 seconds East, 50.71 feet; thence South 56 degrees 28 minutes 48 seconds East, 50.79 feet; thence South 54 degrees 26 minutes 05 seconds East, 52.41 feet; thence South 59 degrees 11 minutes 18 seconds East, 68.39 feet; thence South 43 degrees 59 minutes 52 seconds East, 130.58 feet; thence South 74 degrees 10 minutes 13 seconds East, 155.19 feet; thence South 83 degrees 32 minutes 57 seconds East, 85.38 feet to a point of curvature; thence along a curve to the left through a central angle of 15 degrees 37 minutes 06 seconds, an arc distance of 377.92 feet, a radius of 1386.39 feet and a chord bearing South 89 degrees 59 minutes 07 seconds East, 376.75 feet; thence North 80 degrees 18 minutes 53 seconds East, 115.93 feet to a point of curvature; thence along a curve to the left through a central angle of 07 degrees 50 minutes 52 seconds, an arc distance of 189.89 feet, a radius of 1386.39 feet and a chord bearing North 74 degrees 04 minutes 59 seconds East, 189.74 feet; thence South 43 degrees 51 minutes 47 seconds East, 19.68 feet to a point of curvature; thence along a curve to the left through a central angle of 20 degrees 08 minutes 51 seconds, an arc distance of 493.84 feet, a radius of 1404.39 feet and a chord bearing North 59 degrees 45 minutes 31 seconds East, 491.30 feet to a point of compound curvature; thence along a curve to the left through a central angle of 04 degrees 16 minutes 13 seconds, an arc distance of 569.46 feet, a radius of 7640.40 feet and a chord bearing North 49 degrees 03 minutes 21 seconds East, 569.33 feet; thence North 45 degrees 50 minutes 11 seconds East, 14.96 feet; thence continuing North 45 degrees 50 minutes 11 seconds East, 420.06 feet to a point of curvature; thence along a curve to the left through a central angle of 02 degrees 54 minutes 00 seconds, an arc distance of 289.24 feet, a radius of 5714.65 feet and a chord bearing North 44 degrees 23 minutes 11 seconds East, 289.21 feet; thence North 42 degrees 56 minutes 11 seconds East, 348.97 feet; thence South 44 degrees 27 minutes 13 seconds East, 5.64 feet; thence North 42 degrees 56 minutes 11 seconds East, 132.50 feet; thence North 44 degrees 27 minutes 13 seconds West, 5.64 feet; thence North 42 degrees 56 minutes 11 seconds East, 1587.55 feet; thence North 37 degrees 18 minutes 02 seconds East, 6.39 feet; thence South 47 degrees 05 minutes 15 seconds East, 33.96 feet; said point being South 50 degrees 08 minutes 54 seconds West of and 273.33 feet from a meander corner for the north quarter corner of Section 24, Township 7 North, Range 9 East; thence North 42 degrees 55 minutes 32 seconds East, 158.65 feet to a point of curvature; thence along a curve to the left through a central angle of 04 degrees 45 minutes 04 seconds, an arc distance of 164.26 feet, a radius of 1980.88 feet and a chord bearing North 40 degrees 31 minutes 16 seconds East, 164.21 feet; thence North 37 degrees 17 minutes 48 seconds East, 66.77 feet to a point of curvature; thence along a curve to the left through a central angle of 10 degrees 48 minutes 01 second, an arc distance of 373.39 feet, a radius of 1980.88 feet and a chord bearing North 30 degrees 51 minutes 38 seconds East, 372.84 feet; thence North 72 degrees 36 minutes 24 seconds East, 59.47 feet to a point of curvature; thence along a curve to the right through a central angle of 08 degrees 06 minutes 47 seconds, an arc distance of 286.72 feet, a radius of 2024.89 feet and a chord bearing South 28 degrees 22 minutes 21 seconds West, 286.48 feet; thence South 39 degrees 07 minutes 36 seconds West, 140.87 feet; thence South 38 degrees 14 minutes 36 seconds West, 66.62 feet to a point of curvature; thence along a curve to the

right through a central angle of 04 degrees 37 minutes 58 seconds, an arc distance of 162.72 feet, a radius of 2012.39 feet and a chord bearing South 40 degrees 35 minutes 56 seconds West, 162.67 feet; thence South 42 degrees 54 minutes 12 seconds West, 2557.83 feet; thence North 47 degrees 05 minutes 48 seconds West, 31.50 feet; thence South 42 degrees 54 minutes 12 seconds West, 83.24 feet, said point being North 08 degrees 07 minutes 41 seconds East of and 102.32 feet from a meander corner for the west quarter corner of Section 24, Township 7 North, Range 9 East; thence South 45 degrees 50 minutes 11 seconds West, 304.23 feet; thence continuing South 45 degrees 50 minutes 11 seconds West, 66.00 feet; thence continuing South 45 degrees 50 minutes 11 seconds West, 15.61 feet to a point of curvature; thence along a curve to the right through a central angle of 04 degrees 16 minutes 09 seconds, an arc distance of 572.87 feet, a radius of 7688.40 feet and a chord bearing South 49 degrees 03 minutes 07 seconds West, 572.73 feet to a point of compound curvature; thence along a curve to the right through a central angle of 28 degrees 06 minutes 14 seconds, an arc distance of 712.40 feet, a radius of 1452.39 feet and a chord bearing South 63 degrees 45 minutes 42 seconds West, 705.28 feet; thence South 81 degrees 40 minutes 24 seconds West, 209.47 feet to a point of curvature; thence along a curve to the right through a central angle of 14 degrees 18 minutes 54 seconds, an arc distance of 362.87 feet, a radius of 1452.39 feet and a chord bearing North 87 degrees 19 minutes 35 seconds West, 361.93 feet; thence South 45 degrees 49 minutes 36 seconds West, 61.62 feet to a point of curvature; thence along a curve to the right through a central angle of 01 degree 23 minutes 10 seconds, an arc distance of 52.85 feet, a radius of 2184.66 feet and a chord bearing South 41 degrees 48 minutes 23 seconds East, 52.85 feet; thence South 34 degrees 47 minutes 43 seconds East, 95.30 feet; thence South 33 degrees 10 minutes 35 seconds East, 118.46 feet; thence South 33 degrees 07 minutes 04 seconds East, 67.21 feet; thence South 32 degrees 40 minutes 27 seconds East, 101.40 feet; thence South 34 degrees 49 minutes 08 seconds East, 317.20 feet; thence continuing South 34 degrees 49 minutes 08 seconds East, 30.01 feet; thence South 56 degrees 20 minutes 30 seconds West, 55.85 feet; thence North 33 degrees 39 minutes 30 seconds West, 44.73 feet; thence continuing North 33 degrees 39 minutes 30 seconds West, 334.95 feet to a point of curvature; thence along a curve to the left through a central angle of 01 degree 11 minutes 39 seconds, an arc distance of 60.24 feet, a radius of 2890.56 feet and a chord bearing North 30 degrees 38 minutes 58 seconds West, 60.24 feet; thence North 31 degrees 54 minutes 17 seconds West, 67.50 feet to a point of curvature; thence along a curve to the left through a central angle of 05 degrees 16 minutes 46 seconds, an arc distance of 266.34 feet, a radius of 2890.56 feet and a chord bearing North 35 degrees 13 minutes 27 seconds West, 266.25 feet; thence North 38 degrees 47 minutes 23 seconds West, 66.29 feet to a point of curvature; thence along a curve to the left through a central angle of 10 degrees 30 minutes 05 seconds, an arc distance of 265.58 feet, a radius of 1449.01 feet and a chord bearing North 45 degrees 16 minutes 51 seconds West, 265.21 feet; thence North 53 degrees 44 minutes 49 seconds West, 66.97 feet; thence North 54 degrees 26 minutes 05 seconds West, 42.31 feet; thence North 56 degrees 28 minutes 48 seconds West, 49.19 feet; thence North 58 degrees 06 minutes 14 seconds West, 49.27 feet; thence North 59 degrees 47 minutes 02 seconds West, 49.51 feet; thence North 60 degrees 17 minutes 35 seconds West, 49.84 feet; thence North 60 degrees 26 minutes 51 seconds West, 100.04 feet, said point being North 77 degrees 48 minutes 39 seconds East of and 83.07 feet from the center of Section 23, Township 7 North, Range 9 East; thence North 63 degrees 13 minutes 06 seconds West, 143.43 feet; thence North 67 degrees 30 minutes 42 seconds West, 1370.94 feet; thence South 01 degree 00 minutes 26 seconds West, 67.44 feet; thence North 65 degrees 36

minutes 00 seconds West, 71.91 feet; thence continuing North 65 degrees 36 minutes 00 seconds West, 1209.76 feet; thence North 24 degrees 19 minutes 11 seconds East, 40.00 feet; thence North 65 degrees 36 minutes 00 seconds West, 179.26 feet; thence North 77 degrees 00 minutes 14 seconds West, 35.40 feet; thence North 65 degrees 36 minutes 00 seconds West, 2394.89 feet; thence North 62 degrees 44 minutes 00 seconds West, 276.43 feet to a point of curvature; thence along a curve to the left through a central angle of 29 degrees 59 minutes 59 seconds, an arc distance of 528.17 feet, a radius of 1008.74 feet and a chord bearing North 77 degrees 44 minutes 00 seconds West, 522.16 feet; thence South 87 degrees 16 minutes 00 seconds West, 618.39 feet to a point of curvature; thence along a curve to the left through a central angle of 03 degrees 57 minutes 15 seconds, an arc distance of 393.15 feet, a radius of 5696.58 feet and a chord bearing South 85 degrees 17 minutes 30 seconds West, 393.07 feet; thence South 83 degrees 19 minutes 00 seconds West, 263.35 feet to a point of curvature; thence along a curve to the left through a central angle of 05 degrees 12 minutes 23 seconds, an arc distance of 517.64 feet, a radius of 5696.58 feet and a chord bearing South 80 degrees 43 minutes 00 seconds West, 517.46 feet; thence South 78 degrees 07 minutes 00 seconds West, 708.51 feet; thence South 83 degrees 19 minutes 00 seconds West, 673.36 feet; thence North 02 degrees 40 minutes 00 seconds West, 17.50 feet; thence South 83 degrees 19 minutes 00 seconds West, 185.00 feet; thence South 87 degrees 20 minutes 00 seconds West, 215.00 feet; thence South 02 degrees 40 minutes 00 seconds East, 4.50 feet; thence South 87 degrees 19 minutes 43 seconds West, 272.90 feet to a point of curvature; thence along a curve to the right through a central angle of 20 degrees 04 minutes 00 seconds, an arc distance of 1003.34 feet, a radius of 2864.79 feet and a chord bearing North 82 degrees 44 minutes 09 seconds West, 998.22 feet; thence North 72 degrees 41 minutes 00 seconds West, 549.61 feet; thence North 69 degrees 34 minutes 00 seconds West, 542.59 feet; thence North 72 degrees 41 minutes 00 seconds West, 1892.52 feet; thence South 01 degree 21 minutes 25 seconds West, 30.68 feet; thence North 72 degrees 41 minutes 00 seconds West, 17.17 feet, said point being North 01 degree 20 minutes 41 seconds East of and 274.33 feet from the southeast corner of Section 17, Township 7 North, Range 9 East; thence continuing North 72 degrees 41 minutes 00 seconds West, 369.20 feet to a point of curvature; thence along a curve to the left through a central angle of 23 degrees 33 minutes 49 seconds, an arc distance of 2336.04 feet, a radius of 5680.15 feet and a chord bearing North 84 degrees 27 minutes 55 seconds West, 2319.61 feet; thence North 00 degrees 14 minutes 10 seconds West, 24.63 feet to a point of curvature; thence along a curve the left through a central angle of 05 degrees 15 minutes 36 seconds, an arc distance of 523.71 feet, a radius of 5704.65 feet and a chord bearing South 81 degrees 08 minutes 56 seconds West, 523.52 feet; thence South 00 degrees 14 minutes 10 seconds East, 24.98 feet to a point of curvature; thence along a curve to the left through a central angle of 06 degrees 21 minutes 28 seconds, an arc distance of 630.29 feet, a radius of 5680.15 feet and a chord bearing South 75 degrees 17 minutes 27 seconds West, 629.97 feet; thence South 72 degrees 06 minutes 43 seconds West, 2436.69 feet to a point of curvature; thence along a curve to the right through a central angle of 69 degrees 25 minutes 49 seconds, an arc distance of 3035.76 feet, a radius of 2505.20 feet and a chord bearing North 73 degrees 10 minutes 22 seconds West, 2853.40 feet; thence North 38 degrees 27 minutes 28 seconds West, 736.15 feet to a point of curvature; thence along a curve to the left through a central angle of 10 degrees 47 minutes 00 seconds, an arc distance of 1069.02 feet, a radius of 5680.15 feet and a chord bearing North 43 degrees 50 minutes 58 seconds West, 1067.44 feet; thence North 49 degrees 14 minutes 28 seconds West, 2990.31 feet to a point of curvature; thence

along a curve to the left through a central angle of 08 degrees 50 minutes 32 seconds, an arc distance of 876.61 feet, a radius of 5680.15 feet and a chord bearing North 53 degrees 39 minutes 44 seconds West, 875.74 feet; thence North 58 degrees 05 minutes 00 seconds West, 3053.40 feet, said point being North 01 degree 53 minutes 40 seconds East of and 177.57 feet from a meander corner for the southwest corner of Section 12, Township 7 North, Range 8 East; thence continuing North 58 degrees 05 minutes 00 seconds West, 935.11 feet to a point of curvature; thence along a curve to the left through a central angle of 02 degrees 44 minutes 38 seconds, an arc distance of 271.98 feet, a radius of 5679.50 feet and a chord bearing North 58 degrees 31 minutes 58 seconds West, 271.95 feet to a point of compound curvature; thence along a curve to the left through a central angle of 03 degrees 22 minutes 06 seconds, an arc distance of 336.83 feet, a radius of 5729.58 feet and a chord bearing North 58 degrees 47 minutes 32 seconds West, 336.78 feet to a point of compound curvature; thence along a curve to the left through a central angle of 01 degree 19 minutes 08 seconds, an arc distance of 131.12 feet, a radius of 5696.00 feet and a chord bearing North 63 degrees 57 minutes 11 seconds West, 131.12 feet to a point of compound curvature; thence along a curve to the left through a central angle of 06 degrees 31 minutes 46 seconds, an arc distance of 369.34 feet, a radius of 3241.04 feet and a chord bearing North 69 degrees 10 minutes 03 seconds West, 369.14 feet; thence North 18 degrees 35 minutes 57 seconds East, 11.00 feet to a point of curvature; thence along a curve to the left through a central angle of 02 degrees 11 minutes 04 seconds, an arc distance of 123.98 feet, a radius of 3252.04 feet and a chord bearing North 73 degrees 31 minutes 15 seconds West, 123.97 feet to a point of compound curvature; thence along a curve to the left through a central angle of 00 degrees 51 minutes 29 seconds, an arc distance of 42.58 feet, a radius of 2842.79 feet and a chord bearing North 75 degrees 04 minutes 56 seconds West, 42.58 feet; thence South 11 degrees 23 minutes 29 seconds West, 2.00 feet to a point of curvature; thence along a curve to the left through a central angle of 09 degrees 23 minutes 54 seconds, an arc distance of 465.98 feet, a radius of 2840.79 feet and a chord bearing North 80 degrees 12 minutes 30 seconds West, 465.45 feet; thence North 84 degrees 54 minutes 25 seconds West, 202.17 feet; thence South 01 degree 05 minutes 33 seconds West, 10.67 feet; thence North 84 degrees 54 minutes 37 seconds West, 590.69 feet; thence South 01 degree 08 minutes 48 seconds West, 16.54 feet; thence North 84 degrees 54 minutes 37 seconds West, 725.52 feet; thence North 85 degrees 05 minutes 56 seconds West, 3618.38 feet to a point of curvature; thence along a curve to the left through a central angle of 08 degrees 04 minutes 29 seconds, an arc distance of 800.51 feet, a radius of 5680.15 feet and a chord bearing North 89 degrees 08 minutes 11 seconds West, 799.85 feet; thence South 86 degrees 49 minutes 35 seconds West, 468.74 feet; thence North 00 degrees 55 minutes 17 seconds East, 99.25 feet; thence North 86 degrees 49 minutes 35 seconds East, 461.66 feet to a point of curvature; thence along a curve to the right through a central angle of 08 degrees 04 minutes 29 seconds, an arc distance of 814.46 feet, a radius of 5779.15 feet and a chord bearing South 89 degrees 08 minutes 11 seconds East, 813.79 feet; thence South 85 degrees 05 minutes 56 seconds East, 2293.19 feet, said point being South 00 degrees 07 minutes 50 seconds East of and 329.39 feet from the east quarter corner of Section 10, Township 7 North, Range 8 East; thence continuing South 85 degrees 05 minutes 56 seconds East, 1325.36 feet; thence South 84 degrees 54 minutes 37 seconds East, 718.86 feet; thence South 01 degree 08 minutes 48 seconds West, 16.54 feet; thence South 84 degrees 54 minutes 37 seconds East, 48.62 feet; thence South 00 degrees 20 minutes 03 seconds West, 8.03 feet; thence South 84 degrees 54 minutes 37 seconds East, 541.90 feet; thence North 01 degree 05 minutes 33 seconds East, 1.65 feet; thence South 84 degrees

54 minutes 25 seconds East, 205.59 feet to a point of curvature; thence along a curve to the right through a central angle of 10 degrees 15 minutes 17 seconds, an arc distance of 517.20 feet, a radius of 2889.79 feet and a chord bearing South 79 degrees 46 minutes 48 seconds East, 516.51 feet to a point of compound curvature; thence along a curve to the right through a central angle of 08 degrees 43 minutes 19 seconds, an arc distance of 502.19 feet, a radius of 3299.04 feet and a chord bearing South 70 degrees 15 minutes 08 seconds East, 501.71 feet to a point of compound curvature; thence along a curve to the right through a central angle of 02 degrees 23 minutes 04 seconds, an arc distance of 239.46 feet, a radius of 5754.00 feet and a chord bearing South 63 degrees 25 minutes 37 seconds East, 239.44 feet; thence North 01 degree 26 minutes 56 seconds East, 27.32 feet to a point of curvature; thence along a curve to the right through a central angle of 05 degrees 11 minutes 09 seconds, an arc distance of 523.02 feet, a radius of 5778.50 feet and a chord bearing South 59 degrees 45 minutes 43 seconds East, 522.84 feet; thence South 58 degrees 05 minutes 00 seconds East, 3987.71 feet to a point of curvature; thence along a curve to the right through a central angle of 08 degrees 50 minutes 32 seconds, an arc distance of 891.88 feet, a radius of 5779.15 feet and a chord bearing South 53 degrees 39 minutes 44 seconds East, 891.00 feet; thence South 49 degrees 14 minutes 28 seconds East, 2487.00 feet, said point being South 01 degree 37 minutes 50 seconds West of and 342.61 feet from the west quarter corner of Section 14, Township 7 North, Range 8 East; thence continuing South 49 degrees 14 minutes 28 seconds East, 503.30 feet to a point of curvature; thence along a curve to the right through a central angle of 10 degrees 47 minutes 00 seconds, an arc distance of 1087.66 feet, a radius of 5779.15 feet and a chord bearing South 43 degrees 50 minutes 58 seconds East, 1086.06 feet; thence South 38 degrees 27 minutes 28 seconds East, 736.15 feet to a point of curvature; thence along a curve to the left through a central angle of 69 degrees 25 minutes 49 seconds, an arc distance of 2915.80 feet, a radius of 2406.20 feet and a chord bearing South 73 degrees 10 minutes 22 seconds East, 2740.64 feet; thence North 72 degrees 06 minutes 43 seconds East, 1056.75 feet, said point being South 89 degrees 55 minutes 21 seconds East of and 184.09 feet from the southwest corner of Section 17, Township 7 North, Range 9 East; thence continuing North 72 degrees 06 minutes 43 seconds East 1379.94 feet to a point of curvature; thence along a curve to the right through a central angle of 35 degrees 12 minutes 17 seconds, an arc distance of 3550.92 feet, a radius of 5779.15 feet and a chord bearing North 89 degrees 42 minutes 52 seconds East, 3495.33 feet; thence South 72 degrees 41 minutes 00 seconds East, 1733.24 feet; thence South 17 degrees 19 minutes 15 seconds West, 24.50 feet; thence South 72 degrees 41 minutes 00 seconds East, 1410.09 feet to the north-south quarter line of Section 21, Township 7 North, Range 9 East; thence North 00 degrees 07 minutes 01 second West, along said north-south quarter line, 25.68 feet to the point of beginning.

Excepting therefrom is all that property described in a quit claim deed from the Wisconsin & Southern Railroad Co., a Wisconsin railroad corporation, to the Union Pacific Railroad Company, a Utah corporation, recorded in the office of the Dane County Register of Deeds on September 16, 1996, as Document 2796076.

## **Exhibit B**

### **EASEMENT**

#### **1. Reservation of Easement:**

1.1 Wisconsin and Southern Railroad Company ("WSOR"), its successors, administrators, trustees and assigns, reserves from the Corridor conveyed to the Wisconsin Department of Transportation ("WisDOT") as defined and described in the deed and more particularly in Exhibit A to the deed, which description is incorporated herein by reference, a rail freight easement for the purpose of providing common carrier freight rail service on the Corridor (the "Easement"). The Easement includes the non-exclusive right for WSOR to operate its trains, locomotives, rail cars and rail equipment over the Corridor. It is expressly understood and intended that the Corridor shall be subject to use by third parties for purposes that include, but are not limited to passenger rail service, "light-rail" or commuter rail service, and other public and private purposes. It is further expressly understood and intended that portions of the Corridor may be used by WisDOT or WisDOT's permittees for highway, bicycle, pedestrian ways or other transportation facilities, provided such uses do not unreasonably interfere with WSOR rail operations.

1.2 The conveyance by WSOR to WisDOT set forth in the deed excludes any and all rights and obligations of WSOR under federal law to provide, directly or indirectly, common carrier rail freight service. WSOR retains all such rights and obligations to provide freight rail service to all shippers and shippers facilities located on the Corridor.

1.3 The Easement does not reserve to WSOR any interest in the property acquired by the Village of Shorewood Hills by virtue of that Award of Compensation dated August 24, 1998, and recorded in the office of the Register of Deeds for Dane County, Wisconsin, on August 24, 1998, as document number 3010617.

#### **2. Term and Termination:**

2.1 The term of this Easement shall commence as of the date and time of the recording of the deed and this Easement.

2.2 Except as otherwise provided in the deed and this Easement Agreement, the term of this Easement Agreement and the reserved rail freight easement contained herein shall be perpetual, in recognition of WSOR's continuing common carrier rail freight obligations on the Corridor.

2.3 All rights and interests reserved by WSOR in this Easement, including without limitation the rail freight easement reserved herein, shall terminate, be extinguished and vest in WisDOT upon the happening of all of the following: (a) termination by WSOR, pursuant to an order of the United States Surface Transportation Board (the "STB") of common carrier rail freight services on the Corridor (the "STB Termination Order"); (b) recording in the office of the Register of Deeds for Dane County, Wisconsin of a copy of the STB Termination Order; and (c) recording by WisDOT in the office of the Register of Deeds of a notice terminating the Easement.

#### **3. Compensation:**

3.1 Except as otherwise provided herein, WSOR and WisDOT shall have no obligation to compensate each other in connection with this Easement, including, without limitation, any payment in connection with WSOR's maintenance, dispatching, use or operation of the Corridor or any other portion of the Corridor, as set forth in Section 4.

4. Maintenance and Operation:

- 4.1 As part of the rights and interests reserved by WSOR in this Easement, WSOR and its successors, administrators, trustees and assigns, shall be bound by all terms and conditions, including but not limited to the obligation for maintenance and operation of the Corridor and any costs and expenses, including damages of any kind, incurred as a result thereof, of the operating agreement between WSOR and the Wisconsin River Rail Transit Commission (the "Commission"), number 0491-50-39(C), dated September 22, 1995 (the "Operating Agreement").

Exhibit 2

MIDDLETON - MADISON

OPERATING AGREEMENT

BY AND BETWEEN

WISCONSIN RIVER RAIL TRANSIT COMMISSION

AND

WISCONSIN & SOUTHERN RAILROAD CO.

OPERATING AGREEMENT NO. 0491-50-39(C)

SEPTEMBER 1995

6007-A

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**MIDDLETON-MADISON OPERATING AGREEMENT  
BY AND BETWEEN  
WISCONSIN RIVER RAIL TRANSIT COMMISSION  
AND  
WISCONSIN & SOUTHERN RAILROAD CO.**

**AGREEMENT NO. 0491-50-39(C)**

This Agreement made and entered into this 22<sup>nd</sup> day of SEPTEMBER, 1995, by and between Wisconsin River Rail Transit Commission, a municipal corporation established in accordance with Sec. 66.30 Wis. Stats., ("Commission") and Wisconsin and Southern Railroad, a railroad company organized and existing under the laws of the State of Wisconsin and fully empowered to act as a railroad company in Wisconsin, having its principal office at 5300 N. 33rd Street, City of Milwaukee, County of Milwaukee, and State of Wisconsin ("Operator").

WHEREAS, Commission is created by Iowa, Grant, Crawford, Sauk, Dane, Rock, Walworth and Waukesha Counties for the purpose of providing for the continuance of rail service on the Rail Line with authority to acquire the use of the Rail Line by purchase, lease or otherwise, and to provide for the operation of freight rail service thereon by contract or otherwise; and

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

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

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

**ARTICLE 1.0 - DEFINITIONS.**

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

- a. "ICC" means the Interstate Commerce Commission or its successors, if any.
- b. "WisDOT" means the Wisconsin Department of Transportation.
- c. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.
- d. "Commission" means the Wisconsin River Rail Transit Commission.

- e. "Operator" means the Wisconsin and Southern Railroad Company.
- f. "Land" means the real estate, generally 66 feet in width, upon which the Trackage is located which is owned by Operator and further described under Section 2.1 herein.
- g. "Commuter passenger service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.
- h. "Trackage" means the rails, ties, ballast, track material, bridges, switches, culverts, signals, and all other nonland property on the line segments described under Section 2.1 herein.
- i. "Building" means any structure built to stand more or less permanently with columns or walls and designed to support a roof, and constructed as either an addition which increases the outside dimensions of another structure, or as a detached entity which is not physically connected to another structure and for which it was primarily intended and designed for human use, occupancy or the storage of goods and materials.
- j. "Improved property" means Buildings and Trackage located upon the land of the Rail Line.
- k. "Person" means an individual, a partnership, an association, or bodies politic or corporate.
- l. "Rail Line" means Land, Trackage and Buildings as a totality, but not including common carrier authority to provide rail service.

## ARTICLE 2.0 - CONSIDERATION, TERM AND RESERVATIONS.

### Section 2.1 - Consideration.

Operator enters into and is bound by this Agreement in exchange for and as a requirement of Operator receiving a grant from WisDOT in the amount of \$600,000 for the preservation of freight rail service on the Rail Line located between Milepost 138.79 in Madison and Milepost 146.72 in Middleton and between Mileposts 167.53 and 168.00 in Madison.

### Section 2.2 - Term.

(a) This Agreement shall be for a period of fifty-five (55) years commencing as of July 1, 1995 (herein referred to as "Commencement Date") and ending at 12:01 A.M. June 30, 2051; provided, however, that either party may terminate this Agreement under Article 5.0.

(b) Provided Operator is not in default, Operator shall have the right to renew this Agreement for successive additional ten (10) year periods. Each option to renew shall be for

a period of ten (10) years and shall be exercised at least one (1) year but no more than two (2) years prior to the expiration of the then current term, said renewal notice to be exercised in writing to the Commission with notice to WisDOT. All terms and conditions of this Agreement shall apply to the renewal periods unless amended by mutual agreement.

#### Section 2.3 - Reservations.

(a) Operator shall not sell or lease or grant easements, licenses or permits on land, improved property or both without first obtaining approval in writing from Commission and WisDOT of the terms of the sale, lease, easement, license, or permit. Approval shall not be unreasonably withheld.

(b) Commission reserves the right to contract for the use of the rail line or portions thereof for commuter passenger service. Such contract may be with Operator or a governmental unit or Commission may provide that service itself; provided, however, that Commission may alternatively contract, directly or indirectly, with an entity other than Operator or a governmental unit if it notifies Operator, in writing, of its intention to do so and offers Operator an option to provide the same service on the rail line portion proposed to be operated over by such other entity, upon the same terms and conditions, which option may be exercised by Operator within thirty (30) days following receipt of the foregoing notice. Neither Operator nor any other operator may provide commuter passenger service over any portion of the rail line without first entering into a separate agreement authorizing that service. Before commuter passenger service may begin, Commission must sign the authorizing agreement, and WisDOT must approve it. Further, it is a condition of this reservation that Commission may contract with a third party respecting the provision of commuter passenger service only if reasonable advance notice is given to Operator and Operator is afforded the opportunity of participation in the negotiating and establishing of the conditions of the co-use of these facilities. The granting of such co-use is on the further condition that any upgrading or changing of the rail line or other facilities to accommodate the co-use shall be first approved by WisDOT and shall not involve any additional cost to Operator and that a reasonable division of costs for the servicing, maintaining and repairing of the trackage and other facilities for the co-use shall be established. It is a further condition that such a joint use shall not unreasonably restrict the use of the particular facilities by Operator to meet its common carrier obligations. This joint use may involve testing or trial operations as well as permanent operations.

### ARTICLE 3.0 - RAILROAD OPERATIONS.

#### Section 3.1 - Authority to Operate.

In order for Operator to exercise its rights under this Agreement, Operator shall maintain the requisite operating authority from the Interstate Commerce Commission for the railroad operations described under this Agreement and shall keep such authority in full force and effect throughout the term of this Agreement. Operator shall make all required filings and reports to the ICC.

Section 3.2 - Agreement of Operator to Operate and Agreements and Covenants as to Operator.

- (a) Maintenance. Operator shall perform or cause to be performed all maintenance of the rail line including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the land or improved property reasonably necessary for the safe operation of freight rail service or any other service provided by it to no less than the standards set forth in Appendix A hereto.
- (b) Safety and Other Inspections. Operator agrees to facilitate the inspection of the rail line facilities as required by governmental agencies.
- (c) Operating Personnel. It is understood and agreed that no personnel of Operator are agents, employees, servants or subcontractors of Commission or WisDOT.
- (d) Use of Land or Trackage as Collateral. Neither the land nor the improved property identified under this Operating Agreement shall be used by Operator in any form or amount as equity, security, or collateral for any borrowing or other means of raising capital by Operator or as collateral for any other purpose.
- (e) Public Order. Operator hereby assumes full responsibility for preserving public order upon the subject property and for resolving matters concerning trespass upon or from the rail line land and improved property adjacent to private lands. Operator may adopt and enforce any necessary rules in accordance with Section 3.1 in order to protect the rail line. Operator shall have the right to post signs and erect barricades necessary to delineate the rail line as railroad property and to prevent entrance upon the subject rail line by unauthorized vehicles or individuals.
- (f) Fencing. Operator assumes such responsibility as may exist for providing fencing required under applicable state law or local ordinance or contract.
- (g) Vegetation Control. Operator assumes such responsibility as may exist for the eradication, control and removal of vegetation as required by applicable state law or local ordinance.
- (h) Highways and Streets. Operator assumes full responsibility on the rail line for the maintenance of trackage, warning devices, and railroad highway crossings whenever crossing maintenance is required by law from Operator.
- (i) Private Crossings. Operator may, according to applicable statutory provisions, abrogate any private crossing established by agreement which interferes substantially with Operator's performance of freight rail services.
- (j) Liens Against Rail Line. Operator shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the land or improved property or any interest therein, including treatment as after acquired property under financial arrangements entered into prior

to or subsequent to the commencement date of this Agreement, Operator will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

#### ARTICLE 4.0 - LIABILITY AND INSURANCE.

##### Section 4.1 - Hold Harmless.

Except to the extent that the same arises from or is related to co-uses permitted by Commission or WisDOT pursuant to Section 2.3(b) above, Operator shall save and hold Commission and WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of Operator, or its agents, servants, subcontractors, officers or employees, including, without limiting the applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to Commission, its officers, employees, agents, subcontractors or frequenters, or to any other person whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of Commission or WisDOT) under Federal or state statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the applicability of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. Operator shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

##### Section 4.2 - Insurance.

(a) Required Coverage. During the term of this Agreement, Operator shall maintain, at its own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$10,000,000 per occurrence, or other form approved by WisDOT. WisDOT and Commission and their officers, employees, and agents shall be named as additional insureds under such policies. Operator agrees to maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Operator further agrees to carry fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All such insurances shall cover Commission and WisDOT to the extent of the ownership of both or either in any of said properties and to include under such coverage buildings and trackage hereunder, even though some of said buildings or structures might not be included in the property used by the Operator, except that

coverage need not be maintained on improvements sold or leased otherwise disposed of by WisDOT or Commission to any third party. Items of coverage for Commission may be waived by letter from Commission to the Operator.

(b) Validation of Coverage and Notice of Cancellation. Upon initial purchase and each renewal of insurance coverage, Operator shall provide to both WisDOT and Commission written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage and within 60 days thereafter a copy of the Comprehensive Railroad Liability Policy and the other policies of insurance aforesaid. In the event of suspended coverage or insurance cancellation by any insurance carrier, both the insurance carrier and the Operator shall provide WisDOT and Commission with notification of such suspension or cancellation no less than 10 days prior to such suspension or cancellation.

(c) Self-Insured Retention. It is understood and agreed that the comprehensive railroad liability policy to be obtained and kept in force by Operator may contain a self-insured retention. The figures of \$50,000 per occurrence is hereby approved as the self-insured retention for railroad liability, \$75,000 for FELA, and \$100,000 for property. Operator agrees to confer with Commission and WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer. It is a condition of this Agreement that Operator shall annually provide Commission and WisDOT with an independently audited financial statement showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention.

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

(e) Self-Insured Retention Set Aside. Operator shall, within 30 days after receiving a claim or notice of claim alleging an incident or after being notified of a claim or notice of claim being received by Commission, a member county of Commission, or a WisDOT employee alleging an incident, set aside a separate, segregated reserve for each claim, including claim defense. The reserve fund set aside for each claim and for its defense shall be determined by Operator's counsel and WisDOT's counsel. If the two are unable to agree, they shall select a third party to make the determination. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to claims, Operator agrees to provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position. In the event that the ratio of Operator's current assets to current liabilities, including

claim reserves, as determined from General Ledger Trial Balance sheets filed with Commission and WisDOT within 45 days after the end of each quarter beginning with the quarter ending September 30, 1994, is less than 1.1 to 1, as determined by WisDOT, Commission shall have the right to terminate this Agreement by fifteen (15) days written notice to Operator. If, upon receipt of such notice of termination, Operator shall desire to continue this Agreement in effect, Commission or Operator shall have the right to do so by (i) purchasing, at its own cost and expense, such insurance as WisDOT and Commission shall deem necessary in their reasonable judgment or by (ii) causing the equity owners of Operator to contribute such additional amounts to the capital of Operator as are required to increase such ratio to 1.1 to 1.

(f) Review and Modification of Liability Insurance. (i) The coverage limits of Operator's Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review by Commission and WisDOT no more than once every twelve months. Modifications to self-insured retention amounts shall be governed by Section 4.2(c) herein. Modifications increasing coverage limits shall be effective upon notice by Commission or WisDOT to Operator. Any modifications decreasing coverage limits may not in any event reduce the requisite insurance coverage below that required under Section 4.2(a) above and shall be effective only upon WisDOT approval and upon amendment to this Agreement. Review of liability insurance shall be conducted by Commission, Operator, and WisDOT no less than 30 days prior to the expiration date of the policy then in force, except that a special review may be conducted in the event Operator experiences a cancellation of or a modification or a refusal to renew its liability insurance.

#### ARTICLE 5.0 - TERMINATION OR SUSPENSION.

##### Section 5.1 - Declaration of Default.

(a) Default. A condition of default exists (1) when either party to this Agreement fails to abide by or perform in a material respect any one or more of its terms and conditions, (2) when Operator's insurance coverage lapses, is suspended, is canceled, or fails to satisfy all the terms and conditions of Section 4.2 of this Agreement or any amendment thereto, or (3) when Operator files for protection under any bankruptcy statute.

(b) Notice of Default. A declaration of default shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 9.2 below. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice of default or the date required insurance coverage ceased or the date of filing for bankruptcy protection, whichever occurs first.

##### Section 5.2 - Termination for Default.

In the event of any default described in Section 5.1 above, the non-defaulting party shall have the right to and at its option may, after first giving the required notice to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof or concurrent breach, terminate this Agreement, unless the breach is cured within the period set forth in Section 5.3 below, and the exercise of such right shall not impair any other rights of

the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages whether arising under this Agreement or otherwise.

#### Section 5.3 - Ability to Cure Default.

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

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

#### Section 5.4 - Contractual Obligations Upon Termination.

Except as otherwise agreed to by the parties in writing, the obligations of Operator to Commission to provide freight rail service and to maintain the Land and Improved property under this Agreement shall cease on the effective date of the termination hereof, but all other obligations of the parties shall remain in full force and effect until all operations of Operator hereunder have ceased. Both parties agree to make reasonable efforts to satisfy their surviving obligations promptly after termination.

#### Section 5.5 - Termination Approvals.

Both parties recognize that the termination of Operator's use of the rail line shall require regulatory agency approval before termination can be effective. Operator and Commission both agree to cooperate in necessary efforts associated with obtaining such approvals and, if action is required by WisDOT, to cooperate with WisDOT in all necessary efforts associated with obtaining such approvals.

#### Section 5.6 - Bankruptcy of Operator.

If any proceeding shall be commenced by or against Operator for any relief which includes, or might result in, any modification of the obligations of Commission or its Operator hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), it may be declared cause for default and said contract may be terminated upon 10 days notice by

Commission to Operator. If all the obligations of Operator hereunder shall not have been and shall not continue to be duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Operator, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within ten (10) days after proceedings shall have been commenced, it may be declared cause for default. Arrangements may be made in such event by Commission with the trustee or bankruptcy court for continuation under such terms as agreed to by Commission.

#### Section 5.7 - Transfer of Property Upon Bankruptcy Default.

If this Agreement shall terminate pursuant to Section 5.6, Operator shall tender title and possession of the Rail Line Land and Improved property to WisDOT. Land and improved property so tendered shall be in the same or better operating order, repair, and condition as exists upon completion of the state-assisted rehabilitation project of 1995 on the Rail Line, reasonable wear and tear in service excepted, shall meet the standards of all applicable laws and shall have removed therefrom at Operator's expense any addition, modification, or improvement owned by Operator and for which Commission or WisDOT has not made a specific request for it to remain with the property.

#### Section 5.8 - Vacating the Rail Property.

Upon determination by Commission or WisDOT that the remedial action has not removed the default condition, it may provide written notice to Operator to vacate the rail line, and Operator shall vacate the rail line within 10 days of deliver of such notice. Commission shall arrange with Operator for an inventory of the rail line to be conducted within this 10 day period. If Operator does not remove any of its equipment within the 10 day period, Commission or WisDOT shall have the option to remove it at Operator's expense.

#### Section 5.9 - Obligations of Operator in the Event of Termination.

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

#### Section 5.10 - Sale or Transfer of All or Portions of Rail Line.

Transfer of Rail Line ownership or any portion thereof by sale, gift, or any other means, including through sale or transfer of the Wisconsin & Southern Railroad Co., or its successor or assign, is prohibited unless approved in writing by WisDOT. All proceeds from the taking of all or any portion of the Rail Line under the power of eminent domain (condemnation) during the term of this Agreement shall be immediately transferred to WisDOT.

#### Section 5.11 - Acquisition Option.

Transfer of Rail Line ownership to WisDOT shall be at WisDOT's option at any time during the duration of this Agreement. The transfer shall preserve the operating rights of the Operator on the Rail Line under terms and conditions in effect for Operator's other operating agreements with the WRTC or its successor. Upon transfer of title to the property to WisDOT, WisDOT shall pay Operator \$10.00. Upon conclusion of this Agreement, Operator shall tender title and possession of the Rail Line to WisDOT.

#### Section 5.12 - New Improved Property.

Operator may acquire or install, at its own expense, additional facilities deemed necessary for railroad service. Installation shall be permitted only after prior receipt of written approval of the installation proposal and plan by Commission and by WisDOT, which approval shall not be unreasonably withheld. In the event of liquidation or transfer of ownership of such facility to anyone other than Operator, WisDOT shall first determine, within 180 days, if any of these additional facilities are needed for the provision of freight rail service on this or any other line in the State. If WisDOT determines that they are not needed for such purpose, the owner of the additional facilities may dispose of the facilities in any manner it sees fit at its own expense and shall restore any trackage and land to the condition it was in prior to the installation of the additional facilities. If WisDOT determines that any of the additional facilities are needed, Commission shall arrange for WisDOT, or the subsequent user of the facilities, to pay, or assume the obligation to pay, if assignable, the fair market value of the needed additional facilities to the owner prior to taking possession of the facility. Should Operator produce an executed agreement for such facility from a bona fide purchaser, it shall notify WisDOT, and WisDOT or its nominee shall have the right of first refusal to purchase under the same terms and conditions, but such right must be exercised within forty-five (45) days, and such purchase must be completed within six (6) months of notice by Operator. Property covered under this section does not include property used in maintenance or betterment or replacement of property preserved under this grant or to be installed by government order or regulation. Property covered under this Section shall include but not be limited to new buildings, new sidings, spurs, or passing tracks.

### ARTICLE 6.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.

#### Section 6.1 - Operator.

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

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

(b) To the best of its knowledge, the execution of this Agreement and the providing of the freight rail service it is obligated to provide will not violate any statute, rule, regulation, order, writ, injunction or other decree of any court, administrative agency or governmental body.

(c) In the event that termination occurs and Commission requires Operator to do so, Operator will support Commission efforts to provide a replacement freight service, without obligation by Operator to expend additional funds to do so.

#### Section 6.2 - Commission.

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

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

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

#### ARTICLE 7.0 - TAXES.

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

#### ARTICLE 8.0 - OTHER COMMITMENTS.

##### Section 8.1 - Handicapped.

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

#### Section 8.2 - Environmental Protection.

(a) Operator agrees that facilities or equipment shall not be acquired, constructed or improved as a part of its operations unless such facilities or equipment are designed and equipped to limit water and air pollution in accordance with all applicable state and Federal standards, statutes, and regulations.

(b) Operator agrees to conduct its operations in compliance with all requirements of Section 114 of the Clean Air Act, 42 USC 7414, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under those acts.

(c) Operator hereby certifies that no facilities which will be utilized or improved as a part of its operations are listed on the Environmental Protection Agency (EPA) list of violating facilities ("the EPA list").

(d) Operator stipulates that it will notify WisDOT as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be utilized or improved as a part of its operations is under consideration to be listed on the EPA list.

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

#### Section 8.3 - Prohibited Interest in the Proceeds of Operations.

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

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

#### Section 8.4 - Nondiscrimination.

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

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

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

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

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

#### ARTICLE 9.0 - GENERAL PROVISIONS.

##### Section 9.1 - Choice of Law.

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

##### Section 9.2 - Notice.

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

Director, Bureau of Railroads and Harbors  
Wisconsin Department of Transportation  
P.O. Box 7914  
Madison, Wisconsin 53707

Chairman  
Wisconsin River Rail Transit Commission  
426 Karrmann Library  
Platteville, Wisconsin 53818

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

Section 9.3 - Status of Operator.

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

Section 9.4 - Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

Section 9.5 - Severability.

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

Section 9.6 - Amendments, Consents, and Approvals.

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

Section 9.7 - Captions.

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

Section 9.8 - Entire Agreement.

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

Section 9.9 - Benefited Parties.

This Agreement is solely for the benefit of the parties hereto and WisDOT.



APPENDIX A  
OPERATING AGREEMENT NO. 0491-50-39(C)

RAILROAD TRACK AND STRUCTURES MAINTENANCE STANDARDS  
ON STATE-ASSISTED RAIL LINES

The following standards shall be used to determine Operator's compliance with its obligation to maintain subject property under Section 3.2(a) of this Agreement.

(The citations listed under the minimum standards column refer to Code of Federal Regulation sections and subsections generally known as Federal Railroad Administration Safety Standards. Citations labeled AREA refer to the American Railroad Engineers Association Manual for Railway Engineering.)

| <u>MAINTENANCE ITEM</u>     | <u>MINIMUM STANDARD</u>                                                                                                     |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| 1.0 <u>Track Components</u> |                                                                                                                             |
| 1.1 Cross Ties              | Federal Railroad Administration (FRA) Class II 213.109.                                                                     |
| 1.2 Switch Ties             | No consecutive defective ties FRA 213.109(c)(1)-(4).                                                                        |
| 1.3 Rail                    | FRA 213.113-213.115 plus no torched cut rail or torched bolt holes, and no rails shorter than 12 feet.                      |
| 1.4 Joint Bars              | FRA Class II 213.121.                                                                                                       |
| 1.5 Tie Plates              | At such time as ties are renewed or rail is replaced, effective tie plates shall be installed.                              |
| 1.6 Track Spikes            | Minimum of 2 spikes per tie plate on ties renewed or ties under rail replaced.                                              |
| 1.7 Track Bolts             | FRA Class II 213.121(d) plus proper size bolts.                                                                             |
| 1.8 Ballast                 | FRA 213.103.                                                                                                                |
| 1.9 Rail Anchors            | No missing anchors, according to the anchoring pattern established by the rehabilitation, on ties renewed or rail replaced. |

## MAINTENANCE ITEM

## MINIMUM STANDARD

### 2.0 Track Geometry

#### 2.1 Track Gage

FRA Class II 213.53.

#### 2.2 Track Alignment

FRA Class III 213.55.

#### 2.3 Track Surface

FRA Class III 213.63.

### 3.0 Turnout Components

#### 3.1 Switches

FRA 213.135.

#### 3.2 Frogs

FRA 213.137, 213.139, 213.141, and 213.143 for Class II.

### 4.0 Grade Crossings

#### 4.1 Track Surface Within 100' of Edge of the Crossing Surface

FRA Class IV 213.63.

#### 4.2 Roadway Surfaces

No necessary surface components missing or in a condition potentially damaging to vehicular or pedestrian traffic. No outstanding Office of Commissioner of Railroads (OCR) complaints.

#### 4.3 Crossing Warning Devices

In place, functioning and inspected per Wisconsin Administrative Code Transportation Commission (TC) 3.10.

#### 4.4 Brushing

Wis. State Statutes 195.29(6) or other OCR order.

#### 4.5 Rail in Crossing

No joints installed within 8' of the edge of the crossing's road surface.

### 5.0 Drainage Structures

#### 5.1 Bridge Structures

FRA 213.33 and AREA Chapter 7, Parts 2 and 3, plus no apparent bridge component failure as determined by a bridge inspector meeting or exceeding the qualifications for a WisDOT Bridge Maintenance and Inspection Technician.

No drift remaining that can be injurious to bridge components.

#### 5.2 Culvert Structures

FRA 213.33 and AREA Chapter 1, Part 4, plus no holes that allow loss of ballast.

## MAINTENANCE ITEM

## MINIMUM STANDARD

### 6.0 Miscellaneous

- 6.1 Track Zone Vegetation FRA 213.37 and documentation of herbicide application once every 24 months.
- 6.2 Brush Wis. Admin. Code TC 3.15(2) & (5); Wis. ss 195.28(6); FRA 213.37 and no brush over 24" in height within 15 feet of the centerline of track.
- 6.3 Fence Maintenance No outstanding order from OCR.
- 6.4 Sidings FRA Class I.

### 7.0 Track Inspections

- 7.1 Track Inspection Frequency FRA 213.233.
- 7.2 Turnout and Track Crossings FRA 213.235.
- 7.3 Inspection Records FRA 213.241.

### 8.0 Buildings

Buildings and other structures shall be maintained as required by local and state building codes without regard to the status of rehabilitation of the rail line.

### 9.0 Bridges

Bridges shall be maintained in compliance with AREA Chapter 7, Part 3.

