

WEINER BRODSKY SIDMAN KIDER PC

RICHARD J. ANDREANO, JR.
SANDRA L. BRICKEL
JAMES A. BRODSKY
DONALD C. BROWN, JR.
JO A. DeROCHE
TROY W. GARRIS
CYNTHIA L. GILMAN
CAMILLO M. GONSALVES*
KAREN R. GUSTAVSON
DON J. HALPERN
STEPHEN E. HART
MITCHEL H. KIDER

THOMAS LAWRENCE III*
JAMES M. MILANO
SUZANNE DE ARMOND MUCCHETTI
LEAH SCHMULEWITZ GETLAN
MARK H. SIDMAN
JOHN D. SOCKNAT
DAVID M. SOUDERS
DIAN P. STEVENS
CYNTHIA G. SWANN
MICHAEL S. WALDRON
HARVEY E. WEINER
ROSE-MICHELE WEINRYB
*NOT ADMITTED IN D.C.

1300 NINETEENTH STREET NW
FIFTH FLOOR
WASHINGTON DC 20036 1609
TEL 202 628 2000
FAX 202 628 2011

206255

FEE RECEIVED

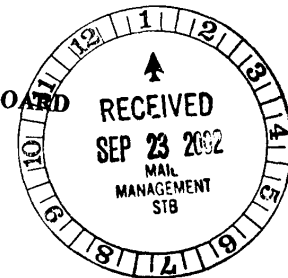
SEP 23 2002

September 23, 2002

**SURFACE
TRANSPORTATION BOARD
ENTERED
Office of Proceedings**

SEP 23 2002

Part of
Public Record



BY HAND DELIVERY

The Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Finance Docket No. 34234; Minnesota Prairie Line, Inc. – Modified
Certificate of Public Convenience and Necessity

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceedings are an original and 10 copies of the Modified Certificate of Public Convenience and Necessity of Minnesota Prairie Line, Inc. pursuant to 49 C.F.R. § 1150.21. Also enclosed is our check in the amount of \$1,200 to cover the filing fee.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Sincerely,


Troy W. Garriss

Enclosures

cc: William F. Drusch

F:\92114\010\tdt512let williams let.doc

FILED

SEP 23 2002

**SURFACE
TRANSPORTATION BOARD**

MINNESOTA PRAIRIE LINE, INC. - MODIFIED CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY

FEE RECEIVED

PURSUANT TO 49 CFR § 1150.21

SEP 23 2002

STB FINANCE DOCKET NO. 34234

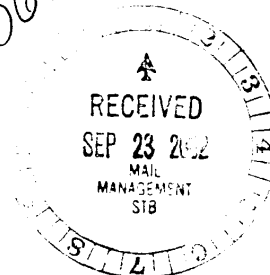
**SURFACE
TRANSPORTATION BOARD**

Applicant's name and address
49 CFR § 1150.23(b)(1)

ENTERED
Office of Proceedings

SEP 23 2002

Part of
Public Record



FILED

SEP 23 2002

**SURFACE
TRANSPORTATION BOARD**

The Articles of Incorporation for Minnesota Prairie Line, Inc. ("MPL") are attached hereto as Exhibit A.

The Directors of MPL are Douglas M. Head and Charles H. Clay. The Officers of MPL are William F. Drusch, Mark J. Wegner, Douglas M. Head and Cheryl A. Webb. William F. Drusch and Mark J. Wegner may be reached at Twin Cities & Western Railroad Co., 2925 12th Street East, Glencoe, MN 55336 and Douglas M. Head and Cheryl A. Webb may be reached at Head, Seifert & Vander Weide, PC, 333 South Seventh Street, Suite 1140, Minneapolis, MN 55402. Douglas M. Head and Charles H. Clay are also directors of three other class III rail carriers: Red River Valley & Western Railroad Company ("RRVW"), Twin Cities & Western Railroad Company ("TCW") and Rutland Line, Inc. ("RLI"). William F. Drusch, Douglas M. Head and Cheryl A. Webb are also officers of RRVW, TCW and RLI.

MPL has sufficient financial responsibility. MPL is a subsidiary of TCW, a successful class III carrier, and the Minnesota Valley Regional Rail Authority (the "Authority") owns and is rehabilitating the Subject Line (described below).

Information about the prior abandonment
49 CFR § 1150.23(b)(2)

The line at issue was abandoned in 1982. Chicago and North Western Transportation Co. - Abandonment Between Norwood and Madison, MN, ICC Docket No. AB-1 (Sub-No. 142) (served Dec. 2, 1982), *corrected* decision served Dec. 10, 1982. Subsequently, the Authority, a political subdivision of the State of Minnesota, bought the approximately 94-mile line, which extends from approximately milepost 51.4, at or near Norwood, MN (at the point of connection with TCW's main line), to approximately milepost 145.7, at or near Hanley Falls, MN (the "Subject Line"). A map of the Subject Line is attached hereto as Exhibit B.

Since the date of the acquisition, several railroads attempted to acquire and operate the Subject Line without success.¹ The most recent operator, Minnesota Central Railroad Co. ("MCTA"), filed for bankruptcy in August 2000,² and it is believed that rail freight service has not been provided over the Subject Line since that time. Prior operators appear to have obtained their respective operating certificates pursuant to class exemptions. MPL has no knowledge of the discontinuance proceedings, if any, in the bankruptcy court. Even in the absence of such proceedings, however, it is appropriate for MPL to operate the Subject Line pursuant to a modified certificate. *See, e.g., Cheatham County Rail Authority "Application and Petition" for Adverse Discontinuance; The Central of Tennessee Railway and Navigation Company, Incorporated Modified Rail Certificate*, ICC Finance Docket No. 32049 (Sub-No. 1) (served Aug. 31, 1992), 1992 ICC Lexis 181, at *6-7.

The Subject Line has been virtually inoperable for some time due to lack of maintenance, but the Authority is currently rehabilitating it.

Dates of the period of operation

49 CFR § 1150.23(b)(3)

Under the Lease and Operating Agreement between the Authority and MPL, effective January 15, 2002 ("Agreement"), the initial term contemplated is 10 years, commencing upon the satisfaction of the conditions precedent set forth in the Agreement, including receipt of necessary regulatory approval for rail operations. A copy of the Agreement is attached hereto as Exhibit C.

Description of service to be performed

49 CFR § 1150.23(b)(4)

MPL will acquire the common carrier obligation to serve the Subject Line, pursuant to this modified certificate. MPL will contract with TCW to perform the actual service. It is currently intended that traffic will be moved east, interlining with TCW, at or near Norwood, MN, though the Subject Line also connects to The Burlington Northern and Santa Fe Railway Co., at or near Hanley Falls.

¹ The carriers attempted to purchase the line through successive assignments of a contract for deed, under which the buyers gained possession of, but the Authority retained legal title to, the Subject Line, pending fulfillment of certain contractual conditions. Most recently, Cascade Rail Corp., Inc. attempted to operate the Subject Line, through the acquisition of 100 percent of the stock of the Minnesota Central Railroad Co. in late 1999. *See Cascade Rail Corp., Inc. – Acquisition and Control Exemption – Minnesota Central Railroad Company*, STB Finance Docket No. 33804 (served Oct. 18, 1999). MCTA had taken assignment of the contract for deed in or about January 1995. *See Minnesota Central Railroad Company – Acquisition and Operation Exemption – Rail Lines of MNVA Railroad, Inc.*, ICC Finance Docket No. 32628 (served Jan. 5, 1995). In or about October 1999, however, shortly after Cascade's acquisition of MCTA, the Authority notified MCTA that the carrier had defaulted on the contract for deed and the Authority thereafter regained the State law possessory right to the Subject Line (*see Minnesota Central Railroad Co. v. Minnesota Valley Regional Rail Authority*, Minnesota District Court for the County of Renville, Eighth Judicial District, Case No. C2-0-267).

² On August 22, 2000, MCTA filed for bankruptcy. *See* United States Bankruptcy Court, Eastern District of Wisconsin, Case No. 00-27913 MDM, Notice of Bankruptcy.

During the term of the Agreement, MPL is required to obtain and maintain in effect, liability insurance to cover various liabilities that MPL may incur in connection with the operation, use, or maintenance of the Subject Line. MPL has obtained the required insurance policies from Essex Insurance Company, Steadfast Insurance Company and Zurich America Insurance Company.

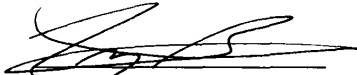
MPL intends to restore service on segments of the Subject Line as rehabilitation progresses, but before the entire line is rehabilitated.³ Accordingly, the following preconditions for operations apply to the Subject Line: (i) the Subject Line must be rehabilitated to FRA class 1 operating condition; (ii) a shipper must install and maintain industry track that connects to a rehabilitated portion of the Subject Line; or (iii) the shipper must arrange, at its own cost, to have goods transported to an accessible point on a rehabilitated portion of the Subject Line, and there transloaded to/from railcars.

Subsidizers

49 CFR §§ 1150.23(b)(5) and 1150.23(b)(6)

At this time, the rehabilitation of the track is being subsidized, but there are no plans for rail operations to be so.

Respectfully submitted,



Troy W. Garris
Weiner Brodsky Sidman Kider PC
1300 19th Street, NW
Fifth Floor
Washington, D.C. 20036-1609

Attorneys for:
Minnesota Prairie Line, Inc.

Dated: September 23, 2002

F:\92114\010\twg594sev mod cert.doc

³ Much of the Subject Line has been inoperable for some time. The Authority is performing its rehabilitation with deliberate speed, and MPL anticipates that some portions of the Subject Line may become serviceable earlier than others.

**MINNESOTA PRAIRIE LINE, INC. – MODIFIED CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

PURSUANT TO 49 CFR § 1150.21

STB FINANCE DOCKET NO. 34234

EXHIBIT A

ARTICLES OF INCORPORATION

**ARTICLES OF INCORPORATION
OF
MINNESOTA PRAIRIE LINE, INC.**

11m-651

The incorporator, for purposes of forming a corporation under the provisions of Minnesota Statutes, Chapter 302A, as amended, hereby adopts the following Articles of Incorporation:

**ARTICLE I.
NAME**

- 1.01. **Name.** The name of this Corporation is Minnesota Prairie Line, Inc. *pc*

**ARTICLE II.
REGISTERED OFFICE AND AGENT**

- 2.01. **Registered Office.** The registered office of this Corporation is located at One Financial Plaza, Suite 2400, 120 South Sixth Street, Minneapolis, Minnesota 55402. ✓

- 2.02. **Registered Agent.** The registered agent shall be Thomas V. Seifert. ✓

**ARTICLE III.
SHARES AND SHAREHOLDERS**

- 3.01. **Number of Shares.** The aggregate number of shares of stock which this Corporation shall have the authority to issue is 500,000 shares. ✓

- 3.02. **Classes of Shares.** The stock of this Corporation shall be a single class of common stock, par value \$0.01 per share. The Board of Directors may, from time to time, establish by resolution additional or different classes or series of shares and may fix the rights and preferences of said shares in any class or series.

- 3.03. **Preemptive Rights.** No shareholder of the Corporation shall have any preemptive rights.

- 3.04. **Cumulative Voting.** No shareholder shall be entitled to any cumulative voting rights.

- 3.05. **Vote Required.** The shareholders shall take action by the affirmative vote of the holders of a majority of the voting power of the shares present and voting except where a larger proportion is required by law or a shareholder control agreement.

ARTICLE IV. DIRECTORS

4.01. **Meetings of Directors; Vote Required.** The Board of Directors shall take action by the affirmative vote of a majority of the directors present at a duly held meeting.

4.02. **Board Action Without Meeting.** An action required or permitted to be taken by the Board of Directors of this Corporation may be taken by written action signed by that number of directors that would be required to take the same action at a meeting of the Board at which all directors are present, except as to those matters requiring shareholder approval, in which case the written action must be signed by all members of the Board of Directors then in office.

ARTICLE V. LIMITATION OF DIRECTOR LIABILITY

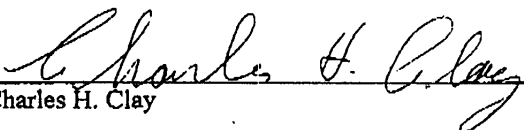
A director of the Corporation shall not be personally liable to the Corporation or to its stockholders for monetary damages for any breach of fiduciary duty as a director to the extent permitted by applicable law. If the Minnesota Business Corporation Act is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director to the Corporation in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Minnesota Business Corporation Act. Any repeal or modification of this Article by the shareholders of the Corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VI.

The name and post office address of the Incorporator of this Corporation is:

Charles H. Clay
One Financial Plaza, Suite 2400
120 South Sixth Street
Minneapolis, Minnesota 55402

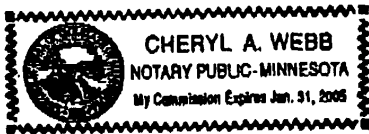
IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of January, 2001.



Charles H. Clay

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 24th day of January, 2001, personally appeared before me, Charles H. Clay, to me known to be the person named in and who executed the within Articles of Incorporation, and he acknowledged this to be of his own free act and deed for the uses and purposes therein expressed.



Cheryl A. Webb
Notary Public

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 24 2001

Mary Kiffmeyer
Secretary of State

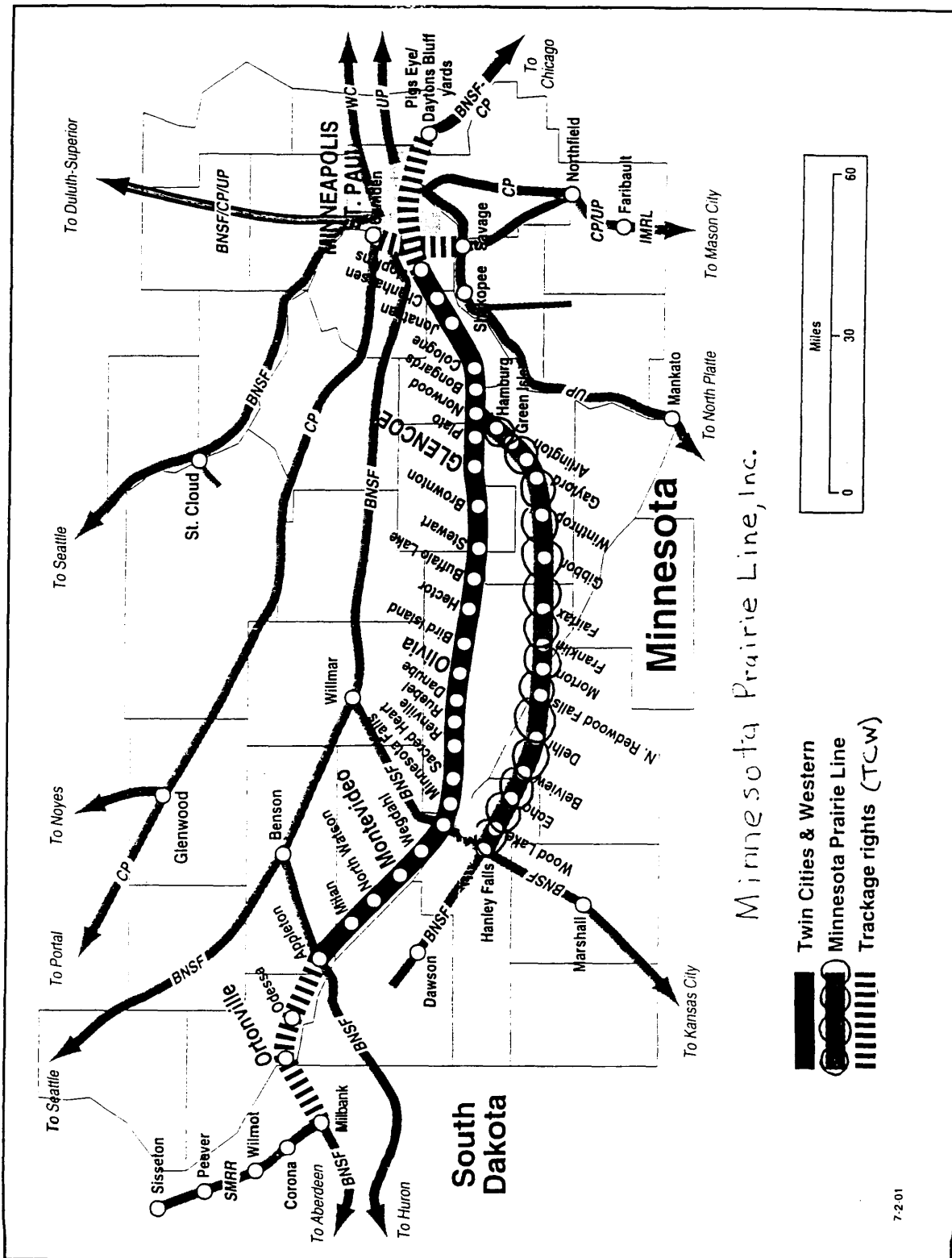
**MINNESOTA PRAIRIE LINE, INC. – MODIFIED CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

PURSUANT TO 49 CFR § 1150.21

STB FINANCE DOCKET NO. 34234

EXHIBIT B

MAP



**MINNESOTA PRAIRIE LINE, INC. – MODIFIED CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

PURSUANT TO 49 CFR § 1150.21

STB FINANCE DOCKET NO. 34234

EXHIBIT C

AGREEMENT

LEASE AND OPERATING AGREEMENT
BETWEEN
MINNESOTA VALLEY REGIONAL RAILROAD AUTHORITY
AND
MINNESOTA PRAIRIE LINE, INC.

INDEX

	Page
Index	2
Recitals.....	4
Article I - Lease of Railroad	4
Article II - Rent.....	6
Article III - Term of Lease	8
Article IV - Use and Maintenance of the Railroad	8
Article V - Rail Service by Lessee.....	12
Article VI - Indemnification	13
Article VII - Insurance	17
Article VIII - Inspection by Lessor.....	17
Article IX - Events of Default by Lessee; Remedies	18
Article X - Events of Default by Lessor; Remedies.....	20
Article XI - Regulatory Approvals.....	22
Article XII - Force Majeure	22
Article XIII - Assignment of Lease.....	23
Article XIV - Obligations of the Parties	23
Article XV - Taxes.....	24
Article XVI - Miscellaneous	24
Article XVII - Special Provisions	25
Article XVIII - Lessor's Representations and Warranties	30
Article XIX - Lessee's Representations and Warranties.....	32

Article XX - Arbitration.....	33
Signatures.....	34
Acknowledgments.....	35
Mn DOT Approval.....	37

LEASE AND OPERATING AGREEMENT
BETWEEN MINNESOTA VALLEY REGIONAL RAILROAD AUTHORITY
AND
MINNESOTA PRAIRIE LINE, INC.

This Lease and Operating Agreement (hereinafter "Agreement"), made effective this 15 day of January, 2001, by and between MINNESOTA VALLEY REGIONAL RAILROAD AUTHORITY, a political subdivision of the State of Minnesota (hereinafter "Lessor") and MINNESOTA PRAIRIE LINE, INC., a Minnesota corporation (hereinafter "Lessee"), WITNESSETH:

WHEREAS, Lessor is the owner of certain real property, railroad right of way, railroad facilities and appurtenances located between Norwood, in Carver County, Minnesota, and Hanley Falls, in Yellow Medicine County, Minnesota (hereinafter referred to as "Railroad"), and

WHEREAS, Lessor acquired the Railroad from the Chicago and North Western Transportation Company for the purpose of operating the same and to provide rail service to the communities located along said line, and

WHEREAS, Lessor is duly authorized, pursuant to Minnesota Statutes Chapter 398A, to acquire railroads and to provide for the operation of the same, and

WHEREAS, Lessor has or will obtain the necessary authority from the Surface Transportation Board to operate an interstate railroad over the Railroad; and

WHEREAS, Lessor now desires to lease the Railroad for use and operation of a railroad as a rail carrier of freight, and Lessee desires to lease the Railroad for operation as a railroad and as a rail carrier of freight,

NOW THEREFORE, In consideration of the mutual promises, covenants, and conditions as set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

LEASE OF RAILROAD

Section 1.01. Lessor hereby agrees to lease and let to Lessee and Lessee hereby agrees to rent and hire from Lessor, for the rent, on the terms and subject to the conditions set forth herein, the real property, right-of-way, road bed, main track, sidings, industrial tracks, depots, yards, storage and parking areas, culverts, bridges, tunnels, buildings, structures, communication and

signal facilities, fixtures, and all other railroad appurtenances, located on or along the Railroad, approximately 94 miles in length, from Norwood in Carver County, Minnesota (approximately milepost 51.4) to Hanley Falls, in Yellow Medicine County, Minnesota (approximately milepost 145.7).

Section 1.02. Lessor will retain during the term of this Agreement, all of Lessor's rights and obligations under the leases, side and industrial track agreements, public and private grade crossing agreements, pipeline and wire agreements, licenses and other agreements that were assigned by Chicago and Northwestern Transportation Company or subsequently granted which pertain to the Railroad.

Section 1.03. Lessor, as between Lessor and Lessee, shall and hereby does retain full legal title to the Railroad notwithstanding the delivery thereof to, and the use and possession thereof by Lessee.

Section 1.04. Lessee shall not, without the express consent of Lessor in writing, directly or indirectly create, incur, assume, cause, or suffer to exist any lien on or with respect to the Railroad.

Section 1.05. Lessee shall take the Railroad subject to: (a) reservations or exceptions of record of minerals or mineral rights, (b) all easements, public utility easements and rights-of way, howsoever created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other legal purposes; (c) existing and future building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (d) encroachments or other conditions that may be revealed by a survey, title search or inspection of the property; (e) Lessor's exclusive right to grant any and all easements, leases, or licenses in, on, under, through, above, across or along the Leased Premises, or any portion thereof; and (f) the rights, interest, contracts, agreements, leases, licenses and easements described in Section 1.02; provided, that none of the foregoing shall interfere with the operation of the Railroad. The parties are not aware whether any of the existing rights, interests, contracts, agreements, leases, licenses, or easements interfere with operation of the Railroad and agree to cooperate in terminating or revising any rights, interests, contracts agreements, leases, licenses, or easements which do interfere with operation of the Railroad. Following the date of this Agreement, Lessor will not grant easements, leases, licenses, rights, or interests or enter into agreements or contracts of any type whatsoever which interfere with the operation of the Railroad. Lessor will give Lessee thirty (30) days advance written notice of its intent to grant any easements, leases, licenses, rights, or interests or to enter into agreements or contracts of any type that may affect Railroad property or operations. If Lessee does not provide a written response within the thirty (30) day period, Lessee will be deemed to accept that the grant does not affect or interfere with the operation of the Railroad. Lessee is specifically prohibited from granting any and all easements, leases, or licenses in, on, under, through, above, across, or along the Leased Premises.

Section 1.06. The real property referred to as "Railroad" in the Recitals herein and leased to Lessee under the terms of this Agreement is legally described on Exhibit A attached hereto. Said legal description includes the engine house in Morton, Minnesota.

Section 1.07. Lessor agrees to retain documents concerning the Railroad which are in its possession which may be helpful or reasonably necessary in operating the Railroad, including without limitation interchange agreements, trackage agreements, right-of-way valuation maps, track charts, blueprints, traffic records, maintenance records, derailment records, engineering specifications, and similar records and to allow Lessee unfettered access to such documents upon reasonable notice and to allow Lessee to make copies of such documents at Lessee's expense. Lessor also agrees to turn over to Lessee keys to switch locks, the engine house, and any other structures.

ARTICLE II

RENT

Section 2.01. After the rehabilitation and certification of the entire Railroad to a FRA Class 1 track condition as defined in Section 17.01 is completed by Lessor as described in Article XVII hereof and any necessary regulatory approval or exemption has been obtained allowing Lessee to operate as provided for in Article XI, Lessee agrees to pay Lessor rents computed on a "per loaded rail car" basis for each loaded rail car transported over the Railroad by Lessee. The amount of rents due and payable for line haul rail freight service will vary and depend upon the total number of loaded rail cars transported over the Railroad during each calendar year as follows:

0 to 5,000 loaded rail cars in a calendar year	\$15 per car
5,001 to 10,000 loaded rail cars in a calendar year	\$30 per car in excess of 5,000
10,001 to 15,000 loaded rail cars in a calendar year	\$40 per car in excess of 10,000
15,001 or more loaded rail cars in a calendar year	\$45 per car in excess of 15,000

A "loaded rail car" for purposes of this section means any railroad car transporting any commodity, goods, materials, or other items, no matter what quantity, which moves to or from the Railroad at Norwood or Hanley Falls, or which goes from one shipper to another shipper on the Railroad, but shall not include company freight or other non-revenue movements.

The rents set forth above shall not apply to car switching or to overhead traffic (traffic which neither originates nor terminates on the Railroad). In the event that overhead traffic is generated, Lessee will notify Lessor and the parties will determine a reasonable rental rate for such traffic. If the parties cannot agree after a thirty (30) day negotiation period, the matter will be submitted to arbitration as provided in Article XX.

Section 2.02. The rents provided for in Section 2.01 shall be due and payable by Lessee quarterly, as follows: Within twenty (20) business days after the end of each calendar quarter.

Lessee shall supply an estimate of the number of loaded rail cars moved on the Railroad for which rent is due during the quarter and pay the rent due therefor. Within forty-five (45) business days after the end of each calendar quarter, Lessee shall supply a certified report as to the number of loaded rail cars moved on the Railroad for which rent is due and shall pay any additional rent due. If there was an overpayment of rent, Lessee shall be entitled to take credit therefor on the next quarterly rent payment.

Section 2.03. Lessee shall have no obligation to pay rents for using the Railroad before rehabilitation of the entire Railroad to FRA Class 1 track condition is complete, even if operations commence sooner on part of the Railroad.

Section 2.04. Any profits or losses from any and all operations and uses of the Railroad by Lessee, including without limitation transportation or storage of cars, during the term of this Agreement, shall inure and accrue to Lessee.

Section 2.05. In the event that a portion of the Railroad shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose and such portion of the Railroad does not materially interfere with Lessee's operations on the Railroad, then this Agreement shall continue for the balance of its terms as to the part of the Railroad remaining, and the parties shall negotiate in good faith an appropriate reduction in rent. In the event that the taking of a portion of the Railroad materially interferes with Lessee's operations, Lessee shall have the right to terminate this Agreement upon sixty (60) days written notice to Lessor. Notwithstanding the foregoing, Lessor will publicly oppose any exercise of the right of eminent domain over the Railroad for any purpose.

Section 2.06. Lessor agrees that it will use the rent received from Lessee under this Agreement to service the debt for the rehabilitation of the Railroad as more fully described in Article XVII, to pay for capital improvements on the Railroad, or to establish a reserve for future capital improvements to the Railroad. Lessor will refund any rents paid in excess of debt service, capital improvements, and reserves for future capital improvements to Lessee to be utilized to reduce shipper freight rates.

Section 2.07. After completion of the sixth year of operations (following completion of the Phase I rehabilitation) and again after completion of the eleventh year of operations (following completion of the Phase I rehabilitation), the Lessor and State reserve the right to renegotiate the per car rents with Lessee based upon cars shipped during years 3 through 6 (with respect to the renegotiation after six years of operations) and years 7 through 11 (with respect to the renegotiation after eleven years of operation) if necessary to ensure complete repayment of the loans from the State and shippers described in Section 17.04 by the end of year 15 according to the schedule attached to this Agreement as Exhibit B. Any renegotiated per car rents shall be applied to rail cars transported on or after the first day of the next calendar quarter following the renegotiation. Notwithstanding the foregoing, the maximum increase in per car rent at the time of each renegotiation shall be no greater than \$15. After the loans from the State and shippers described in Section 17.04 have been repaid, all such renegotiated per car rents shall be rescinded and the rents set forth in Section 2.01 shall apply. After twenty (20) years have elapsed from the

effective date of this Agreement stated above, the rents set forth in Section 2.01 shall be redetermined. In making the redetermination, the average per car revenue obtained by Lessee during the first five (5) years of Lessee's operations of the Railroad shall be compared to the average per car revenue obtained by Lessee during the five (5) years immediately preceding the redetermination. The rents set forth in Section 2.01 shall be increased or decreased in proportion to the percentage change in average per car revenue. The new rent rates shall become effective on the first day of the calendar year following the redetermination of rents. Thereafter, rents shall be redetermined every ten (10) years using the same method.

ARTICLE III

TERM OF LEASE

Section 3.01. This Agreement shall be effective on the date stated above and shall extend for ten (10) years thereafter unless terminated earlier pursuant to this Agreement.

Section 3.02. At the conclusion of the term set forth in Section 3.01, Lessee shall have the right to automatically renew this Agreement for a further term of ten (10) years so long as no Event of Default in Article IX of this Agreement shall have occurred and be continuing. At the conclusion of each term of 10 years, Lessee shall have the right to automatically renew this Agreement for a successive term of ten (10) years so long as no Event of Default in Article IX of this Agreement shall have occurred and be continuing.

ARTICLE IV

USE AND MAINTENANCE OF THE RAILROAD

Section 4.01. Lessee agrees to comply with all applicable federal governmental laws, rules, regulations, orders, and standards with respect to the Railroad and the use, operation and maintenance thereof (including, without limitation, the rules of the United States Department of Transportation, the Federal Railroad Administration, the Surface Transportation Board, and the Environmental Protection Agency, and all health, safety, zoning, pollution and other environmental control regulations and/or standards, as the same may be in effect from time to time). If any failure by Lessee to comply with such laws, rules, regulations, orders and standards results in any fine, penalty, cost, or charge being assessed, imposed, or charged against Lessor, Lessee shall reimburse and indemnify Lessor if and as required under Article VI of this Agreement.

Section 4.02. After the completion of the rehabilitation and certification of the entire Railroad to FRA Class 1 track condition, Lessee shall, at its own expense, maintain the Railroad to the level to which it was rehabilitated, including weed control to the extent reasonably necessary for safe and effective operation of the Railroad and as required by applicable statute governing control of noxious weeds. It is the intention that the Railroad be maintained in a state of repair, ordinary wear and tear excepted, so as to comply with the minimum FRA Class 1 safety standards

enabling operating speeds of 10 mph and capable of sustaining cars of gross loaded weight limits of 263,000 pounds per car and the Minimum Maintenance Requirements set forth in the far right column of page 1 of Exhibit C and any change or modification of the Minimum Maintenance Requirements as described in page 2 of Exhibit C, subject to slow orders in the ordinary course of business, lawful embargoes, and *force majeure* events. Notwithstanding the foregoing, Lessee's maintenance obligations shall be limited as follows:

- (a) Lessee shall have no obligation to maintain any part or section of the Railroad that has not been certified by MNDOT as having a FRA Class 1 track condition as defined in Section 17.01 of this Agreement;
- (b) Lessee shall have no obligation to maintain any part or section of the Railroad until the entire Railroad has been certified by MNDOT as having a FRA Class 1 track condition as defined in Section 17.01 of this Agreement;
- (c) In a calendar year after the entire Railroad has been certified by MNDOT as having a FRA Class 1 track condition, if further rehabilitation is occurring during such calendar year, Lessee shall have no obligation to replace ties, add ballast, or surface track;
- (d) Notwithstanding the provisions set forth above and within Exhibit C, in a calendar year commencing after the entire Railroad has been certified by MNDOT as having a FRA Class 1 track condition, if further rehabilitation is not occurring during such calendar year, as long as traffic volume is at least 8,200 loaded rail cars in the calendar year, Lessee's maintenance obligations for ties, ballast, and surfacing track shall be limited to the expenses of the following: (1) renewing an average of 5,000 ties (or 4,000 minimum in any one year); (2) adding at least 2,000 tons of ballast; and (3) surfacing at least 10 miles of track. If traffic volume is less than 8,200 loaded rail cars during such calendar year, Lessee's maintenance expense limit shall be proportionately reduced;
- (e) Any obligation of Lessee to maintain the railroad will be suspended by natural or otherwise occurring disasters, floods, fires and other calamity, including the *force majeure* events described in Article XII, so long as a reasonable plan for restoring the Railroad is made within 30 days and Lessee commences restoration in accordance with the plan;
- (f) If the costs of maintenance or repairs to any bridge are in excess of \$10,000 in any calendar year, then such expenses shall be considered capital improvements and not maintenance;
- (g) "Capital improvements," for purposes of this Agreement, are defined as all expenditures upon the road property (real estate) owned by the Lessor other than maintenance expenditures. Maintenance expenditures are (1) routine and cyclical in nature and (2) are made for the purpose of keeping the rail line in the rehabilitated condition. Examples of maintenance expenditures that are routine and cyclical in nature include normalized annual tie replacements, renewing ballast, surfacing track, maintaining

- ditches, replacing isolated broken rails, replacing worn switch components, cleaning culverts, clearing brush, spraying weeds, removing ice and snow, maintaining existing crossings, maintenance and repair of signals, and minor bridge repairs. Examples of capital improvements, by way of example and not by way of limitation, include: all rail upgrades (higher weights and/or welding); rehabilitation projects; laying new trackage; installing new sidings or turnouts; replacing subgrade soil, adding materials to subgrade soil, or making other significant improvements to the subgrade soil; major repairs, renewals, or replacement of bridges or buildings or portions thereof; construction, renewal, replacement, or major repair of tunnels, underpasses, or overpasses; construction of new or replacement crossings; building construction, remodeling, or additions; installing fencing along the rail line; installing additional rail anchors; and installing or replacing culverts.
- (h) Lessee shall make no capital improvements without the express written consent of Lessor;
 - (i) Lessee shall not be responsible for conditions that exist at the time the Phase I rehabilitation is completed. Such conditions may include, by way of example and not limitation, poor or unsteady subgrade conditions, the presence of uninstalled or discarded ties, ballast, rail, or other track materials, soil contaminated by the presence of spilled fuel, chemicals, or other materials, underground tanks, or soil, gravel, or other construction materials or debris on or along the Railroad. Lessee will cooperate with Lessor's plans and programs to cure such conditions.

Section 4.03. Lessee shall submit an annual maintenance plan by December 15 of each preceding year. Lessee will abide by any maintenance plan approved by the State of Minnesota, subject to the limitations on Lessee's maintenance obligations in this Agreement and Exhibit C.

Section 4.04. Any property or materials used by Lessee to replace or repair any property or materials in the Railroad shall be of equal or better quality as compared to the property or materials so replaced, and any such repair or replacement materials shall become the property of Lessor. Lessee may take into its inventory any rail or other materials removed during the rehabilitation and re-use such rail or other materials during the rehabilitation or subsequently in maintaining the Railroad.

Section 4.05. Subject to the provisions of Section 7.05 of this Agreement, upon termination of this Agreement, Lessee shall return the Railroad to Lessor in at least as good and complete condition as it was at the completion of the rehabilitation to FRA Class 1 track condition, reasonable wear and tear excepted. Lessee shall have the right to remove any material inventory including unapplied rail and other track materials.

Section 4.06. At all reasonable times Lessor shall have the right to inspect the Railroad pursuant to Article VIII, including bridge inspections. Lessor shall notify Lessee in writing of any

deficiencies in Lessee's obligation to maintain the Railroad to FRA Class 1 track condition, and Lessee shall, within ninety (90) days of its receipt of such notice, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence. Subject to the limitations set forth in Section 4.02 of this Agreement, such maintenance will include any function which Lessor, but for this Agreement, would be required to perform pursuant to applicable federal, state, and municipal laws, ordinances, and regulations. If Lessee does not agree with Lessor's position regarding the alleged deficiencies, it may proceed to demand arbitration under the provisions of Article XX of this Agreement.

Section 4.07. Nothing herein shall preclude Lessee, at its sole cost and expense, from maintaining the Railroad to a standard higher than the minimum herein provided, but Lessee shall not be required hereunder to do so.

Section 4.08. Lessee will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by Lessee during the term of this Lease in any construction, repair, maintenance, or removal on the Railroad and any improvements located thereon, whether said improvements are the property of Lessor or of Lessee, and Lessee will indemnify and save harmless Lessor from all such claims, liens, or demands if required under the provisions of Article VI.

Section 4.09. Lessor acknowledges and agrees that Lessee shall have no obligation under this Agreement to perform any work in connection with or make any expenditures on account of the rehabilitation or to make capital improvements to the Railroad, except as provided in section 17.04. If in Lessee's reasonable judgment capital improvements are necessary to perform safe rail freight service on the Railroad, and Lessor declines or is unable to pay the cost of such improvements, Lessee shall have the right to (1) embargo the affected portion of the Railroad and discontinue service thereon and the Lessor shall not oppose such embargo or discontinuance in any forum, either directly or indirectly or (2) terminate this Agreement (in which case Lessor shall not oppose such embargo or discontinuance in any forum, either directly or indirectly). Lessee shall immediately notify Lessor in writing of the effective date of any embargo. If Lessor does not agree with Lessee's position regarding the need for capital improvements necessary to perform safe rail freight service on the Railroad, it may proceed to demand arbitration under the provisions of Article XX of this Agreement. Any capital improvements made to the Railroad shall be the property of Lessor and shall remain on the Railroad following the termination of this Agreement.

Section 4.10. Lessee, at its sole cost and expense, may construct or relocate sidetracks or industrial spur tracks on the Railroad as required in the ordinary course of business and operations. Sidetracks or industrial spurs in place on the Railroad as of the date of the commencement of operations by Lessee may not be removed from the Railroad without the prior consent of Lessor, which consent will not be unreasonably withheld or delayed. In the event any tracks are removed and track materials sold for salvage, the net proceeds (after removal costs) of such sale shall belong to Lessor unless otherwise agreed to in writing; provided that, to the extent that Lessee replaces track and /or track materials with like kind or better materials, Lessee may

retain the proceeds from the sale of the salvaged materials without obtaining the prior consent of Lessor. Lessee shall notify Lessor prior to the commencement of construction or replacement of any track and/or track materials, except that such notice is not required when such construction or replacement is part of normal maintenance of the Railroad.

ARTICLE V

RAIL SERVICE BY LESSEE

Section 5.01. After completion of the Phase I rehabilitation of the entire Railroad as described in Article XVII of this Agreement and the securing of any required regulatory approvals or exemptions as provided for in Article XI, during the term of this Agreement, Lessee shall, at its expense, provide line haul rail freight service of sufficient frequency and reliability as to satisfy the reasonable service needs and expectations of shippers located on or in the vicinity of the Railroad, taking into account the prevailing demand for line haul rail service, the cost of providing such service, and the level of revenues generated by operations over the Railroad: provided that in no event shall Lessee be required to provide service over and above that required of railroad common carriers under the ICC Termination Act of 1995, 49 U.S.C. Sec. 10101, *et seq.* Lessee shall, in its sole discretion, have the authority to enter into transportation contracts with customers and/or connecting carriers and, if required, publish rates and/or quotations.

Section 5.02. Notwithstanding the generality of the foregoing, the parties agree that Lessee will provide line haul rail freight service at least three (3) times per week where there is reasonable demand from shippers for such service. Lessee shall have the right and discretion to suspend service on all or any part of the Railroad in the event of derailments, bridge failure, adverse weather conditions, and natural disasters such as floods, tornados, and windstorms or any other event described in Article XII of this Agreement. Lessee must give written notice of any suspension to Lessor immediately. If Lessor disagrees with the suspension, Lessor and Lessee shall meet within the next thirty (30) days. If the parties cannot resolve the disagreement, either party can submit this to arbitration as provided in Article XX.

Section 5.03. Line haul rail freight service is subject to review and comment by the Lessor and the Lessee is required to give advance notice to the Lessor of any alterations or adjustments in Lessee's published rate tariffs. Lessee agrees to give prompt response to any inquiries or complaints referred to it by Lessor.

Section 5.04. Lessee shall have the right to enter into agreements and commercial arrangements, including interchange and similar agreements, with third party rail carriers and affiliated rail carriers such as the Twin Cities & Western Railroad, to facilitate providing common carrier rail freight service as Lessee shall determine in its sole discretion, provided that Lessee shall comply with all federal rules or agreements governing the Railroad.

Section 5.05. Lessee, in its reasonable judgment, shall have the right to issue lawful embargos to suspend or discontinue its operations over all or any part of the Railroad, provided that Lessee

follows all federal requirements. Lessee must give written notice of the embargo to Lessor immediately and if Lessor disagrees with the embargo Lessor and Lessee shall meet within the next thirty (30) days. If the parties cannot resolve the disagreement, either party can submit this to arbitration as provided in Article XX.

ARTICLE VI

INDEMNIFICATION

Section 6.01. Lessee shall indemnify and save Lessor, its officials, agents and employees harmless from and against any and all losses, costs, expenses (including without limitation, reasonable attorneys' fees and disbursements of counsel), liabilities, damages, debts, fees, fines, penalties, charges, assessments, judgments, settlements, claims, demands, rights, actions, suits, causes of action, proceedings, and other obligations of any nature whatsoever (hereinafter collectively referred to as "Losses") arising from or in connection with the use, operation, or maintenance of the Railroad by Lessee and not arising directly out of the sole negligence, gross negligence, or willful or intentional misconduct of Lessor, its officials, agents, or employees.

Section 6.02. Notwithstanding the foregoing, Lessee shall have no obligation to indemnify Lessor with respect to Losses of any nature related to or arising from or in connection with leases, easements, licenses, rights, or interests granted, or agreements or contracts of any type whatsoever entered into, by Lessor, its predecessors, or previous lessees or operators of the Railroad or with respect to the Losses as set forth in Section 6.03 of this Agreement as to which Lessor is obligated to indemnify and hold harmless Lessee.

Section 6.03. Lessor agrees to pay and perform and indemnify and hold Lessee, its officers, directors, employees, affiliates, shareholders, agents, and parent or related corporations, and all persons acting by, through, under, or in concert with any of them, and each of their respective heirs, personal representatives, successors, and assigns, harmless from, against, and in respect of any and all Losses that any of them may at any time, directly or indirectly, suffer, sustain, incur or become subject to, arising out of, based upon, resulting from, or on account of any of the following:

- (a) The breach or falsity of any representation or warranty made by Lessor in this Agreement, including the documents, instruments, and agreements to be executed and/or delivered by Lessor pursuant hereto and thereto;
- (b) The breach of any covenant or agreement made by Lessor in this Agreement, including the documents, instruments, and agreements to be executed and/or delivered by Lessor pursuant hereto and thereto;
- (c) Any claims by or liability to the present or former employees of any previous operator of the Railroad on account of any sums due to such employees or otherwise, including but not limited to salaries, pension or profit sharing benefits, Federal Employer's Liability Act claims or

- liabilities, Railroad Retirement Act claims or liabilities, wages, vacation, sick pay, severance pay, and other employee benefits;
- (d) All claims, demands, liabilities and/or encumbrances which may be asserted by creditors of and/or claimants against Lessor or any previous operator of the Railroad;
 - (e) All claims, demands, liabilities and/or encumbrances that may be asserted against Lessee or any of the assets of the Railroad at any time or from time to time resulting from or arising out of the ownership, use, maintenance, rehabilitation, or operation of the Railroad with respect to any period of time prior to the commencement of operations by Lessee or after termination of this Agreement;
 - (f) Any other Losses or liability of or claims against Lessor of any kind, to the extent not specifically assumed by Lessee under this Agreement;
 - (g) Any past, present or future existence, use, handling, storage, transportation, manufacture, release, discharge, spillage, leakage, pumping, pouring, emitting, dumping or disposal of any Hazardous Materials on, about, under, or near the Railroad, whether foreseeable or unforeseeable and regardless of the source, the time of occurrence, or time of discovery of such existence, use, handling, storage, transportation, manufacture, release, discharge, spillage, leakage, pumping, pouring, emitting, dumping, or disposal. The foregoing indemnification includes, without limitation, indemnification against all costs in law or in equity of removal, remediation of any kind, and disposal of such Hazardous Materials, all costs of determining whether the Railroad is in compliance with, and of causing the Railroad to be in compliance with, all applicable Environmental Laws, all costs associated with claims for damages to persons, property, or natural resources, and the Lessee's reasonable attorneys' and consultants' fees, court costs, and expenses incurred in connection with any thereof. Notwithstanding anything in this Section 6.03(g) to the contrary, this indemnification shall not apply to any Losses incurred by Lessee as a direct result of affirmative actions of the Lessee in bringing or allowing the transport of Hazardous Materials on the Railroad as the tenant of the Railroad after the commencement of operations by Lessee if such affirmative actions of the Lessee are the sole and direct cause of the introduction and initial release of Hazardous Materials on, about, under, or near the Railroad. This indemnification shall remain in full force and effect with respect to Hazardous Materials which are discovered or released on, about, under, or near the Railroad after the commencement of operations by Lessee or after termination of this Agreement, but which were introduced or released on, about, under, or near the Railroad prior to the commencement of operations by Lessee and with respect to the continuing migration or release of any Hazardous Materials previously introduced or released on, about, under, or near the Railroad.

- (1) For purposes of this Agreement, "Hazardous Materials" includes any chemical, material, or substance that is now, or at the time in question is, regulated or governed by any law, the release of which creates any liability under any applicable law, and any other chemical, material, or substance which, when released, would cause significant ecological damage;
- (2) For purposes of this Agreement, "Environmental Laws" includes any federal, state, or local statute, ordinance, rule, regulation, order, or decision of any court or agency relating to Hazardous Materials.
- (h) Any products sold or services provided by the Lessor or any previous operator of the Railroad prior to the commencement of operations by Lessee;
- (i) The failure to comply with any requirement for fencing along rail lines contained in any statute, regulation, rule, order, or court decision, including without limitation Minn. Stat. Sections 219.31, 219.33, and 219.34; and
- (j) Events occurring after termination of this Agreement.

Section 6.04. In the event a party intends to seek indemnification pursuant to the provisions of Sections 6.01 or 6.03 hereof (the "Indemnified Party"), the Indemnified Party shall promptly give notice hereunder to the other party (the "Indemnifying Party") after obtaining written notice of any claim or the service of a summons or other initial legal process in any action instituted against the Indemnified Party as to which recovery may be sought against the Indemnifying Party because of the indemnification provided for in Section 6.01 or 6.03 hereof, and, if such indemnity shall arise from the claim of a third party, the Indemnified Party shall permit the Indemnifying Party to assume the defense of any such claim and any litigation resulting from such claim; provided, however, that the Indemnified Party shall not be required to permit such an assumption of the defense of any claim or litigation which, if not first paid, discharged or otherwise complied with, would result in an interruption or disruption of the business of the Indemnified Party or any material part thereof. Notwithstanding the foregoing, the right to indemnification hereunder shall not be affected by any failure of the Indemnified Party to give such notice (or by delay by the Indemnified Party in giving such notice) unless, and then only to the extent that, the rights and remedies of the Indemnifying Party shall have been prejudiced as a result of the failure to give, or delay in giving, such notice. Failure by the Indemnifying Party to notify the Indemnified Party of its election to defend any such claim or action by a third party within twenty (20) days after notice thereof shall have been given to the Indemnifying Party shall be deemed a waiver by the Indemnifying Party of its right to defend such claim or action.

If the Indemnifying Party assumes the defense of such claim or litigation resulting therefrom, the obligations of the Indemnifying Party hereunder as to such claim or litigation shall include taking

all steps necessary in the defense or settlement of such claim or litigation and holding the Indemnified Party harmless from and against any and all damages caused by or arising out of any settlement approved by the Indemnifying Party or any judgment entered in connection with such claim or litigation. The Indemnifying Party shall not, in the defense of such claim or any litigation resulting therefrom, consent to entry of any judgment (other than a judgment of dismissal on the merits without costs) except with the written consent of the Indemnified Party or enter into any settlement (except with the written consent of the Indemnified Party) which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party a release from all liability in respect to such claim or litigation.

If the Indemnifying Party assumes the defense of such claim or litigation resulting therefrom, the Indemnified Party shall bear the fees and expenses of any additional counsel retained by it to conduct its defense.

If the Indemnifying Party does not assume the defense of any such claim by a third party or litigation resulting therefrom after receipt of notice from the Indemnified Party, the Indemnified Party may defend against such claim or litigation in such manner as it deems appropriate, and unless the Indemnifying Party shall deposit with the Indemnified Party a sum equivalent to the total amount demanded in such claim or litigation plus the Indemnified Party's estimate of the cost (including attorneys' fees and expenses) of defending the same, the Indemnified Party may settle such claim or litigation on such terms as it may deem appropriate and the Indemnifying Party shall promptly reimburse the Indemnified Party for the amount of such settlement and for all costs (including attorneys' fees and expenses), expenses and damages incurred by the Indemnified Party in connection with the defense against or settlement of such claim or litigation, or if any such claim or litigation is not so settled, the Indemnifying Party shall promptly reimburse the Indemnified Party for the amount of any judgment rendered with respect to any claim by a third party in such litigation and for all costs (including attorneys' fees and expenses), expenses and damage incurred by the Indemnified Party in connection with the defense against such claim or litigation, whether or not resulting from, arising out of, or incurred with respect to, the act of a third party.

Section 6.05. The indemnities and assumptions of liability contained in this Article shall survive the expiration or termination of this Agreement, provided that such indemnities and assumptions of liability shall not apply with respect to acts or events that occur during the period after the termination of this Agreement and return of the Railroad to Lessor.

Section 6.06. In the event Lessor asserts sovereign immunity in connection with a claim by Lessee for indemnity hereunder, and if a court or other tribunal rules that Lessor's claim of sovereign immunity is a full or partial defense to such claim, then (i) Lessee shall receive a credit against rent payable under Article II hereof in the amount of such claim, and (ii) Lessee shall be entitled to offset the amount of the claim against any amounts payable by Lessee to Lessor under this Agreement. This section is not intended to operate or be construed as a waiver of any rights, including those granted by statute, which Lessor may have to assert a sovereign immunity defense. Nothing in this paragraph nor any other paragraph of this Agreement shall abrogate.

reduce, or eliminate any immunities, whether created by statute or case law, available to Lessor, a municipal entity, under Minnesota or federal law.

ARTICLE VII

INSURANCE

Section 7.01. Lessee shall procure and maintain in effect, during the term of this Agreement, a policy or policies of liability insurance in an amount of \$10,000,000 to cover any occurrence to which the Lessee or Lessor may be subject to liability in connection with the operation, use, or maintenance of the Railroad, including personal injury or death. Lessee shall procure and maintain in effect, during the term of this Agreement, a policy or policies of property/casualty insurance with appropriate limits.

Section 7.02. Such insurance policy or policies shall specify Lessor as an additional insured and loss-payee, as its interests may appear.

Section 7.03. Lessee shall furnish to Lessor certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Lessor in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof, at least thirty (30) days prior thereto.

Section 7.04. Subject to the provisions of Section 7.05 of this Article, all insurance proceeds payable on account of any damage to or destruction of the Railroad or any part thereof shall be used to repair or restore the Railroad as required by Article IV of this Agreement.

Section 7.05. In the event an occurrence such as a flood, tornado, windstorm, bridge failure, or other natural disaster shall render the Railroad inoperable without major reconstruction, Lessee may, at its option: (a) receive the related insurance proceeds and repair or reconstruct the Railroad as required by Article IV of this Agreement; or (b) elect to terminate this Agreement, in which case such insurance proceeds shall be paid to Lessor.

ARTICLE VIII

INSPECTION BY LESSOR

Section 8.01. Lessor shall have the right, at its sole cost and expense, by its authorized representative, to enter upon and inspect the Railroad and to inspect and audit Lessee's books, records and financial statements pertaining to Lessee's covenants in this Agreement and with respect to determining Lessee's obligation to pay rent, provided that Lessor shall have no obligation to make any such inspection or audit. The Minnesota State Track Inspector shall also have the right to enter upon and inspect the Railroad. All persons conducting such inspections

shall execute appropriate releases of liability and, at Lessee's option, shall be accompanied by Lessee's representative.

Section 8.02. Lessee agrees to furnish to Lessor such copies of financial reports by quarter pertaining to Lessee and the Railroad prepared in the normal course of Lessee's business as Lessor may reasonably request and Lessee may lawfully furnish.

Section 8.03. Irrespective of any obligations of Lessee to furnish financial statements to others, Lessee shall furnish Lessor financial statements prepared in accordance with generally accepted accounting principles (which need not be in addition to those furnished to others as aforesaid) fairly presenting the financial position and results of operation of Lessee as and at the end of each fiscal year. Such statements shall be furnished to Lessor within one hundred twenty (120) days following the end of each fiscal year.

ARTICLE IX

EVENTS OF DEFAULT BY LESSEE; REMEDIES

Section 9.01. Any of the following events shall constitute an Event of Default of this Agreement:

- (a) Default shall be made by Lessee in the payments of rent due under Article II of this Agreement and such default shall continue for thirty (30) days after notice from Lessor to Lessee; or
- (b) Lessee shall fail to provide service when requested on the Railroad and such failure shall continue for thirty (30) days after notice from Lessor to Lessee, except when such failure is caused by an event or occurrence such as an act of God, vandalism, strike, or order of a court or governmental authority which (i) is not attributable, directly or indirectly to any act or failure to act by Lessee, and (ii) cannot be cured by Lessee without unreasonable delay or expense; or
- (c) Lessee shall fail to maintain the Railroad in accordance with Article IV of this Agreement and Lessee shall not make reasonable and diligent efforts to comply with Article IV within thirty (30) days after receiving notice from Lessor and satisfy Lessor within ninety (90) days from the receipt of such notice, however, where the alleged failure is a violation of federal regulations Lessee shall comply within the time allowed under such regulations, except where such failure is caused by a *force majeure* event; or
- (d) Lessee shall make or permit any assignment or transfer of this Agreement, or of possession of the Railroad, or any portion thereof, not permitted by this Agreement; or
- (e) Lessee shall consent to the appointment of, or taking possession by, a receiver, trustee, custodian or liquidator of itself or of a substantial part of

- its property, or Lessee shall fail to pay its debts generally as they become due, or shall make a general assignment for the benefit of creditors; or
- (f) Lessee shall file a voluntary petition in bankruptcy or a voluntary petition in or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against Lessee in any such proceeding, or Lessee shall by voluntary petition, answer or consent, seek relief under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or
 - (g) The breach of any of the warranties of Lessee contained in Article XIX.

Section 9.02. If an Event of Default referred to in Section 9.01 hereof has occurred and is continuing, Lessor, at its option, may, directly or through an agent, declare this Agreement to be in default; and after Lessor, at its option, may, directly or through an agent, do one or more of the following as Lessor in its sole discretion shall elect, in each case to the extent permitted by, and subject to compliance with any mandatory requirement of, applicable law then in effect:

- (a) By notice to Lessee, terminate this Agreement subject to any necessary regulatory approval or exemption, whereupon the term of this Agreement and the leasehold estate granted hereby shall terminate and all rights of Lessee to use and occupy the Railroad shall forthwith terminate and Lessee's obligation to pay rent for any lease period commencing after the date of such termination shall terminate; or
- (b) (i) Demand that Lessee, and Lessee shall, at its own cost, expense and risk, upon the written demand of Lessor, return the Railroad promptly to Lessor in the manner and condition required by, and otherwise in accordance with, all the provisions of Article IV as if the Railroad were being returned at the end of the term of this Agreement, or (ii) enter upon the Railroad or any part thereof and take immediate possession of (to the exclusion of Lessee) or remove the same, by summary proceedings or otherwise, all without liability to Lessor for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise; or
- (c) Sell all or part of the Railroad at public or private sale, with or without notice to Lessee, advertisement or publication, as Lessor may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or for any proceeds with respect thereto, in which event the Lessee's obligation to pay rent for any lease period commencing after the date of such termination shall terminate; or
- (d) Hold, keep idle, operate or lease to others all or any part of the Railroad, as Lessor may determine, free and clear of any rights of Lessee or for any proceeds with respect thereto, except that Lessee's obligation to pay rent

- for any lease period commencing after Lessee shall have been deprived of use of the Railroad pursuant to this paragraph (d) shall be reduced by the net proceeds, if any, received by Lessor from leasing the Railroad to any person other than Lessee for the same period or portion thereof, or
- (e) Exercise any other right or remedy that may be available to it under this Agreement, applicable law or proceed by appropriate court action to enforce specifically the terms hereof or to recover damages for the breach hereof or to rescind this Agreement as to the Railroad or any part thereof.

Section 9.03. Lessee covenants and agrees that it will cooperate with the Lessor in obtaining any regulatory approvals or exemptions that may be necessary to transfer title to, or possession of, the Railroad and the operating authority pursuant to Section 9.02.

Section 9.04. The failure of Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies. No right or remedy referred to in Section 9.02 is intended to be exclusive, but each shall be cumulative and in addition to any other right or remedy referred to above or otherwise available to Lessor; and the exercise or beginning of exercise by Lessor of any one or more rights or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other rights or remedies.

Section 9.05. In the event of a default by Lessee not described in Section 9.01, Lessor shall have the right to exercise any other right or remedy that may be available to it under this Agreement or applicable law, including without limitation, to proceed to binding arbitration under Article XX of this Agreement or to initiate an appropriate action in court to enforce specifically the terms of this Agreement, to recover damages, to rescind this Agreement, or to obtain a declaratory judgment.

ARTICLE X

EVENTS OF DEFAULT BY LESSOR; REMEDIES

Section 10.01. Any of the following events shall constitute an Event of Default of this Agreement:

- (a) Lessor shall fail to rehabilitate the Railroad in accordance with Article XVII of this Agreement; or
- (b) Lessor shall make or permit any assignment or transfer of this Agreement, or of possession of the Railroad, or any portion thereof, not permitted by this Agreement; or
- (c) Lessor shall consent to the appointment of, or taking possession by, a receiver, trustee, custodian or liquidator of itself or of a substantial part of

- its property, or Lessor shall fail to pay its debts generally as they become due, or shall make a general assignment for the benefit of creditors; or
- (d) Lessor shall file a voluntary petition in bankruptcy or a voluntary petition in or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against Lessor in any such proceeding, or Lessor shall by voluntary petition, answer or consent, seek relief under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or
 - (e) Lessor shall fail to apply the rents paid by Lessee in compliance with Section 2.06 of this Agreement;
 - (f) The breach of any of the warranties of Lessor contained in Article XVIII: or
 - (g) The default by Lessor under the promissory note and loan agreement to be executed by Lessor.

Section 10.02. If an Event of Default referred to in Section 10.01 hereof has occurred and is continuing, Lessee, at its option, may, directly or through an agent, declare this Agreement to be in default; and thereafter Lessee, at its option, may, directly or through an agent, do one or more of the following as Lessee in its sole discretion shall elect, in each case to the extent permitted by, and subject to compliance with any mandatory requirement of, applicable law then in effect:

- (a) By notice to Lessor, terminate this Agreement subject to any necessary regulatory approval or exemption, and Lessee's obligations to pay rent, provide maintenance, and insure the Railroad shall terminate as of the date specified in the notice of termination: or
- (b) Exercise any other right or remedy that may be available to it under applicable law or proceed by appropriate court action to enforce specifically the terms hereof or to recover damages for the breach hereof or to rescind this Agreement as to the Railroad or any part thereof.

Section 10.03. In the event of a default by Lessor not described in Section 10.01, Lessee shall have the right to exercise any other right or remedy that may be available to it under applicable law, including without limitation, to proceed to binding arbitration under Article XX of this Agreement or to initiate an appropriate action in court to enforce specifically the terms of this Agreement, to recover damages, to rescind this Agreement, or to obtain a declaratory judgment.

Section 10.04. Lessor covenants and agrees that it will cooperate with Lessee in obtaining any regulatory approvals or exemptions that may be necessary for Lessee to transfer any title to, or possession of, the Railroad and the operating authority pursuant to Section 10.02.

Section 10.05. The failure of Lessee to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies. No right or remedy referred to in Section 10.02 or 10.03 is intended to be exclusive, but each shall be cumulative and in addition to any other right or remedy referred to above or otherwise available to Lessee; and the exercise or beginning of exercise by Lessee of any one or more rights or remedies shall not preclude the simultaneous or later exercise by Lessee of any or all such other rights or remedies.

ARTICLE XI

REGULATORY APPROVALS

Section 11.01. Lessor and Lessee shall cooperate in obtaining all necessary regulatory approvals or exemptions from regulations required to permit Lessee's operation of the Railroad, including a modified operating certificate under which Lessee has the ability to terminate its operating authority upon termination of this Agreement. The obligations of Lessee to commence rail operations, as contemplated by this Agreement, are subject to Lessee's receiving all necessary approvals or exemptions therefrom.

Section 11.02. At the termination of this Agreement, Lessee shall transfer or assign to Lessor any trackage rights, interchange rights, switching rights, access rights, supplemental and divisions agreements, or other rights or agreements Lessee may have which permit Lessee to operate the Railroad or interchange with other rail carriers from a connection with the Railroad.

Section 11.03. At the termination of this Agreement, Lessee shall file with the appropriate agencies any necessary application, petition, notice, or documentation required under then applicable law to permit Lessee to cease rail freight operations on the Railroad (the "Discontinuance Filing"). Lessor shall cooperate with Lessee to obtain the relief sought in the Discontinuance Filing, including, without limitation, preparing and filing with such agency or agencies statements in support of the Discontinuance Filing. Lessor shall not oppose or take any action to impede Lessee from obtaining any necessary agency approval or exemption therefrom in connection with Lessee's Discontinuance Filing.

ARTICLE XII

FORCE MAJEURE

Section 12.01. In the event of an act of war, fire, flood, windstorm, tornado, unusually severe weather, epidemic, terrorist act(s), strike, labor strike, bridge failure, recall of equipment for safety concerns, riot, or other unforeseen event beyond the control of either party, preventing such party from performing the commitments made in this Agreement, performance of such commitments by such party shall be excused during the period in which performance is so prevented. Rent shall be abated during the period of the event, provided it shall be reinstated and

remitted from proceeds of any recovery from insurance, lawsuits or other means, and said recovery will be applied to those rents abated back to the point in time the abatement began. It shall be the duty of Lessee to remit the recovered amount sufficient to cover the abated rent to Lessor in a prompt and reasonable fashion.

XIII

ASSIGNMENT OF LEASE

Section 13.01. Lessor may not assign this Agreement without the written consent of Lessee, which consent will not be unreasonably withheld or delayed.

Section 13.02. Lessee may not assign this Agreement without the written consent of Lessor, which consent will not be unreasonably withheld or delayed. To obtain Lessor's consent to such an assignment, Lessee must provide written notice to Lessor of its desire to assign this agreement, including a letter signed by an authorized officer of the intended assignee stating that the assignee agrees to such assignment and agrees to be bound by all the terms of this Agreement. In determining whether to consent to such assignment, Lessor reasonably may consider the experience, qualifications, and capability of the proposed assignee to operate and maintain the Railroad as required by this Agreement.

Section 13.03. This Agreement shall be binding upon and inure to the benefit of successors and permitted assignees of Lessor and successors and permitted assignees of Lessee.

Section 13.04. This Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto and their respective successors and assigns, any right pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement, except as otherwise provided in this Article.

Section 13.05. This Agreement may not be assigned by Lessor or Lessee without the prior written consent of the Minnesota Department of Transportation.

ARTICLE XIV

OBLIGATIONS OF THE PARTIES

Section 14.01. During the term hereof, Lessee will pay all bills for water, sewer, gas and electric service to the Railroad, except with respect to any buildings or services which are not used for Railroad operations. If Lessor is required to, or does pay, any such bills for Railroad operations, Lessee will promptly reimburse Lessor upon receipt of a bill or bills therefor. If the Railroad is not billed separately but as a part of a larger tract or parcel, Lessee shall pay that portion of such bills as is attributable to usage on or in connection with operations of the Railroad.

Section 14.02. During the term of the Lease, Lessee will comply with all applicable federal, state, local laws, rules, regulations, and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of Hazardous Materials, substances, waste, or other pollutants; provided that the provisions of federal statutes, rules, and regulations shall control.

ARTICLE XV

TAXES

Section 15.01. Lessee shall render and pay all real estate taxes and assessments up to a total of \$2,500 per year, general and special or otherwise, which may be payable, levied, assessed, or imposed upon the Railroad during the term of this Agreement. Lessee shall pay such taxes and assessments directly to the taxing authorities on or before the due date thereof. Lessor shall pay any assessments in excess of \$2,500 per year. Lessee shall not be responsible for any taxes or assessments with respect to property owned by Lessor which is leased to third parties or which is not used in the operation of the Railroad.

ARTICLE XVI

MISCELLANEOUS

Section 16.01. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be enforceable and valid under applicable law, but should any provision of this Agreement, for any reason, be declared invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable the remainder of such provision or the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 16.02. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Minnesota.

Section 16.03. This Agreement may be modified only by an instrument in writing signed by an authorized officer of Lessor and Lessee.

Section 16.04. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 16.05. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. By executing this Agreement in counterparts and sending such executed counterpart to the other party via facsimile, the sending party intends to be bound by the terms, conditions and provisions of this Agreement. The sending party shall provide the other party with an

executed original counterpart of this Agreement within two (2) days after the facsimile transmission.

Section 16.06. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 16.07. The language used in this Agreement should be deemed the language chosen by Lessor and Lessee to express their mutual intent, and no rule of strict construction shall be applied against each party.

Section 16.08. Any provision of this Agreement may be amended or waived only in writing signed by the party to be charged. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default.

Section 16.09. All notices required or permitted under this Agreement shall be in writing, shall be delivered by hand or by certified mail, shall become effective on the date delivered by hand or deposited in certified mail with postage prepaid, and shall be addressed as follows:

IF TO LESSOR: MINNESOTA VALLEY REGIONAL RAILROAD AUTHORITY
Sibley County Courthouse
P.O. Box 207
Gaylord, Minnesota 55334

IF TO LESSEE: MINNESOTA PRAIRIE LINE, INC.
Attention: President
2925 - 12th Street East
Glencoe, Minnesota 55336

or addressed to such other address as such party shall hereafter furnish to the other party in writing.

Section 16.10. The parties agree to cooperate in preparing and executing any documents reasonably necessary or helpful to effectuate this Agreement, including a short form memorandum of this lease so as to allow its recording.

ARTICLE XVII

SPECIAL PROVISIONS

Section 17.01. Lessor agrees to undertake the rehabilitation of the Railroad as set forth in its Railroad Reopening and Revitalization Plan dated October 4, 2000, a copy of which is attached hereto as exhibit D and is hereby incorporated by reference. The rehabilitation shall include, at a minimum, upgrading the main line (including switches and turnouts) of the Railroad to FRA Class 1 track condition as determined by MNDOT. As used in this Agreement, "FRA Class 1

track condition" shall have the meaning set forth in 49 C.F.R. Part 213. Lessor shall make diligent efforts to secure all necessary financing and engage qualified contractors to undertake the Phase I rehabilitation and complete the Phase I rehabilitation by November 30, 2002. Lessor shall consult with Lessee as to the specifications of the Phase I rehabilitation prior to engaging contractors.

Section 17.02. Lessor shall make diligent efforts to secure all necessary financing and engage qualified contractors to (i) upgrade portions of the Railroad to 25 m.p.h. operations, by one year from the completion of Phase I (the "Phase II Rehabilitation"), and (ii) upgrade additional portions of the Railroad to 25 m.p.h. operations, and permit the handling of 286,000-lb. gross car weight limits, over the entire main line of the Railroad, by two years from the completion of Phase I (the "Phase III Rehabilitation"). The identification of the mileage locations to be upgraded to 25 m.p.h. operation in the Phase II Rehabilitation and Phase III Rehabilitation shall be based upon operating efficiency, traffic density and cost factors. Lessor shall consult with Lessee and MNDOT as to the specifications of the Phase II Rehabilitation and Phase III Rehabilitation prior to engaging contractors.

Section 17.03. The continuation of this Lease is conditional upon satisfaction of each of the following conditions (each of which, other than subsections (f) and (g), may be waived):

- (a) The receipt of an engineering report acceptable to both Lessor and Lessee that indicates the feasibility of rehabilitation of the Railroad to all three phases and that the cost of rehabilitation of the main line (including switches and turnouts) of the Railroad to a FRA Class 1 track condition will not exceed \$6,000,000;
- (b) Confirmation by October 1, 2001, to the reasonable satisfaction of Lessee, of the availability of \$6,000,000 of interest-free financing for the Phase I rehabilitation of the main line of the Railroad to a solid 10 mph operation with a FRA Class 1 track condition as further described in Section 17.01;
- (c) A volume level of at least 8,200 carloads annually after Phase I rehabilitation is completed;
- (d) Continuing full support from the shippers and Lessor to seek necessary public infrastructure financing to achieve a 25 mph line that can handle 286,000 pound gross weight carloadings;
- (e) The completion of the Phase I rehabilitation of the Railroad by Lessor to a solid 10 mph operation with a FRA Class 1 track classification as determined by track inspectors from the Federal Railroad Administration by November 30, 2002;
- (f) The grant of regulatory approval or exemption for Lessee to commence operations as described in Section 11.01;
- (g) Lessee obtaining property/casualty and liability insurance at reasonable cost acceptable to Lessee and in compliance with this Agreement; and
- (h) Maintenance of the Railroad within the expense limitations set forth in section 4.02 and Exhibit C sustains a FRA Class 1 track classification.

Section 17.04. In connection with the Phase I rehabilitation of the Railroad, Lessee agrees to lend to Lessor ten percent (10%) of the cost of the Phase I rehabilitation, not to exceed the sum of \$600,000, to allow Lessor to satisfy its share of the cost of the Phase I rehabilitation as required by Minn. Rule 8830.5300, subpart 4.B. The loan from Lessee shall have a term not to exceed fifteen (15) years and shall not bear interest, except that said loan shall become due and payable immediately upon termination of this Agreement. Said loan may be in the form on "in-kind" services performed by Lessee during the Phase I rehabilitation such as brush cutting, changing broken rail, cutting shoulders, unloading and stockpiling materials, raising track, work train service, and similar services. Lessee shall provide a monthly accounting or invoice to Lessor of the "in-kind" services performed. Lessor will use the revenue derived from its contract with MCI to repay the loan. Said loan will be separately and specifically documented. Lessee's obligation to make such loan is expressly conditioned upon each of the following:

- (a) Lessor contemporaneously receiving an interest-free loan from the State of Minnesota in the amount of eighty percent (80%) of the cost of the Phase I rehabilitation;
- (b) Lessor contemporaneously receiving interest-free loans from shippers in a total amount of no less than ten percent (10%) of the cost of the Phase I rehabilitation; and
- (c) The parties agreeing on the documents relating to the loan.

If Lessee cannot perform the "in-kind" services or work to meet the timelines of the rehabilitation contractor performing the Phase I rehabilitation, Lessee must hire at its sole expense a contractor to perform the "in-kind" services or work, and must comply with Minnesota Statutes Section 222.50, subd. 5.

Section 17.05. If the Railroad has been rehabilitated to FRA Class 1 track condition but the entire Railroad has not been rehabilitated to allow for 25 mph operation of cars with 286,000 gross weight carloadings, Lessee is willing to continue to operate under this Agreement in the following circumstances and under the following conditions:

- (a) In the circumstance that Lessee determines that the Phase III rehabilitation is likely to be completed by December 31, 2007, Lessee is willing to continue to operate under this Agreement under the conditions that:
 - (1) Lessor, the shippers, and local governments and legislators who represent the area continue to aggressively pursue the necessary rehabilitation funds; and
 - (2) Lessee is able to operate the Railroad profitably (applying generally accepted accounting principles) from year to year.
- (b) In the circumstance that the Phase III rehabilitation does not achieve the capability of handling 286,000 pound gross weight carloadings over the

main line of the Railroad, Lessee is willing to continue to operate under this Agreement under the conditions that:

- (1) The lower weight limits do not impair the ability of Lessee to offer competitive rates to shippers due to the rate requirements of the connecting railroads; and
 - (2) Lessee is able to operate the Railroad profitably (applying generally accepted accounting principles) from year to year.
- (c) In the circumstance that only the eastern half of the Railroad is upgraded to achieve 25 mph operations, Lessee is willing to continue to operate under this Agreement under the conditions that:
- (1) Lessee is able to operate the Railroad profitably (applying generally accepted accounting principles) from year to year; and
 - (2) Lessee is not required to fund further improvements.
- (d) In the circumstance that only 10 mph speed limits are attainable due to funding or engineering limits, Lessee is willing to continue to operate under this Agreement under the conditions that:
- (1) Lessee is able to operate the Railroad profitably (applying generally accepted accounting principles) from year to year;
 - (2) Shipments continue at the annual rate of 8,200 carloadings or more; and
 - (3) Lessor, the shippers, and local governments and legislators who represent the area served by the Railroad continue to aggressively pursue the necessary rehabilitation funds for Phases II and III.

Section 17.06. If any of the conditions for continuing this Agreement under Sections 17.03 and 17.05 of this Agreement are not satisfied or if Lessor defaults in the performance of its obligations under the promissory note and loan agreement, Lessee shall have the right to terminate this Agreement and all of Lessee's obligations hereunder. If Lessee reasonably determines that any of the conditions for continuing this Agreement set forth in Sections 17.03 and 17.05 are not satisfied, Lessee shall advise Lessor and attempt to resolve any disagreements within the next sixty (60) days. If Lessee decides to terminate this Agreement because any of the conditions set forth in Sections 17.03 and 17.05 are not satisfied, Lessee shall give Lessor written notice of its determination and of the date proposed by Lessee for termination of this Agreement, which date shall be at least sixty (60) days after the written notice date. If Lessor disagrees with the termination decision, the parties agree to submit the issue to binding arbitration under the provisions of Article XX of this Agreement. Lessee will continue to operate until the arbitrator(s) render a decision.

Section 17.07. Lessor agrees that any revenue it receives separate from rent paid under this Agreement, after paying administrative expenses, will be applied to repay the loans described in Section 17.04, to pay for capital improvements on the Railroad, or to establish a reserve fund to pay for future capital improvements on the Railroad. Notwithstanding the above, Lessor may use its net revenue, after establishing reserves for future capital expenditures and with Lessee's

specific consent, to fund economic development projects which substantially benefit the Railroad.

Section 17.08. Right of First Refusal. After complying with the agreement between Lessor and the State of Minnesota dated December 1983, in the event Lessor enters into any agreement to sell all or any part of the Railroad, or its interest therein, it shall by written notification notify Lessee thereof within ten (10) days next following the date on which Lessor entered into such sale agreement. Such written notification shall also set forth the identity of the proposed purchaser, the sale price and the terms of sale, and shall be accompanied by a copy of the proposed sale agreement. The Lessee shall thereupon have the option to purchase that portion of the Railroad, or Lessor's interest therein, which is subject to such sale agreement, at the purchase price and upon the terms set forth in such sale agreement, in which event such sale agreement shall be deemed to be null and void as to the proposed purchaser named in such sale agreement. Such option shall be exercised by written notification thereof sent by Lessee to Lessor within ninety (90) days next following the date of Lessee's receipt of the aforesaid written notification of the proposed sale, and the closing with respect thereto shall take place on the latter of such date as is (i) thirty (30) days next following Lessor's receipt of written notification pursuant to which Lessee exercises its purchase option granted pursuant to this paragraph, or (ii) the closing date specified in such sale agreement. In the event such option granted in favor of the Lessee is not exercised by the Lessee within the aforesaid ninety (90) day period, such option shall be deemed to be null and void thereafter. The terms of this paragraph 17.08 shall survive the term of this Agreement, including any renewal term, and shall expire on the latter of (a) the date on which that certain loan (the "Loan") described in section 17.04 above made by Lessee to Lessor pursuant to a Loan Agreement between the parties has been paid in full, or (b) the date of termination of this Agreement, including any renewal term.

Section 17.09. Restriction on Sale. Lessor agrees that it will not sell all or any part of the Railroad, or its interest therein, until such date as is the latter of (i) ten (10) years from the date hereof, or (ii) the date on which the Loan has been paid in full. The terms of this paragraph 17.09 shall survive the term of this Agreement, including any renewal term, and shall expire on the latter of (a) the date on which that certain loan (the "Loan") described in section 17.04 above made by Lessee to Lessor pursuant to a Loan Agreement between the parties has been paid in full, or (b) the date of termination of this Agreement, including any renewal term.

Section 17.10. Approval of Buyer. In the event Lessor proposes to sell all or any part of the Railroad, or its interest therein, any sale agreement entered into by the Lessor shall provide that Lessee shall have the right to disapprove of any proposed buyer, notwithstanding Lessee's refusal to exercise its option granted pursuant to Section 17.08 hereinabove. Lessee agrees that it will not unreasonably disapprove any proposed buyer so long as the Loan by Lessee to Lessor described in Section 17.04 has been repaid in full or will be repaid in full as part of the sale and Lessee has recovered the losses (including the cost of capital and opportunity costs) it has experienced in operating the Railroad. In the event that the foregoing conditions are not satisfied, then Lessee shall have the right to disapprove of any such buyer for any reason or for no reason whatsoever, in which event such sale agreement in favor of such proposed buyer shall

be deemed null and void. The right of disapproval set forth in this Section 17.10 shall be exercisable by Lessee notifying Lessor thereof in writing on or before the date on which Lessee's option granted pursuant to Section 17.08 hereinabove expires. The provisions of this Section 17.10 shall survive the term of this Agreement, including any renewal term, and shall expire on the latter of (a) the date on which that certain loan (the "Loan") described in section 17.04 above made by Lessee to Lessor pursuant to a Loan Agreement between the parties has been paid in full, or (b) the date of termination of this Agreement, including any renewal term.

ARTICLE XVIII

LESSOR'S REPRESENTATIONS AND WARRANTIES

Section 18.01. Lessor represents and warrants as of the date hereof and as of the date for commencement of operations by Lessee on the Railroad, as follows:

- (a) It is a political subdivision duly organized, validly existing and in good standing under the laws of the State of Minnesota, and has all requisite governmental authority, subject to any necessary regulatory authority, to enter into this Agreement and carry out the obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by Lessor and no further proceedings of Lessor are required to approve this Agreement.
- (c) This Agreement is the legal, valid, and binding agreement of Lessor and is enforceable against Lessor in accordance with its terms (assuming that this Agreement is the legal, valid and binding obligation of Lessee), except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by Lessor, the consummation by Lessor of the transactions contemplated hereby, nor compliance or performance by Lessor with any of the provisions hereof, does or will violate any judgment, order, law, or regulation applicable to Lessor or result in any breach of, or constitute a default under, any note, bond, indenture, mortgage, deed of trust, bank loan, credit agreement, or other instrument to which Lessor is a party or by which any of the Railroad is bound, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of Lessor or the Railroad.
- (d) Lessor has sufficient title and interest in and to the Railroad to permit its use for the provision of rail freight operations as contemplated in this Agreement. In the event there is any interference with Railroad operations due to the existence of any easement, right, title, license, or other interest in real property, Lessor shall have one hundred twenty (120) days to cure.

- (e) There are no actions, suits, or proceedings pending or, to Lessor's knowledge threatened, against Lessor or any of its property in any court or before any federal, state, municipal, or other governmental agency, which, if decided adversely to Lessor, would prohibit the execution and delivery by Lessor of this Agreement, or the consummation by Lessor of the transactions contemplated hereby.
- (f) There are no actions, suits or proceedings pending or, to Lessor's knowledge threatened, against Lessor or any of its property in any court or before any federal, state municipal or other governmental agency, which, if decided adversely to Lessor, would materially adversely affect Lessee's ability to conduct rail freight operations over the Railroad as such operations are contemplated in this Agreement.
- (g) Lessor has not created or affirmatively assumed or permitted to arise by operation of law due to an act or omission of Lessor any mortgage, security interest, or other lien or encumbrance securing payment obligations on the Railroad, which mortgage, security interest, lien, or encumbrance would have a material adverse effect on Lessee's ability to conduct rail freight operations as set forth in this Agreement or would require the payment of money by Lessee in order to perform such rail freight operations on the Railroad, except for the rehabilitation funding from the State of Minnesota and shippers described in Article XVII.
- (h) There is no other rail carrier to which Lessor or any other party with an interest in the Railroad has granted rights to use the Railroad.
- (i) Lessor has granted Lessee sufficient interest in and to the Railroad to permit Lessee to perform its rail freight operations on the Railroad.
- (j) Lessor has not received any written notice and is not otherwise aware of any pending or threatened civil, criminal, or administrative actions with respect to any Hazardous Materials or toxic substance on, about, under, or near the Railroad. Hazardous Materials shall have the meaning set forth in Section 6.03(g)(1) of this Agreement.
- (k) No representation or warranty by Lessor in this Agreement contains any untrue statement of a material fact nor omits any material fact that is necessary to make any representation or warranty not materially misleading.
- (l) The Railroad has a continuous right-of-way from approximately milepost 51.4 at Norwood, Minnesota to approximately milepost 145.7 at Hanley Falls, Minnesota of sufficient width along its entire length to permit Lessee to perform efficient rail freight operations.

ARTICLE XIX

LESSEE'S REPRESENTATIONS AND WARRANTIES

Section 19.01. Lessee represents and warrants as of the date hereof and as of the date of the commencement of operations on the Railroad, as follows:

- (a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Minnesota, is qualified to do business in the State of Minnesota, and has full statutory power and authority, subject to any necessary regulatory authority, to enter into this Agreement and carry out the obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by Lessee and is the legal, valid, and binding agreement of Lessee enforceable against Lessee in accordance with its terms (assuming that this Agreement is the legal, valid, and binding obligation of Lessor), except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by Lessee, the consummation by Lessee of the transactions contemplated hereby, nor compliance or performance by Lessee with any of the provisions hereof, does or will violate any judgment, order, law, or regulation applicable to Lessee or any provisions of Lessee's certificate of incorporation or by-laws or result in any breach of, or constitute a default under, any note, bond, indenture, mortgage, deed of trust, bank loan, or credit agreement or other instrument to which Lessee is a party or by which Lessee is bound, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of Lessee (other than any such lien, charge, security interest, or other encumbrance arising from a collateral assignment of this Agreement by Lessee to its primary lender and as otherwise expressly permitted hereunder).
- (c) Lessee's execution of and performance under this Agreement do not violate any rule, regulation, order, writ, injunction, or decree of any court, administrative agency, or governmental body, or any contract to which Lessee is a party.
- (d) There are no actions, suits, or proceedings pending or, to the best of Lessee's knowledge threatened, against Lessee or any of its property in any court or before any federal, state, municipal, or other governmental agency, which, if decided adversely to Lessee, would prohibit the execution and delivery by Lessee of this Agreement, or the consummation by Lessee of the transactions contemplated hereby.

- (e) There are no judgments, orders, or decrees entered in any lawsuit or proceeding that materially affect, or could reasonably be expected to materially affect, the Railroad or Lessee's ability to conduct rail freight operations on the Railroad as such operations are contemplated in this Agreement.
- (f) Upon expiration of the term of this Agreement or other termination of this Agreement in accordance with the terms set forth herein, Lessee shall bear any and all costs of protection of its current or future employees, arising under the terms of any collective bargaining agreement to which Lessee is a party, or as a result of any labor protective conditions imposed on Lessee by the STB or any other regulatory agency, or arising under any statute, as a result of Lessee's rail freight operations on the Railroad, or arising as a result of the termination of this Agreement.
- (g) There is no other rail carrier to which Lessee or any other party with an interest in the Railroad has granted rights to use the Railroad.
- (h) No representation or warranty by Lessee in this Agreement contains any untrue statement of a material fact nor omits any material fact that is necessary to make any representation or warranty not materially misleading.

ARTICLE XX

ARBITRATION

Section 20.01. Except as otherwise provided herein, if any dispute, controversy, or question arises between the parties, either party may submit the dispute, controversy, or question to binding arbitration as hereafter provided. Such dispute, controversy, or question shall be submitted to a single, competent, disinterested arbitrator who is knowledgeable about railroad leases and operating agreements. If the parties are unable to agree on a single arbitrator within thirty (30) days of the date either party gives written notice, then the arbitration shall be had before a board of three (3) competent and disinterested persons who are experienced in the railroad industry, to be selected as follows: The party demanding arbitration shall give the other party notice of such demand, stating specifically the question(s) to be submitted for decision and nominating one person with the required qualifications to serve as one arbitrator; the party to whom such notice is given shall appoint a second arbitrator with the required qualifications within thirty (30) days from the date of such notice. If such party receiving a notice of demand for arbitration fails to select the second arbitrator within the time prescribed, the party making the demand may select the second arbitrator. The first and second arbitrators shall select a third arbitrator with the required qualifications.

Section 20.02. The arbitrator(s) shall proceed without delay to schedule such hearings and submissions by the parties so that the matters in dispute will be determined without delay. The arbitrator(s) shall determine what procedural and evidentiary rules will be followed. In reaching a decision, the arbitrator(s) shall be governed by the rules of law applicable thereto. The decision

of the arbitrator(s) shall be final and conclusive upon the parties hereto. The arbitrator(s) shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator(s), there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator(s).

Section 20.03. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the single arbitrator, if any, shall be borne equally by the parties. If there are three arbitrators, each party shall bear the compensation, costs and expense of the arbitrator selected by it and to share equally the compensation, costs and expense of the third arbitrator.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year written below.

LESSOR

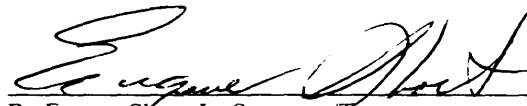
MINNESOTA VALLEY REGIONAL RAILROAD
AUTHORITY

Dated 1-23-02



By Francis Schweiss, Its Chairman

Dated 1-23-02



By Eugene Short, Its Secretary/Treasurer

Approved as to form and execution by the Sibley County Attorney's Office, Counsel for Lessor

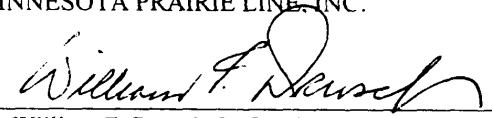


David E. Schauer
Sibley County Attorney

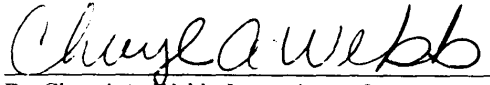
LESSEE

MINNESOTA PRAIRIE LINE, INC.

Dated 1/4/02

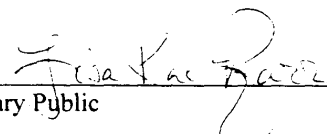

By William F. Drusch, Its President

Dated December 28, 2001


By Cheryl A. Webb, Its Assistant Secretary

STATE OF MINNESOTA)
)SS.
COUNTY OF SIBLEY)

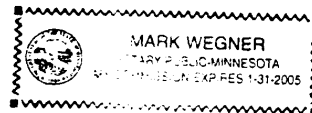
The foregoing instrument was acknowledged before me this 23rd day of January, 2001, by Francis Schweiss and Eugene Short, the Chairman and Secretary/Treasurer of Minnesota Valley Regional Rail Authority, a political subdivision, under the laws of Minnesota, on behalf of the Minnesota Valley Regional Rail Authority.


Notary Public

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 4th day of January, 2002, by William F. Drusch, the President of Minnesota Prairie Line, Inc., a Minnesota Corporation, under the laws of Minnesota, on behalf of Minnesota Prairie Line, Inc.

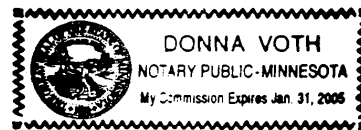
Mark Wegner
Notary Public



STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 28th day of December, 2001, by Cheryl A. Webb, the Assistant Secretary of Minnesota Prairie Line, Inc., a Minnesota Corporation, under the laws of Minnesota, on behalf of Minnesota Prairie Line, Inc.

Donna Voth
Notary Public



DOCUMENT DRAFTED BY:
Thomas V. Seifert
HEAD, SEIFERT & VANDER WEIDE
Suite 1140
333 South Seventh Street
Minneapolis, Minnesota 55402
612-339-1601

APPROVAL OF LEASE AND OPERATING
AGREEMENT BY MINNESOTA DEPARTMENT OF
TRANSPORTATION

The above Lease and Operating Agreement is hereby approved by the State of Minnesota,
acting by and through its Department of Transportation.

Dated: Jan 23, 2002 MINNESOTA DEPARTMENT OF TRANSPORTATION
Office of Freight, Railroads and Waterways

By: Alan M. Zel
Director

Dated: Jan 23, 2002 Approved as to form and execution by the Minnesota
Attorney General's Office

By: [Signature]
Title Assistant Attorney General

EXHIBIT A
TO
LEASE AND OPERATING AGREEMENT
BETWEEN
MINNESOTA VALLEY REGIONAL RAILROAD AUTHORITY
AND
MINNESOTA PRAIRIE LINE, INC.

CARVER COUNTY

IN TOWNSHIP 115 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) beginning at the Southerly right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in Section 14, and extending Southwesterly through Sections 14, 23, 22, 21, 28, 33, and 32.

SIBLEY COUNTY

IN TOWNSHIP 114 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Southwesterly through Sections 5, 8, 7, and 18.

IN TOWNSHIP 114 NORTH, RANGE 27 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Southwesterly through Sections 13, 24, 25, 26, and 35.

IN TOWNSHIP 113 NORTH, RANGE 27 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Southwesterly through Sections 2, 3, 10, 9, 16, 17, 18, and 19.

IN TOWNSHIP 113 NORTH, RANGE 28 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Southwesterly and Westerly through Sections 24, 25, 26, 27, 28, 33, 32, and 31.

IN TOWNSHIP 113 NORTH, RANGE 29 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly through Sections 36, 35, and 34.

IN TOWNSHIP 112 NORTH, RANGE 29 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly through Sections 3, 4, 5, and 6.

IN TOWNSHIP 112 NORTH, RANGE 30 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly through Sections 1, 2, 3, 4, 5, and 6.

IN TOWNSHIP 112 NORTH, RANGE 31 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis and St. Louis Railway Company) extending Westerly through Sections 1, 2, 3, 4, 5 and 6.

RENVILLE COUNTY

IN TOWNSHIP 112 NORTH, RANGE 32 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly through Sections 1, 2, 11, 10, 9, 8, and 7.

IN TOWNSHIP 112 NORTH, RANGE 33 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right, of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly through Sections 12, 11, 10, 3, 4, 5, and 6.

IN TOWNSHIP 112 NORTH, RANGE 34 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly through Sections 1, 2, 3, 4, and 5.

IN TOWNSHIP 113 NORTH, RANGE 34 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly through Sections 32 and 31 to the center of the Minnesota River.

REDWOOD COUNTY

IN TOWNSHIP 113 NORTH, RANGE 34 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) beginning at the center of the Minnesota River in Section 31 and extending Southwesterly through said Section 31.

IN TOWNSHIP 112 NORTH, RANGE 35 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly through Sections 1 and 2.

IN TOWNSHIP 113 NORTH, RANGE 35 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly and Northwesterly through Sections 36, 35, 34, 33, 32, 29, 30, and 19.

IN TOWNSHIP 113 NORTH, RANGE 36 WEST OF THE-FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Northwesterly and Westerly through Sections 24, 23, 14, 15, 16, 17, 18, and 7.

IN TOWNSHIP 113 NORTH, RANGE 37 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly through Sections 12, 11, 10, 9, 8, and 7.

YELLOW MEDICINE COUNTY

IN TOWNSHIP 113 NORTH, RANGE 38 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Westerly and Northwesterly through Sections 12, 11, 2, 3, 4, 5, and 6.

IN TOWNSHIP 113 NORTH, RANGE 39 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Northwesterly across the Northeast Quarter of the Northeast Quarter of Section 1.

IN TOWNSHIP 114 NORTH, RANGE 39 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Northwesterly through Sections 36, 35, 26, 27, 28, 21, 20, 17, and 18.

IN TOWNSHIP 114 NORTH, RANGE 40 WEST OF THE FIFTH PRINCIPAL MERIDIAN

All of the right of way of the Chicago and North Western Transportation Company (formerly the Minneapolis & St. Louis Railway Company) extending Northwesterly through Sections 13 and 12 to a line in the Southwest Quarter of said Section 12, said line being parallel with and distant 25 feet Southeasterly, measured at right angles, from the center line of the main track of the Burlington Northern Railroad Company, as said main track is now located.

Together with and including all of the Grantor's right, title and interest in and to all tracks, ties, rails, fastenings, culverts, bridges, buildings or any other improvements presently located on the above described real estate.

Exhibit B to Lease and Operating Agreement

<u>year of operations</u> <u>after rehab is</u> <u>complete</u>	<u>anticipated gross</u> <u>rents and loan</u> <u>payment</u>
1 (2003)	\$171,000
2 (2004)	\$186,990
3 (2005)	\$204,030
4 (2006)	\$222,150
5 (2007)	\$246,960
6 (2008)	\$274,400
7 (2009)	\$303,600
8 (2010)	\$334,720
9 (2011)	\$367,840
10 (2012)	\$403,120
11 (2013)	\$442,640
12 (2014)	\$487,685
13 (2015)	\$535,655
14 (2016)	\$586,685
15 (2017)	<u>\$641,090</u>
total	\$5,408,565

EXHIBIT C Maintenance Requirements

	Rehabilitated to Standards (Tolerances)	Minimum Maintenance Requirements
Cross Ties	14 good ties per 39 foot segment	Each 39 foot segment will have a sufficient # of crossties which in combination provide effective support that will- 1) Hold gauge 2) Maintain Surface 3) Maintain alignment
Joint Ties	2 good ties within 24 inches	1 good tie within 24"
Gauge	Within 56-1/2" - 57" limits	Within 56"- 58"
Track Surface	1/2" deviation in 62 feet	Be less than a 3" deviation in 62 ft.
Track Alignment	1/2" deviation in 62 feet	Be less than a 5" deviation at a 62 ft mid-ordinate
Turnout	Complete in all aspects	Comply with FRA criteria
Rail Anchors	Applied every 4th tie	Maintained at rehabilitated levels
Rail Joints	All center-broken bars removed	All broken center bars removed and replaced
No. Of Bolts per Joint	2 bolts per rail end	2 bolts per rail end
Crossing Surface	Surface renewed	Surface maintained in good condition
Brush Control	Removed 15 feet from rail	Sprayed annually
Drainage	Waterways cleaned out, as needed	Comply with FRA
Weed Spraying	Sprayed prior to rehab	Annual vegetation control

Page 2 of 3

The maintenance requirements set forth above are subject to change upon further upgrading to allow for operations at 25 mph or with 286,000 lb. cars.

A manager headquartered in Minnesota will oversee the track department and supervise the cyclical maintenance during the term of this Agreement.

The operator will ensure the track is inspected in accordance with the Federal Railroad Administration Guidelines. All inspection reports will be retained for a period of one year at the operator's headquarters. Upon the State's request these reports will be available for inspection.

FRA Class I Safety Standards enabling operating speeds of 10 mph and capable of sustaining cars of gross loaded weight limits of 263,000 pounds per car must be maintained on this Rail Facility during the term of this Agreement, subject to the expense limitations set forth below.

In a calendar year commencing after the entire Railroad has been certified by MNDOT as having a FRA Class I track condition, if further rehabilitation is not occurring during such calendar year, as long as traffic volume is at least 8,200 loaded rail cars in the calendar year, the operator's maintenance obligations for ties, ballast, and surfacing track shall be limited to the expenses of the following: (1) renewing an average of 5,000 ties (or 4,000 minimum in any one year); (2) adding at least 2,000 tons of ballast; and (3) surfacing at least 10 miles of track. If traffic volume is less than 8,200 loaded rail cars during such calendar year, the operator's maintenance expense limit shall be proportionately reduced.

The operator will spend an average of \$8,000 per mile annually on Maintenance of Way (excluding administration and derailment costs) after the entire line has been rehabilitated under Phase I and assuming there are at least 8,200 loaded rail cars transported along the rail line. If traffic volume is less than 8,200 loaded rail cars during a calendar year, Lessee's obligation to spend money on Maintenance of Way shall be reduced proportionately. The value of any recycled or reused materials which are recovered from the line during the rehabilitation and which are reinstalled later will be considered in determining the amount spent by the operator on maintenance. Administrative expenses and repairs resulting from derailments will not be counted in determining the amount spent by the operator on maintenance. The operator will provide the State with annual reports of maintenance records during the term of this Agreement.

The operator agrees that it will not allow any of the Railroad line which has been rehabilitated to conform with the State Standards set forth on the previous page to fall into excepted track conditions as defined in Federal Railroad Administration regulations except where Lessor fails to supply or make capital improvements needed to maintain FRA Class 1 track classification.

All at-grade crossings, public and private, within the Railroad right-of-way will be maintained by the operator at the expense of the operator, as part of routine railroad maintenance unless the need for such crossing ceases to exist or moving the crossing is negotiated with affected parties. The operator may pursue and obtain other funding (including local, state, and federal governmental funding when applicable) to assist in the maintenance of the grade crossing

surfaces.

Page 3 of 3

All private at-grade crossings will be maintained in accordance with Minnesota Statutes Section 219.35 during and following the Phase I rehabilitation project unless the need for such crossing ceases to exist or moving the crossing is negotiated with affected parties.

The operator will obtain the services of sufficient personnel to maintain the property to the minimum maintenance requirements described above.

EXHIBIT D
MINNESOTA VALLEY REGIONAL RAILROAD AUTHORITY
RAILROAD REOPENING AND ECONOMIC REVITALIZATION PLAN

DRAFT OF OCTOBER 4, 2000

OBJECTIVE

The objective of the "Railroad Reopening and Economic Revitalization Plan" ("RRERP") is to restore the 94 mile long rail line from Norwood, Minnesota to Hanley Falls, Minnesota to long-term economically viable operations for the benefit of:

- 1.) Carver, Sibley, Renville, Redwood, Yellow Medicine and surrounding counties;
- 2.) The cities of Hamburg, Green Isle, Arlington, Gaylord, Winthrop, Gibbon, Fairfax, Franklin, Morton, Redwood Falls, Delhi, Belview, Echo, Wood Lake and Hanley Falls;
- 3.) The numerous existing and potential shippers ranging from farmers cooperative elevators, food processors, rock and clay quarries, an ethanol plant and contractors;
- 4.) The thousands of farmers in the area and;
- 5.) The general economy of this predominantly rural area of south central Minnesota.

ECONOMIC RATIONALE

The markets for Minnesota agricultural, food and manufactured products are distant. When those markets are distant and the quantities and weights of those products are heavy; railroad shipping tends to be less costly than shipping by trucks. Rail shipping permits Minnesota farmers, food processors and manufacturers to be competitive in markets that they otherwise would not, or to be able to get a higher price for their goods than is otherwise attainable. These circumstances are applicable to every shipper on the rail line. An excellent example is the rapidly growing California demand for products from the ethanol plant located on the rail line in Winthrop. That plant will need to be expanded to meet the demand, however that market in California is too costly to serve at such a great distance using trucks. The same circumstances are true for the grain cooperatives and elevators on line that

need to reach export markets on the West Coast and on the Gulf of Mexico. This also applies to the food processing plant in Arlington, the animal feed plant in Redwood Falls, and the rock and clay quarries in Redwood Falls. Without the railroad, these businesses will be more marginal and less competitive. The farmers will not be able to get as high a price as possible for their crops. The roads in the area will be more stressed. The tax base of the counties and cities will be lower. The economy of the area will be adversely impacted without a viable, publicly owned and improved rail line.

This rail line is owned by the Minnesota Valley Regional Railroad Authority ("MVRRA") which is a unit of local government. It is public infrastructure in the same way as a state highway, a county road, a city street, a municipal sewer, a municipal airport or the inland waterway system. While this line will be modestly profitable and able to be fully maintained in its upgraded condition from its revenues; it is not feasible for any private entity to finance the front end capital costs of the rehabilitation of this public property. While the benefits to the counties, cities, shippers, farmers and the area's economy are much greater than the needed investment, it is not feasible to charge a high enough freight rate to recover the cost without driving away most of the business. Public funding from state and federal sources is absolutely necessary.

BACKGROUND

Over the last 25 years, six different railroad operators have failed in their attempts to economically operate this 94 mile rail line. There has always been strong demand for shipping on this line. That demand is now growing rapidly. The primary reason for the failures has always been the decrepit condition of the tracks. The MVRRA assumed ownership and control of the rail line during 2000. The rail line is currently embargoed due to unsafe track conditions. The most recent operator ceased operations in August 2000 and subsequently declared bankruptcy.

A SUMMARY OF THE PLAN

Subject to modification, MVRRA's plan for the railroad includes the following major facets:

- 1.) Rehabilitation of the entire rail line over three construction seasons beginning in the spring of 2001.

2.) The rehabilitation would be carried out in three phases as follows:

A.) Phase I would reopen the railroad with construction beginning in early spring 2001 and limited operations beginning in August or September 2001.

B.) Phase II would continue the rehabilitation process in 2002, upgrade portions to 25mph operations and restore the capability for service to the connection with the BNSF railroad on the west end of the line.

C.) Phase III would complete the rehabilitation in 2003 with most of the line upgraded to permit 25mph operations and 286,000 lb. gross car weight limits (up from the current 263,000 lb. limits).

3.) Financing for Phase I would be provided by an existing loan program under the Minnesota Rail Service Improvement program. It is estimated to cost approximately \$6,000,000 of which the state would lend \$4,800,000, the MVRRA would invest \$600,000 and the shippers would lend \$600,000. Efforts to obtain this financing have already commenced. This financing must be in place by January 2001 to enable the solicitation of bids for construction and the acquisition of materials for the construction season. Any delay would preclude a late summer resumption of limited service.

4.) Financing for Phases II and III would come from State and/or Federal grants. One possible source is a federal program for a light density line demonstration project authorized at \$17.5 million but not yet appropriated. The other is to seek state legislation in 2001 to provide public infrastructure financing for the completion of the project. A legislative consultant would be hired to assist in these efforts. The complete funding of the project is necessary as 10 mph operations can only be conducted at a loss to any operator and with unreliable, costly service to the shippers. This funding (\$9,000,000 to \$12,000,000) needs to be committed by the end of the 2001 legislative session.

5.) In order to obtain the financing and facilitate the rehabilitation, a contract with a viable railroad operator must be complete. An RFP for an operator must be issued to pre-qualified parties by early November 2000. The operator must have demonstrated technical, regulatory and financial capability to be able to successfully participate in the physical aspects of the rehabilitation, to obtain rates from connecting carriers, to obtain the necessary

operating authority, to comply with Federal Railroad Administration safety, licensing, inspection and qualification requirements, to obtain the approval of Minnesota DOT, and to commence operations in the fall of 2001. An operating contract should be in place by the end of 2000.

SOME CRITICAL ISSUES

The issue of why we have to upgrade the line to 25 mph capability, when it could be operated at 10 mph for about half of the total rehabilitation project cost, has been raised. While it is true that all regulatory and safety requirements could be met with a 10 mph railroad, the economics dictate that the railroad be capable of operating at 25 mph over most of the line. At 10 mph it would take about 5 crew shifts, 3 car days and 3 locomotive days to travel from Hanley Falls to St. Paul. At 25 mph it would take about 2 crew shifts, 1.5 car days and 1.5 locomotive days to do the same thing. When these operating requirements are doubled like this, the related operating costs per carload are doubled. It would not make a huge difference if this line were only 10 or even 20 miles long, however, it is nearly 100 miles long. In addition to these operating costs, we have found that track maintenance costs and derailment costs tend to be higher for 10 mph track than for 25 mph track. This is because marginal 10 mph track is subject to greater stress on the fewer required good ties, more broken rails due to poorer tie and ballast conditions, more cross level problems due to less stringent surfacing and ballast requirements and less anchoring. For these reasons it is much more costly to operate and maintain a long 10 mph railroad than it is for a 25 mph railroad. These costs make a 10 mph MVRRA uneconomical for any operator.

Another issue is why upgrade the line to handle 286,000 lb. gross weight cars when the upgrade is slightly more costly and the operating costs are somewhat higher due to the need for more track maintenance. The new standard for bulk commodity cars such as hopper cars for coal and ores and covered hopper cars for grain, fertilizer and food products on the western railroads is 286,000 lb. gross weight. Not only have the giant western railroads replaced much of their hopper and covered hopper car fleets with these cars; they have given huge rate incentives to the use of such cars. That means that if the railroad that you are on can not handle the heavy cars, then you will pay a significantly higher rate than your competitors on another rail line who can. While local corn and soybean traffic to the barge terminals in the Twin Cities would not be affected by this, most other destinations would be. It would not be reasonable to have the MVRRA shippers and farmers at a competitive disadvantage.

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2002, a copy of the modified certificate of Minnesota Prairie Line, Inc., dated September 23, 2002, was served by first-class mail, postage prepaid on:

Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001



Troy W. Garris

VERIFICATION

I, William F. Drusch, declare and verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verification.

A handwritten signature in cursive script, reading "William F. Drusch", written in black ink.

William F. Drusch
President
Minnesota Prairie Line, Inc.

Dated: ~~Sept.~~ 23, 2002