



212662

Wisconsin Department of Transportation

www.dot.wisconsin.gov

Jim Doyle
Governor

November 30, 2004

Frank J. Busalacchi
Secretary

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

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

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

Re: Request for Fee Waiver
Petition For Declaratory Order
Finance Docket No.

Dear Mr. Williams:

Enclosed are an original and 11 copies of a Request for Fee Waiver for the Petition for Declaratory Order and an original and 11 copies of the Petition for Declaratory Order and a check for \$1400.

The Wisconsin Department of Transportation (WisDOT) is a government entity that is not and does not intend to become a common carrier when it purchases the land and improved property without common carrier obligation of the of a line of railroad from Wisconsin Central Limited. The line is located between milepost 114.8 near Plymouth to milepost 151.8 near Kiel a distance of 37 miles in Ozaukee, Sheboygan and Manitowoc Counties, Wisconsin. Thus, WisDOT is requesting a fee waiver under 49 CFR 1002.2(e) for the filing of its Petition for Declaratory Ruling asking that the Board to find that it does not have jurisdiction over WisDOT's intended real estate purchase.

WisDOT's Petition for Declaratory Ruling requests that under the rationale of Maine, DOT-Acq. Exemption, Me. Central Co., 8 I.C.C.2d 835 (1991), that the Board find that it does not have jurisdiction and that the proposed acquisition of the rail line and improvements by WisDOT will not make it a common carrier.

I am enclosing a self addressed stamped envelope. Please date stamp one copy and return it to me.

Sincerely,

Allyn Lepeska

Allyn Lepeska
Attorney

Enclosure

pc: Ron Adams / John Heffner / William Sippel

FILED

DEC 6 1 2004

ENTERED
Office of Proceedings

DEC 02 2004

Part of
Public Record

Finance Docket No.

On June 30, 2004, Wisconsin Central Ltd. (WCL) filed an application under 49 U.S.C. 10903 seeking authorization to abandon a line of railroad, known as the Plymouth Line. The line extends from milepost 114.8 near Saukville to milepost 151.8 near Kiel, a distance of approximately 37 miles in Ozaukee, Sheboygan and Manitowoc Counties, WI. By decision and certificate of interim trail use or abandonment served on October 18, 2004, the Board granted authority to WCL to abandon the Plymouth Line subject to the filing of an offer of financial assistance (OFA). On October 27, 2004, WisDOT and

Wisconsin & Southern Railroad Co. (WSOR) jointly filed an OFA for WisDOT to purchase the assets without common carrier authority and WSOR to acquire the common carrier authority and to operate the Plymouth Line. This offer is contingent on the Board finding that WisDOT will not become a common carrier by this purchase.

REQUEST FOR FEE WAIVER

WisDOT requests that the Surface Transportation Board (STB) pursuant to 49 C.F.R. 1002.2(e)(1) waive the filing fee of WisDOT on its Petition for Declaratory Order. The State of Wisconsin Department of Transportation, an executive agency of the State of Wisconsin, is entitled to waiver of the fee under that section. WisDOT is involved in this matter to facilitate continued rail service. WisDOT does not own and is not acting as a carrier or transportation entity. WisDOT does not intend to and will not operate a railroad. WisDOT actions in this matter are within the regulations governing fees for a waiver of a fee. Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services – Policy Statement, STB Policy Statement EP_542_6 (STB served on December 6, 2000). The STB waived the filing fee for WisDOT in a similar matter in State of Wisconsin Department of Transportation–Petition for Declaratory Order, STB F.D. 34181_0 (STB served August 1, 2002).

This request is being filed with the Petition for Ruling with a filing fee of \$1400 so that this matter will receive immediate attention. We understand the fee issue may be resolved later and if in favor of the WisDOT that a check for the amount of the filing fee will be mailed to WisDOT. If you have any questions, feel free to contact me.

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34623

WISCONSIN CENTRAL LTD.
--ABANDONMENT--
IN OZAUKEE, SHEBOYGAN AND MANITOWOC COUNTIES, WI

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

PETITION FOR EXPEDITED DECLARATORY ORDER
OF
WISCONSIN DEPARTMENT OF TRANSPORTATION

Respectfully submitted,

Allyn Lepeska
Assistant General Counsel
Wisconsin Department of Transportation
Office of General Counsel
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, Wisconsin 53707-7910
(608) 266-0253

ORIGINAL

Dated, December 1, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34623

WISCONSIN CENTRAL LTD.
--ABANDONMENT--
IN OZAUKEE, SHEBOYGAN AND MANITOWOC COUNTIES, WI

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

PETITION FOR EXPEDITED DECLARATORY ORDER
OF
WISCONSIN DEPARTMENT OF TRANSPORTATION

INTRODUCTION

The Wisconsin Department of Transportation ("WisDOT") files this Petition for Expedited Declaratory Ruling pursuant to 5 U.S.C. 554(e) and 49 U.S.C. 721, seeking a ruling that the acquisition of a rail line authorized for abandonment by the Board in Docket No. AB-303 (Sub-No. 27), Wisconsin Central Ltd.-Abandonment-In Ozaukee, Sheboygan, and Manitowoc Counties, WI and being acquired by WisDOT and the Eastern Wisconsin Counties Rail Consortium will not render those agencies "rail common carriers" under the I.C.C. Termination Act.

By decision served on October 18, 2004, the Surface Transportation Board ("Board") granted the application of Wisconsin Central Ltd. ("WCL") to abandon the carrier's 37-mile line in southeastern Wisconsin between Milepost 114.8 near Saukville and Milepost 151.8 near Kiel (the "Plymouth Line"). The decision provided that any Offer of Financial Assistance ("OFA") to acquire the line had to be received by WCL and the Board by October 28, 2004.

On October 27, 2004, Wisconsin Department of Transportation ("WisDOT") and the Wisconsin & Southern Railroad Co. ("WSOR") timely filed an OFA to acquire the Plymouth Line, and by decision served November 1, 2004, the Board found WisDOT and WSOR to be financially responsible and postponed the effective date of the abandonment to permit the OFA process to move ahead. The offer was for WisDOT to acquire the tangible assets without assuming any common carrier authority and for WSOR to acquire the common carrier authority and obligation and to operate the Plymouth Line.

WisDOT, WSOR, WCL and Eastern Wisconsin Counties Rail Consortium ("EWCRC")¹ hereby advise the Board that an agreement on the purchase price and all other terms of the OFA has been reached that would allow the transaction to proceed in the manner proposed.² The transaction, however, is contingent on the Board determining that it will not cause WisDOT to become a common carrier subject to the Board's jurisdiction. By this petition, WisDOT, supported by WSOR and WCL, requests an expedited determination to that effect. WisDOT also requests that the Board similarly find that EWCRC would not become a common carrier subject to the Board's jurisdiction.

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

² In addition, WSOR and WCL have reached a trackage rights agreement for the WSOR's overhead use of WCL track located between the change of ownership at Milepost 114.8 near Saukville and WCL's connection with WSOR at Milepost 95.18 at North Milwaukee. A verified notice of exemption for such trackage rights is being filed separately today in STB Finance Docket No. 34621.

THE PROPOSED TRANSACTION

In support of its Petition, WisDOT submits the following documents for the Board's review: (1) a deed from WCL to WisDOT (the "Deed"), (2) an easement from WCL to WSOR (the "Easement"); (3) a land use agreement between the WisDOT and the Eastern Wisconsin Counties Rail Consortium ("EWCRC") (the "EWCRC Land Use Agreement"); and (4) a land use agreement between WSOR and EWCRC (the "WSOR Land Use Agreement") (the Deed, Easement, and Land Use Agreements collectively referred to as the "Transaction Agreement Documents").

Pursuant to the Deed, WisDOT shall acquire certain specified real estate and improvements thereon from WCL, as set forth in the Deed's legal description (the "Real Estate"), without acquiring the common carrier authority upon the Real Estate. To accomplish this, WisDOT, WCL, EWCRC and WSOR have intentionally and specifically structured the transaction similar to those the agency authorized with like result in Maine, DOT-Acquisition Exemption, Maine Central Railroad Company, 8 I.C.C.2d 835 (1991) ("Maine DOT"); Brotherhood of Maintenance of Way Employees, et al. v. CP Rail System, et al., STB Finance Docket No. 32835 (STB served June 10, 1997) and State of Wisconsin Department of Transportation -- Petition for Declaratory Order, Finance Docket No. 34181 (STB served August 1, 2002).. Specifically, the parties have structured the proposed transaction to ensure: 1) that WisDOT does not assume any common carrier liability by having the railroad company that is conveying the Real

³ ECWRC is a municipal entity and consortium of interested Wisconsin counties, created under the provisions of Wisconsin Statutes Section 66.301, which was established, in part, to oversee the preservation of rail service on certain rail lines acquired by the State of Wisconsin. ECWRC was created to undertake rail preservation activities for the State, because the State of Wisconsin was, prior to an April 1992 amendment, constitutionally prohibited from the acquisition, improvement or construction of railways or other railway facilities (or to be a party to any such works) and from borrowing money to invest in rail line improvements and rehabilitation. See, Article VIII, Section 10, Wisconsin Constitution.

Estate to WisDOT, WCL, transfer all of the common carrier obligation directly to WSOR; and 2) that WSOR has sufficient property and contract rights to carry out that obligation. Thus, WisDOT will enter into a Land Use Agreement with EWCRC that requires EWCRC to partially purchase the rail property and allows it to occupy the land corridor and the rail property. See EWCRC Land Use Agreement, Section 306. The WSOR Land Use Agreement between EWCRC and WSOR will, in turn, protect WSOR's occupancy of the land corridor and the rail property and ensure WSOR's ability to provide freight rail service pursuant to the exclusive perpetual freight easement WSOR acquired from WCL. See WSOR Land Use Agreement, Sections 301, 302, 306; see also Easement.

The Agreement thus clearly provides that WSOR will have complete and exclusive control to operate the Plymouth Line as a common carrier unfettered by WisDOT and EWCRC. See WSOR Land Use Agreement, Sections 302(b), 304, and 305. In this way, WisDOT believes that, akin to the Maine-DOT type transactions after which it is patterned, the transaction would not render WisDOT a common carrier or otherwise attach to it any common carrier obligation.

Neither WisDOT nor EWCRC provides, nor is either equipped to provide, common carrier "for-hire" rail freight service. It has always been WisDOT's and EWCRC's intention to preserve service over light density or abandoned rail lines without incurring a common carrier obligation, and they fashioned their previous rail line transactions to avoid the imposition of this obligation. Thus, for example, WisDOT acquired a number of rail lines during the course of the bankruptcy proceedings involving the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that had been authorized for abandonment. The Board determined that neither WisDOT nor EWCRC acquired common carrier authority when that group of rail lines was acquired.

Wisconsin Department of Transportation and East Wisconsin Counties Rail Consortium—Petition for Declaratory Order—Common Carrier Status of Certain Operations in the State of Wisconsin, Finance Docket 32717 (STB served December 8, 1997). More recently, the STB found that WisDOT and another regional county consortium assumed no common carrier status or obligation when they acquired the physical assets of two WSOR line segments. State of Wisconsin Department of Transportation -- Petition for Declaratory Order, Finance Docket No. 34181 (STB served August 1, 2002).

Similarly, and for the purpose of obtaining the same determination, the parties have structured the transaction here so that WSOR will acquire a perpetual easement to operate the Line with exclusive control subject to the terms and conditions of the Land Use Agreements, so that any common carrier obligations shall rest with WSOR, not WisDOT or EWCRC. However, WisDOT does not intend to finalize the Transaction Agreement Documents unless and until it receives such determination from the Board. Pursuant to the terms on the face of the Deed, if the Board determines that WisDOT would become a common carrier as a result of the transaction as structured, WisDOT shall not record the Transaction Agreement Documents nor will WisDOT and WSOR otherwise complete the transaction.

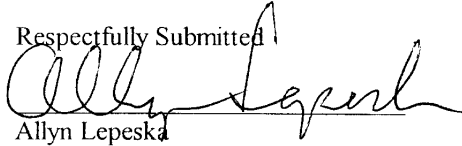
REQUEST FOR EXPEDITED RELIEF

WisDOT and WSOR, pursuant to their OFA, have reached agreement with WCL on the purchase price and all other terms regarding the acquisition of the Plymouth Line, and WSOR, WCL, EWCRC and WisDOT are working together to attempt to close the transaction before the end of this calendar year. As noted above, however, the transaction will not nor cannot proceed until the Board makes the requested declaration on behalf of WisDOT and EWCRC. Consistent with the spirit of the OFA regulations

under which the Board would normally act within very strict time periods so that the carrier which has been granted abandonment authority need not operate the involved line any longer than necessary – and particularly where, as here, an OFA has led to an agreement on all other terms that would preserve continued rail service over that line -- WisDOT respectfully requests that the Board act expeditiously in this matter.

Should the requested declaration be granted, WisDOT further requests, and WSOR and WCL concur, that pursuant to 49 C.F.R. § 1152.27(f)(2), the Board should then approve the sale on the Plymouth Line and dismiss WCL's abandonment application effective on the date the sale is consummated. See, e.g., Union Pacific R.R. Co.—Abandonment Exemption—In Rio Grande and Mineral Counties, CO—Offer of Financial Assistance, STB Docket No. AB-33 (Sub-No. 132X), slip op. at 2 and Ordering Paragraph 2 (STB served May 11, 1999).

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "Allyn Lepeska", written over a horizontal line.

Allyn Lepeska

Assistant General Counsel

Wisconsin Department of Transportation

Office of General Counsel

4802 Sheboygan Avenue, Room 115B

P.O. Box 7910

Madison, Wisconsin 53707-7910

(608) 266-0253

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December 2004, the Petition For Expedited Declaratory Order of Wisconsin Department of Transportation was sent by first-class United States mail, to the following:

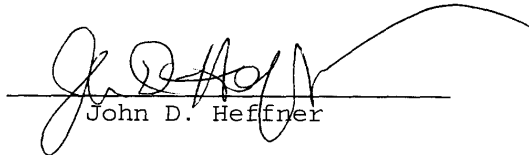
William Sippel
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29 North Wacker Drive
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Allyn Lepeska
Office of General Counsel
Wisconsin Department of Transportation
4802 Sheboygan Avenue
Room 115B
P.O. Box 7910
Madison, WI 53707-7910
(608) 266-8810


John D. Heffner

EXHIBIT

1

**DOCUMENT
NUMBER :** _____

**QUITCLAIM
DEED**

WISCONSIN CENTRAL LTD., an Illinois corporation,
located at 17641 S. Ashland Avenue, Homewood, IL 60430,
hereinafter referred to as Grantor.

**STATE OF WISCONSIN, WISCONSIN DEPARTMENT
OF TRANSPORTATION**, located at
4802 Sheboygan Avenue, Room 701
P.O. Box 7910, Madison, WI 53707,
hereinafter referred to as Grantee.

Return to:

Vicki Schaefer, WisDOT
P. O. Box 7910
Madison, WI 53707

WITNESSETH:

In consideration of the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration in hand paid to Grantor by Grantee, the receipt and sufficiency whereof is hereby acknowledged by Grantor, Grantor hereby CONVEYS AND QUIT CLAIMS unto Grantee, without any covenants or warranties of title whatsoever, on an "as is, where is" basis, AND WITHOUT RECOURSE TO Grantor, all of the Grantor's right, title, interest, estate, claim, and demand in and to the lines of railroad between Grantor's milepost 114.8 and Grantor's milepost 151.8 in the counties of Ozaukee, Sheboygan and Manitowoc more particularly described in the attached Exhibit A, including the real property, estates, roadbeds, rights-of-way, station grounds, railroad yards, yard and terminal facilities, locomotive servicing repair facilities, freight car repair facilities, fixtures, and appurtenances thereto; together with all improvements and structures located thereon, therein, or thereunder, and specifically including (i) associated rail facilities, including without limitation all rails, ties ballast, switches, turnouts, wyes, crossovers, grade crossings, machinery, fixtures, rights-of-way (and improvements thereto), pipes, conduits, wires, communication and signal devices and facilities (including centralized traffic control, train defect detectors, and radio communication and telephone

systems), parking and storage areas, sidings, spurs, trestles, bridges, and culverts, (ii) pole lines, buildings, and structures appurtenant thereto or situated thereon (except that which is indicated as specifically excluded on Exhibit A hereto), and (iii) contiguous property not used for railroad purposes; all of which is situated in the Counties of Ozaukee, Sheboygan and Manitowoc in the State of Wisconsin; TO HAVE AND TO HOLD all the estate, right, title, and interest whatsoever of Grantor in said property, whether in law or in equity, to the use and benefit of Grantee, and Grantee's successors and assigns, forever.

THIS CONVEYANCE IS SUBJECT TO:

- (1) Standard exceptions of a Title Company in its title policies issued in the State of Wisconsin;
- (2) Special taxes or assessments for improvements not yet completed, if any;
- (3) Installments not due at the date hereof of any special tax or assessment for improvements completed, if any;
- (4) General taxes, if any, for the tax year prior to the year in which the Deed is delivered and subsequent years;
- (5) Building, building lines and use or occupancy restrictions, zoning and building laws or ordinances, and other laws, ordinances, requirements, limitations, restrictions, regulations and codes which are or may be imposed upon the property by any governmental authority having jurisdiction thereof;
- (6) Roads and highways, if any;
- (7) Judgment liens; however, any judgment against Grantor which may appear of record as a lien against the property shall be settled and satisfied by Grantor if and when it is judicially determined to be finally valid, and Grantor shall indemnify Grantee for all loss arising out of Grantor's failure to have such judgment lien so settled and satisfied. This provision shall survive the Closing and the delivery of the Deed;
- (8) Covenants, conditions and restrictions of record, and recorded licenses and easements;
- (9) The rights of any owner of the mineral estate in said property, if any. If, however, it is found that Grantor has a mineral right in the property, such rights will not be retained by Grantor but will pass to Grantee by this Deed;
- (10) Rights of any government agencies, public or quasi-public utilities for the use, maintenance, repair, replacement and reconstruction of existing driveways, roads and highways, conduits, sewers, drains, water mains, fiber optics cables and/or communication systems, gas lines, electric power lines, wires, and other utilities and easements;

(Name): _____
(Title): _____

WITNESS: _____
(Name): _____
(Title): _____

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, _____, a Notary Public in and for the
County of Cook, State of Illinois, Do Hereby Certify that _____ and
_____, personally known to me to be the _____ and
_____, of WISCONSIN CENTRAL LTD., an Illinois corporation, and
personally known to me to be the same persons whose names are subscribed to the foregoing
instrument, appeared before me this day in person and severally acknowledged under oath that as
such _____ and _____, they signed and delivered the said
instrument as _____ and _____ of said corporation, pursuant
to authority given by the Board of Directors of said corporation as their free and voluntary act
and as the free and voluntary act and deed of said corporation, for the uses and purposes therein
set forth.

Given under my hand and seal this _____ day of _____, 2004

By: _____
Notary Public

This instrument drafted by:
CN Real Estate Department
17641 S. Ashland Avenue
Homewood, IL 60430

EXHIBIT A
FOR PROPERTY ON THE GB LINE SAUKVILLE TO KIEL, WI

Commencing at the point of intersection of the centerline of the Grantor's main track at or near the Village of Saukville, in the County of Ozaukee, State of Wisconsin, in the NE $\frac{1}{4}$, Section 23, Township 11 North, Range 21 East,) which point is also known as Railroad Engineer's Survey Station 1576+90 (milepost 114.80), and extending northerly along said centerline a distance of approximately 37.00 miles in and through Ozaukee, Sheboygan, and Manitowoc Counties, Wisconsin, and terminating at the point of intersection of the centerline of the Grantor's main track located in the City of Kiel, County of Manitowoc, State of Wisconsin, in the NW $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 30, Township 17 North, Range 21 East,) which point is also known as Railroad Engineer's Survey Station (approximately) 3530+73 (milepost 151.80), all of which is more particularly described on right-of-way maps designated V-5-Wisc./6 through S-15, and are made a part hereof by reference.

PROPERTY EXCEPTED

EXCEPTING, HOWEVER, a parcel of land and depot building located between mileposts 139.16 and 139.27 on Grantor's westerly right of way in Plymouth, WI, as shown in yellow on the attached map labeled Property Excepted Map 1.

PROPERTY EXCEPTED MAP 1

EXHIBIT B
FREIGHT EASEMENT

EXHIBIT

2

DOCUMENT
NUMBER : _____

EASEMENT

WISCONSIN CENTRAL LTD., an Illinois corporation,
located at 17641 S. Ashland Avenue, Homewood, IL 60430,
hereinafter referred to as Grantor.

WISCONSIN & SOUTHERN RAILROAD CO.,
located at 5300 North 33rd Street, Milwaukee, WI 53209,
hereinafter referred to as Grantee.

Return to:

WITNESSETH:

In consideration of the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration in hand paid to Grantor by Grantee, the receipt and sufficiency whereof is hereby acknowledged by Grantor, Grantor hereby CONVEYS AND QUIT CLAIMS unto Grantee, without any covenants or warranties of title whatsoever, on an "as is, where is" basis, AND WITHOUT RECOURSE TO Grantor, (i) an exclusive perpetual easement over the line of railroad between Grantor's Milepost 151.8 near Kiel and Grantor's Milepost 114.8 near Saukville in the Counties of Ozaukee, Sheboygan and Manitowoc in the State of Wisconsin, more particularly described in the attached Exhibit A (the "Subject Property") for the purpose of providing common carrier rail freight transportation service thereon and thereover, (ii) an exclusive perpetual easement ten (10) feet either side of the centerline of the existing track over the excepted parcel described in Exhibit A and shown on the map attached thereto for the purpose of providing common carrier rail freight transportation service thereon and thereover, and (iii) all of Grantor's right, title, interest, estate, claim and demand to operate trains, locomotives, rail cars and rail equipment over the Subject Property and the excepted parcel for the use and benefit of Grantee, and Grantee's successors and assigns, forever.

THIS CONVEYANCE IS SUBJECT TO:

- (1) Standard exceptions of a Title Company in its title policies issued in the State of Wisconsin;
- (2) Special taxes or assessments for improvements not yet completed, if any;
- (3) Installments not due at the date hereof of any special tax or assessment for improvements completed, if any;
- (4) General taxes, if any, for the tax year prior to the year in which the Deed is delivered and subsequent years;
- (5) Building, building lines and use or occupancy restrictions, zoning and building laws or ordinances, and other laws, ordinances, requirements, limitations, restrictions, regulations and codes which are or may be imposed upon the property by any governmental authority having jurisdiction thereof;
- (6) Roads and highways, if any;
- (7) Judgment liens; however, any judgment against Grantor which may appear of record as a lien against the property shall be settled and satisfied by Grantor if and when it is judicially determined to be finally valid, and Grantor shall indemnify Grantee for all loss arising out of Grantor's failure to have such judgment lien so settled and satisfied. This provision shall survive the Closing and the delivery of the Deed;
- (8) Covenants, conditions and restrictions of record, and recorded licenses and easements;
- (9) The rights of any owner of the mineral estate in said property, if any. If, however, it is found that Grantor has a mineral right in the property, such rights will not be retained by Grantor but will pass to Grantee by this Deed;
- (10) Rights of any government agencies, public or quasi-public utilities for the use, maintenance, repair, replacement and reconstruction of existing driveways, roads and highways, conduits, sewers, drains, water mains, fiber optics cables and/or communication systems, gas lines, electric power lines, wires, and other utilities and easements;
- (11) Acts, by through or under Grantee;
- (12) A perpetual non-exclusive easement held by Grantor fifteen (15) feet in width, in, over, under, through and along the entire Subject Property, to construct, maintain, operate, use, replace, relocate, renew and/or remove, at the sole expense of Grantor, a fiber optic communication system consisting of cables, lines or facilities beneath the surface of the Subject Property, together with all ancillary equipment or facilities (both underground and surface), including the right to

attach the same to existing bridges or poles on the Subject Property and such surface rights as are necessary to accomplish the same. Grantor further reserves the right to assign, provided notice of assignment is given to Grantee, said reserved fiber optic easement, rights and facilities (the "Fiber Optic Easement"), in whole or in part, and to lease, license or permit third parties to use the Fiber Optic Easement; provided, however, that the exercise of such rights does not unreasonably interfere with Grantee's or WSOR's safe and efficient use of the property, or any improvements thereon. Grantor shall not perform any work in connection with the construction, reconstruction, repair, operation or maintenance of such fiber optic communication system within twenty-five (25) feet of the centerline of any railroad track located on the property until it shall have given Grantee and WSOR at least five (5) days' written notice prior to commencing such work. The foregoing notice requirement shall not apply in case of emergency, but in such event notice shall be provided as soon as possible. Any such construction shall be subject to reasonable and customary safety procedures required by WSOR for similar construction projects on its railroad.

The right, title and interest in the easement granted to Grantee herein over any portion of the Subject Property shall terminate, cease and determine upon the occurrence of all of the following: (i) Grantee's abandonment of rail freight transportation service over such portion of the Subject Property pursuant to a final order of the United States Surface Transportation Board ("STB Abandonment Order"); (ii) recording in the offices of the Register of Deeds for the county or counties in which such portion of the Subject Property is located of a copy of the STB Abandonment Order; (iii) recording in the offices of the Register of Deeds for such county or counties of Grantee's notice of termination of the easement; and (iv) recording in the offices of the Register of Deeds for such county or counties of Grantee's notice of consummation of the STB Abandonment Order.

IN WITNESS WHEREOF, WISCONSIN CENTRAL LTD., the Grantor, has caused these presents to be signed by _____, he being thereunto duly authorized this _____ day of _____, _____.

WISCONSIN CENTRAL LTD.

By: _____
(Name): _____
(Title): _____

WITNESS: _____
(Name): _____
(Title): _____

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, _____, a Notary Public in and for the
County of Cook, State of Illinois, Do Hereby Certify that _____ and
_____, personally known to me to be the _____ and
_____, of WISCONSIN CENTRAL LTD., an Illinois corporation, and
personally known to me to be the same persons whose names are subscribed to the foregoing
instrument, appeared before me this day in person and severally acknowledged under oath that as
such _____ and _____, they signed and delivered the said
instrument as _____ and _____ of said corporation, pursuant
to authority given by the Board of Directors of said corporation as their free and voluntary act
and as the free and voluntary act and deed of said corporation, for the uses and purposes therein
set forth.

Given under my hand and seal this _____ day of _____, 2004

By: _____
Notary Public

This instrument drafted by:
CN Real Estate Department
17641 S. Ashland Avenue
Homewood, IL 60430

EXHIBIT A
FOR PROPERTY ON THE GB LINE SAUKVILLE TO KIEL, WI

Commencing at the point of intersection of the centerline of the Grantor's main track at or near the Village of Saukville, in the County of Ozaukee, State of Wisconsin, in the NE¼, Section 23, Township 11 North, Range 21 East,) which point is also known as Railroad Engineer's Survey Station 1576+90 (milepost 114.80), and extending northerly along said centerline a distance of approximately 37.00 miles in and through Ozaukee, Sheboygan, and Manitowoc Counties, Wisconsin, and terminating at the point of intersection of the centerline of the Grantor's main track located in the City of Kiel, County of Manitowoc, State of Wisconsin, in the NW¼, SW¼ of Section 30, Township 17 North, Range 21 East,) which point is also known as Railroad Engineer's Survey Station (approximately) 3530+73 (milepost 151.80), all of which is more particularly described on right-of-way maps designated V-5-Wisc./6 through S-15, and are made a part hereof by reference.

PROPERTY EXCEPTED

EXCEPTING, HOWEVER, a parcel of land and depot building located between mileposts 139.16 and 139.27 on Grantor's westerly right of way in Plymouth, WI, as shown in yellow on the attached map labeled Property Excepted Map 1.

PROPERTY EXCEPTED MAP



LAND USE AGREEMENT
FOR RAIL SERVICE CONTINUATION
ON THE KIEL TO SAUKVILLE RAIL LINE

BY AND BETWEEN

THE WISCONSIN DEPARTMENT OF TRANSPORTATION

AND

THE EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

AGREEMENT NO. 0490-40-50(H)

(DECEMBER 1, 2004)

CONTENTS

	<u>Page</u>
INTRODUCTION	1
ARTICLE ONE - DEFINITIONS	2
Section 101 - Definitions	2
ARTICLE TWO - RESERVED	3
ARTICLE THREE - RAILROAD SERVICE OPERATION	4
Section 301 - Provision of Railroad Transportation Service	4
Section 302 - Operation Rights and Responsibilities	5
Section 303 - Force Majeure	7
Section 304 - Freight Rates, Revenue Divisions, Switch Charges and Other Agreements	8
Section 305 - Crew Size	8
Section 306 - Occupancy of the Property	8
ARTICLE FOUR - PROPERTY MANAGEMENT	8
Section 401 - Maintenance of Rail Line	8
Section 402 - Maintenance Plan	9
ARTICLE FIVE - DISPOSITION OF PROPERTY AND PROCEEDS	10
Section 501 - Option to Purchase	10
Section 502 - Right of First Refusal	11
Section 503 - Apportionment of Proceeds	12
Section 504 - New Property	13
ARTICLE SIX - RESERVED	13
ARTICLE SEVEN - TERM AND RENEWAL	14
Section 701 - Term	14
Section 702 - Renewal	14
ARTICLE EIGHT - LIABILITY AND INSURANCE	14
Section 801 - Hold Harmless	14
Section 802 - Insurance	15
ARTICLE NINE - OBLIGATIONS OF COMMISSION AND OPERATOR	17
Section 901 - Obligations of Commission	17
Section 902 - Obligations of Operator	17

CONTENTS (Continued)

	<u>Page</u>
ARTICLE TEN - TERMINATION	18
Section 1001 - Termination for Money Default	18
Section 1002 - Termination for Non-Monetary Default	19
Section 1003 - Ability to Cure Default	19
Section 1004 - Expenses of Termination	19
Section 1005 - Contractual Obligation Under Termination	19
Section 1006 - Accounting--Termination	20
Section 1007 - Termination Approvals	20
Section 1008 - Vacating the Property	20
Section 1009 - Bankruptcy of Operator	20
Section 1010 - Return of Property Upon Bankruptcy Default	20
ARTICLE ELEVEN - REPRESENTATIONS AND WARRANTS	21
Section 1101 - Operator	21
Section 1102 - Commission	21
ARTICLE TWELVE - REPORTS AND ACCOUNTS	22
Section 1201 - Financial and Operating Reports	22
Section 1202 - Accounts	23
ARTICLE THIRTEEN - ARBITRATION	23
Section 1301 - General	23
Section 1302 - Procedure	23
ARTICLE FOURTEEN - TAXES	24
ARTICLE FIFTEEN - GENERAL PROVISIONS	24
Section 1501 - Choice of Law	24
Section 1502 - Notice	24
Section 1503 - Status of Operator	25
Section 1504 - Assignment	25
Section 1505 - Severability	25
Section 1506 - Amendment	25
Section 1507 - Handicapped	25
Section 1508 - Environmental Protection	25
Section 1509 - Use as Equity or Collateral	26
Section 1510 - Liens Against Property	26
Section 1511 - Successor to Commission	26
Section 1512 - Entire Agreement	27
SIGNATURES	27

Agreement No. 0490-40-50(H)

LAND USE AGREEMENT
FOR RAIL SERVICE CONTINUATION
ON THE KIEL TO SAUKVILLE RAIL LINE

BY AND BETWEEN

THE WISCONSIN DEPARTMENT OF TRANSPORTATION

AND

THE EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

THIS AGREEMENT is made and entered into this ____ day of _____ 2004, by and between The Wisconsin Department of Transportation (hereafter referred to as "WisDOT"), P. O> Box 7914, Madison, Wisconsin 53707, and East Wisconsin Counties Railroad Consortium (hereafter referred to as "Commission"), Dodge County Courthouse, Juneau, Wisconsin 53039 WHEREAS Commission and WisDOT are working together to provide for continued freight railroad service on several rail line segments under Commission jurisdiction;

WHEREAS, the Commission has expanded its membership to include the Counties of Ozaukee and Sheboygan and has agreed to assume jurisdiction over the Kiel to Saukville rail line following the acquisition by WisDOT and WSOR;

WHEREAS, by Quit Claim deed dated ____ day of December, 2004, from the Wisconsin Central Ltd. (WCL), the WisDOT acquired the WCL rail line extending from MP 114.8, near Saukville to MP 151.8, near Kiel, Wisconsin (the "Kiel to Saukville line") without any common carrier freight rail obligation;

WHEREAS, by Freight Easement dated ____ day of December, 2004, from the Wisconsin Central Ltd. (WCL), the Wisconsin & Southern Railroad Co. acquired from WCL an exclusive perpetual common carrier freight rail easement on the rail line extending from MP 114.8, near Saukville to MP 151.8, near Kiel, Wisconsin;

WHEREAS, WisDOT owns the real property and track/railroad facilities, and WSOR owns an exclusive perpetual easement over the property for the purpose of providing common carrier rail freight transportation service;

WHEREAS, WisDOT wishes to grant the Commission use of the Kiel to Saukville line so that the Commission can provide access to the Kiel to Saukville line to WSOR to facilitate freight rail service on the line.

NOW THEREFORE, the WisDOT and Commission do hereby mutually agree in accordance with the following terms and conditions.

ARTICLE ONE - DEFINITIONS

Section 101 - Definitions. The following words and phrases shall have the following meanings ascribed to them unless the context clearly determines otherwise:

- (1) "Acquisition cost" or "acquisition price" means the amount of money paid to the Wisconsin Central Ltd. to acquire ownership of track, bridges and other improvements to the Kiel to Saukville line.
- (2) "BORAH" or "BR&H" means the Bureau of Railroads and Harbors of WisDOT.
- (3) "Commission's share" means the amount of money equaling 20 percent of the acquisition cost provided by the Commission as matching funds to the grant amount.
- (4) "Commission's interest" means the financial interest the Commission may have in the proceeds of the liquidation or ownership transfer of any property acquired under this grant.
- (5) "Commission revenue" means any monies collected by the Commission through lease or other means made possible through use by the Commission or others of the property made available to the Commission under this grant or by lease from WisDOT.
- (6) "Crew" means the individual train and engine personnel employed to perform the rail freight service.
- (7) "Default" means non-compliance or unsatisfactory compliance with any of the terms or conditions of this Agreement, thereby providing grounds for cancellation of this Agreement and disposal by WisDOT of the property acquired under this grant.
- (8) "Grant amount" means the amount of money or its equivalent in property provided by WisDOT to the Commission for use in railroad service preservation.
- (9) "Land Corridor" means all land upon which the property exists and minimum land clearances thereto (50 feet off the centerline of track unless present corridor is narrower) together with other land which is used or useful in rail service over the Kiel to Saukville line.
- (10) "Net liquidation value" means the monetary value of property less all the costs associated with disposing of the property.
- (11) "OCR" means the Wisconsin Office of the Commissioner of Railroads.
- (12) "Operator" means the person with the freight rail easement on the Kiel to Saukville line.
- (13) "Operating revenues" means all income produced from operations on the system lines or portions thereof.

- (14) "Person" means an individual, a partnership, an association, and bodies politic or corporate.
- (15) "Private firm" means any non-governmental entity, for-profit or not-for-profit, which may contract with the Commission for use or purchase of the property acquired under this grant or to financially support the Commission's activities.
- (16) "Private interest(s)" means the financial interest a private firm may have in railroad service revenue derived from the use of the property acquired under this grant or in the proceeds of liquidation or ownership transfer of the property acquired under this grant.
- (17) "Property" means the rails, ties, ballast, track material, bridges, culverts, buildings, signals, switches, structures, and all other non-land property acquired by WisDOT and provided under this grant to the Commission for use in providing railroad service. This term does NOT include land or the land corridor.
- (18) "Rail facility" or "rail facilities" means property.
- (19) "Railroad service" means the operation of trains in revenue service and the conduct of other activities to provide freight transportation by railroad over the properties acquired under this grant and over the railroad lines with which this property connects.
- (20) "Right-of-Way" means land corridor.
- (21) "Routine maintenance" means inspection and light repairs, emergency repairs, and a planned program of periodic maintenance which is necessary to keep the track at FRA Track Safety Standards.
- (22) "STB" means the Surface Transportation Board or its successor.
- (23) "Useful life" means the time period between the installation of a physical improvement and its reaching an unserviceable condition as defined in Attachment N of the Office of Management and Budget Circular A-102.
- (24) "Value" or "contribution to value" means the dollar cost of improvement or expansion of the physical characteristics of the property and specifically does not include concepts such as good will, customer loyalty, winning of additional traffic to the line, developing new markets, and the like.

ARTICLE TWO - (RESERVED)

ARTICLE THREE - RAILROAD SERVICE OPERATION

Section 301 - Provision of Railroad Transportation Service

The Commission shall contract with an operator to provide rail freight service on the rail property identified as the Kiel to Saukville

line. Provision of rail service shall include but not be limited to:

(a) Maintenance of the track and right-of-way to appropriate FRA Track Safety Standards.

(b) Operation of approximately 37 miles of trackage on the Kiel to Saukville line.

Commission's Operator shall provide service to regular service users.

Should Commission's Operator determine that different service frequency is required, it shall notify affected users in writing of its intent to change service, and specify the revised service frequency and said service change to be effective thirty (30) days after such notice is received.

(c) Supply freight carfss to meet the reasonable demands of shippers on the line.

(d) Performance of all necessary accounting services appropriate to conducting business as a railroad.

(e) Active promotion and solicitation of additional shipments by rail.

(e) Performance of other such activities as are required elsewhere herein and as are appropriate to railroad operations and management of funds provided herein.

Section 302 - Operation Rights and Responsibilities

(a) The Commission shall require its Operator to warrant that it has all necessary rights to the Kiel to Saukville line and will comply with all appropriate state and federal laws concerning the right to provide railroad service on the Kiel to Saukville line.

(b) The Commission's Operator shall have the exclusive operating control of the Kiel to Saukville line during the term of this Agreement and any extensions thereafter.

Commission's Operator shall have the right, pursuant to state and federal regulations, to adopt new or modify existing tariffs, rates, routes and divisions (subject to Section 304 herein) and shall have the exclusive control in the management and operation of the rail freight and (subject to WisDOT permitting requirements) passenger excursion service, including but not limited to, labor, dispatching of trains, assignment of cars, assignment of crews, and Operator shall have exclusive operating control of the rail facilities and right-of-way. It shall be entitled to operate all properties in the Kiel to Saukville line which are "used or useful" in rail freight operations. This would include any and all buildings and structures, rail freight offices, car and locomotive shops, equipment or other items as may be required by Commission's Operator.

(c) The Commission's Operator shall assure that during the term of this

Agreement and, if improvements are purchased by the Commission's Operator, for the useful life of improvement resulting from the funds provided under this grant, any arrangement for transportation service to the public over the property containing the approved project(s) includes sufficient maintenance to:

1. Permit conduct of safe operation for the original approved project purpose of the assisted facility; and

2. Prevent deterioration of the rail service facilities.

(d) The Commission's Operator shall promulgate and adopt rules and regulations for the operation of the rail freight service and will comply as necessary with applicable FRA safety rules.

(e) Commission and Commission's Operator shall facilitate the inspection of the rail line facilities as required by governmental agencies. Commission's Operator shall inform WisDOT and Commission of the time and place of any inspection requested by a federal or insurance inspector. Commission's Operator shall permit representatives of WisDOT authorized by the Secretary or Director of the Bureau of Railroads and Harbors of WisDOT to accompany the inspector. Commission's Operator shall provide access to all documents related to any inspection by any governmental entity or insurance underwriter's agent. Commission's Operator shall agree upon reasonable notice to permit inspection of the rail line, and the operating and maintenance practices of Commission's Operator and Commission's Operator's railroad affiliates performing work on the rail line, by WisDOT or its agents or Commission during normal business hours.

Commission's Operator shall covenant and agree to furnish WisDOT with copies of all inspection reports from federal agencies or insurance underwriter's agents and safety orders from federal agencies or operating restrictions imposed by insurance underwriter's agents and authorize the Wisconsin Office of the Commissioner of Transportation to furnish WisDOT and Commission any like reports and orders.

(f) Upon emergency notice from WisDOT's Bureau of Railroads and Harbors or Division of State Patrol (by telephone and later confirmed in writing), Commission's Operator shall immediately suspend the movement of trains or motive power when, in the reasonable judgment of Commission or WisDOT, after consulting with Commission's Operator if possible, operation of trains or motive power would be unsafe or if the liability insurance coverage of Commission's Operator lapses, is suspended or is cancelled for any reason or is less comprehensive than is required under Section 802 of this Agreement. Operation of trains and motive power by Commission's Operator shall remain suspended until the president or general manager of Commission's Operator is contacted by WisDOT and until the safety hazard is ameliorated or the required insurance coverage is reinstated. Suspension of operations for safety reasons shall be ordered when operations are not or would not be in compliance with Federal Railroad Administration (FRA) safety regulations. At the option of Commission's Operator, safety officials of FRA may be called upon to determine the existence or non-existence of any safety hazard cited by WisDOT as a sufficient reason for suspending operations. When FRA is

called upon, operations shall be suspended until such determination is made by FRA.

(g) If Commission's Operator proposes to operate or allow the operation of any train over any portion of the rail line which is to carry any person paying a fee for carriage, Commission's Operator shall first apply for and receive a written permit from WisDOT. WisDOT may grant or deny a permit based solely upon Commission's Operator's compliance with excursion permit requirements issued in writing by WisDOT in guideline, manual, or administrative rules.

(h) Commission's Operator shall make necessary and satisfactory arrangements for divisions of revenues with all connecting railroads. Documented evidence of those arrangements shall be furnished to WisDOT and the Commission upon WisDOT's or Commission request. Commission's Operator shall adhere to and comply with interline accounting rules of the Association of American Railroads in dividing revenues under through rates among participating carriers. Commission's Operator shall remain current on its financial arrangements to connecting railroad companies to the extent connecting railroad companies are current with the Commission's Operator.

Section 303 - Force Majeure

The parties hereto will be excused from performance of any of their respective obligations hereunder, occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation: conflicting actions of federal, state or local agencies; imposition of conflicting governmental priorities creating impossible burdens; by Acts of God; by strikes or other labor troubles or other causes beyond the reasonable control of the parties; by interruption of service caused by explosions, fires, vandalism, malicious mischief, or unavoidable interruption or cessation of service by a connecting railroad.

Section 304 - Freight Rates, Revenue Divisions, Switch Charges and Other Agreements

(a) The Commission's Operator shall be responsible for the negotiation, renegotiation and administration of interline revenue divisions and switch charges.

(b) Unless limited by other agreements now existing between WisDOT and the Commission, the Commission's Operator shall undertake the negotiation, renegotiation and administration of easements, trackage rights, equipment leases and other agreements which affect the operation of the facilities in any way, provided, however, that WisDOT shall have the right to review and comment upon all agreements.

Section 305 - Crew Size

The Commission's Operator shall determine the size of each crew.

This agreement shall be consistent with state law. Negotiation of labor agreements is the responsibility of the Commission's Operator. The Commission's Operator shall notify WisDOT and the Commission of any resultant change in labor agreements. No employees of the Commission or Commission's Operator are to be considered or construed as employees of WisDOT, the State of Wisconsin, or the Commission.

Section 306 - Occupancy of the Property

Upon execution of this Agreement, Commission and its Operator may occupy the property. Occupancy and use of the property on a continuing basis shall be governed by the terms of this Agreement. The Commission's Operator has paid to WisDOT the amount of \$227,100 for the acquisition of the Kiel to Saukville line, as set forth in Section 503(b).

ARTICLE FOUR - PROPERTY MANAGEMENT

Section 401 - Maintenance of Rail Line

Commission shall perform or cause to be performed all maintenance of the land and property including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the land corridor or property necessary for the safe operation of rail freight service or any other service provided by it and to prevent deterioration of the property.

Section 402 - Maintenance Plan

Commission shall require its Operator to prepare or cause to be prepared an annual maintenance plan for the property. The plan shall be prepared in consultation with WisDOT and shall be fully completed and delivered to WisDOT for WisDOT review and reasonable approval not later than February 1 of each year beginning February 1, 2005. The plan required to be submitted shall include the quantities of materials to be installed during the year in which the plan is submitted, the numbers and types of personnel to be employed for the proposed maintenance, the numbers and types of machines to be utilized for performing the proposed maintenance, the location of the proposed maintenance and the schedule for performing the proposed maintenance. Estimated prices for materials, labor and machines shall be included as well as the projected rates of production.

ARTICLE FIVE - DISPOSITION OF PROPERTY AND PROCEEDS

Section 501 - Option to Purchase

(a) Commission's Operator shall have the right to exercise an option to purchase the system lines land corridor and improved properties at any

time after the start-up of operations under the provisions of s.85.09(4) Wis. Stats., Stats subject to Wisconsin Central Ltd.'s right of first refusal. This right shall exist throughout the term of this Agreement and any renewals thereto, so long as Commission's Operator is not in default at the time of exercise of said option, or at the time of closing of the intended purchase.

(b) If the option is exercised, it shall be for the entire Kiel to Saukville line (unless the parties hereto agree otherwise) and the purchase price for the Kiel to

(c) Saukville line shall be at fair market value, which shall be determined by appraisal.

(c) The terms of payment shall be as follows:

1. At the time of exercise of the option, Commission's Operator shall forward to WisDOT a cashier's check in the amount of \$10,000, which shall be considered a good faith deposit and shall be placed in an interest bearing escrow account in favor of the buyer.

In the event the Commission's Operator defaults in its purchase, the said \$10,000 amount shall be retained as liquidated damages by WisDOT since it would be extremely difficult, if not impossible, to ascertain the actual damages.

2. At closing, WisDOT shall be paid in cash or in such other manner as WisDOT shall agree, an amount equal to the remainder of the purchase price less any credit allowed under Section 503.

(d) Closing shall be held within 120 days after exercise of option at Madison, Wisconsin or at such other mutually agreed time or place.

(e) All appropriate STB or other governmental approvals must be obtained as a condition precedent to closing.

(f) If the parties cannot agree on one appraiser, then each party shall elect one appraiser and the two selected appraisers shall select a third appraiser within 15 days of their selections. The three appraisers shall then, by majority vote, determine the fair market value of the properties being purchased according to proper appraisal methods then current and approved. If option to purchase is not exercised, the cost of such appraisals shall accrue to the Commission's Operator. If option to purchase is exercised, the cost of the third appraisal is shared equally with each party also paying its respective appraiser.

(g) It is understood that title to all segments of the land corridor shall be held by WisDOT, and the title of the track and other improved facilities on the Kiel to Saukville line segment shall be with WisDOT. WisDOT shall relinquish said title upon settlement herein, except the Kiel to Saukville segment which shall be subject to the terms of the Purchase and Sale Agreement between the WCL, WisDOT and WSOR dated ____ day of December, 2004.

Section 502 - Right of First Refusal

(a) Should WisDOT or Commission as the case may be, propose to sell or otherwise transfer all or any part of the system lines to any other person or entity, Commission's Operator shall to the extent permitted by law have a right of first refusal for a period of sixty (60) days after written notification of such proposed sale, to substitute itself in place of such proposed bona fide purchaser, subject to all of the terms and conditions of such sale. An exact copy of the agreement under which the bona fide purchaser is intending to purchase, shall be submitted to Commission's Operator with the written notification of such proposed sale so that Commission's Operator may have an opportunity to review the terms and conditions therein. This provision shall be subordinate to any conflicting provision in the Purchase and Sale Agreement between the WCL, WisDOT and WSOR dated the _____ day of December, 2004.

(b) Written notice of election to exercise this right of first refusal shall be delivered to the Commission or WisDOT as the case may be, within such 60 day period. Should Commission's Operator intend to purchase, it shall purchase under the same terms and conditions as set forth in the agreement executed by the bona fide purchase, which the WisDOT intends to accept. The bona fide purchaser shall, prior to its executing any agreement, be advised that there exists a prior right of first refusal in the Commission's Operator. Should the Commission's Operator, in writing fail to respond within such 60 day period with notification of Commission's Operator's intent to purchase, under the same terms and conditions, such failure to respond shall be considered as the Commission's Operator's desire not to purchase. Thereafter, should the sale be consummated with a third party, other than the Commission's Operator, the Commission's Operator in that event shall nevertheless have the right to receive from the proceeds of such sale, the proportionate amount of proceeds by which the Commission's Operator's contribution of money bears to the entire contribution made by either the Commission or WisDOT.

(c) Neither the Commission nor WisDOT shall entertain any offer for transfer or sale of all or any part of the system lines prior to July 1, 2007, except as may be otherwise mutually agreed by the Commission's Operator and WisDOT.

Section 503 - Apportionment of Proceeds

(a) Conceptual Basis. WisDOT and Commission's Operator have invested in the acquisition of the property. Furthermore, Commission shall require its Operator to accept the obligation to physically maintain the property and land corridor so as to maintain its value. Over time, three results are possible: (1) Commission's Operator invests in maintenance sufficiently to retain the value of these properties, or (2) Commission's Operator, in violation of the terms of this Agreement, under-invests in maintenance thereby reducing the value of these properties, or (3) Commission's Operator, on its own initiative, over-invests in maintenance, thereby either maintaining, reducing or enhancing the value of these properties.

In the event of liquidation of these properties, both WisDOT and Commission's Operator have a claim on the net proceeds of the liquidation in the same proportion as the original acquisition and subsequent, if any, rehabilitation of the improved property.

(b) Computation. The initial investment basis of WisDOT, Operator and Commission's operator shall be determined by the financial contributions of each to the cost of acquisition and rehabilitation of property for which grant funds are expended. The initial invest basis in the Kiel to Saukville line for WisDOT is \$1,695,900, for the Commission is \$0.00, and for the Commission's Operator is \$227,100.

(1) No more than 60 days following the closing of a sale of project property by WisDOT or the failure by Commission or Commission's Operator to remove a condition of default, the gross salvage value of improved property on the rail lines or any portion thereof subject to the default shall be determined in accordance with Subparagraph 501(f) of this Agreement.

(2) The estimated costs of liquidation, which include both direct salvage operation costs and WisDOT administrative costs, shall be deducted from the appraised value.

(3) WisDOT's share shall be determined by multiplying WisDOT's share in the initial acquisition costs and rehabilitation of the improved property by the net liquidation value of the improved property. Operator's share shall be determined by multiplying Operator's share in the acquisition of improved property and rehabilitation payments actually made by the net liquidation value of the property. WisDOT shall receive 100% of the net liquidation value of the Wisconsin land corridor. Neither Commission nor Operator shall receive funds from the liquidation of the land inasmuch as neither has invested its own funds in the acquisition.

(4) In the event the property is liquidated, the net proceeds of the liquidation are used in place of appraised value in steps 1 through 3 except that the estimate of direct salvage cost of liquidation shall not be deducted from the net proceeds under step 3.

(c) Any property installed or funds expended for maintenance of any portion or aspect of rail lines under the jurisdiction of Commission by permit or grant from WisDOT which is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by WisDOT upon sale of the property or transfer of operating rights on the property to another agency or another party.

Section 504 - New Property

The Commission's Operator may acquire at its own expense additional facilities deemed necessary to continue railroad service. In the event of liquidation or transfer of ownership, WisDOT shall first determine within a reasonable period of time if any of these additional facilities

are needed for the provision of railroad service on this or any other line in the State. If WisDOT determines that they are not needed for such purpose, the owner may dispose of the facilities in any manner it sees fit at its own expense. If WisDOT determines that the facilities are needed, WisDOT, Commission, or the subsequent user of the facilities, shall pay to Commission's Operator, or assume the obligation to pay, if assignable, the fair market value of the facilities. Should Commission's Operator produce an executed Agreement for such facility from a bona fide purchaser, it shall notify WisDOT, and WisDOT or nominee shall have the right of first refusal to purchase under the same terms and conditions but such purchase must be completed within six months of notice by Commission's Operator.

ARTICLE SIX - RESERVED

ARTICLE SEVEN - TERM AND RENEWAL

Section 701 - Term

The term of this Amendment shall commence upon execution and shall be for a period ending December 31, 2050; provided the Commission is not in default, the Commission shall have the right of "quiet enjoyment" of the premises for this period.

Section 702 - Renewals

Provided Commission is not in default, Commission shall have the right to renew this Agreement for successive additional ten (10) year periods as follows:

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

ARTICLE EIGHT - LIABILITY AND INSURANCE

Section 801 - Hold Harmless

Commission shall save and hold WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or railroad operation of the Operator, or its agents, servants, subcontractors or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about the place where such operation, act or omission is being performed or in the vicinity thereof (1) while Operator is performing its work, or (2) during the period this

Agreement between the Operator and Commission is in effect, or (3) while any of the Operator's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of Operator's operations: including without limiting the generality of the foregoing, all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its employees, agents, subcontractors or frequenters, or to any other persons, whether based upon, or claimed to be based upon, statutory (including, without limiting the generality of the foregoing, workmen's compensation), contractual, tort, or other liability of WisDOT, Commission, or any other persons, and whether or not caused or claimed to have been caused by active or inactive negligence or other breach of duty by WisDOT, its employees, agents, subcontractors or frequenters, Commission, its employees, agents, subcontractors or frequenters, or any other person. Without limiting the generality of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatever.

Section 802 - Insurance.

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

(b) Validation of Coverage and Notice of Cancellation - Upon initial purchase and each renewal of insurance coverage, the insurance carrier shall be subject to approval of WisDOT, such approval shall not be unreasonably withheld. WisDOT shall respond within 60 days of receipt of a request for approval of the proposed insurance carrier. Commission's

Operator shall be required to provide to WisDOT written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage on or before the effective date and within 60 days thereafter a copy of the Comprehensive Railroad Liability Policy and the other policies of insurance aforesaid. In the event of insurance coverage suspension or cancellation by any insurance carrier, both the insurance carrier and the Commission's Operator shall be required to provide WisDOT with notification of such suspension or cancellation of insurance coverage required by Section 802(a) no less than 10 days prior to such suspension or cancellation.

(c) Self-Insured Retention - It is understood and agreed that the comprehensive railroad liability policy to be obtained and kept in force by Commission's Operator may contain a self-insured retention. The figure of \$75,000 per occurrence is hereby approved as the self-insured retention for railroad liability, \$5,000 for FELA, and \$100,000 for property. Commission shall require its Operator to confer with WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer. It is a condition of this Agreement that Commission shall require its Operator to annually provide WisDOT with the financial report required under Section 1201(b) showing the financial capability of the Commission's Operator to be sufficient to satisfy the self-insured retention should claims be filed.

(d) Reporting of Incidents and Claims - During the term of this contract and any extension thereof, any damage or injury to person or property occurring on the rail line or from the operation of the equipment of Operator or by the employees of Operator (herein referred to as an "incident") shall be reported to WisDOT and Commission at such time as it is reported to FRA, STB, OCR or its insurance carrier. Operator shall be required to forthwith furnish WisDOT and Commission with copies of any notice of injury or claim of damage made to Operator. Thereafter, Operator shall be required to provide WisDOT and Commission access to copies of any further instruments, reports or records involving such matter and shall report, at least quarterly, to WisDOT and Commission as to further happenings regarding the incident including the final disposition of the matter. Notices of court dates shall be given to WisDOT and Commission upon receipt.

(e) Self-Insured Retention Set Aside - If Operator's Comprehensive Railroad Liability Insurance contains a self-insured retention of more than \$75,000, Operator shall be required, within 15 days after receiving a claim or notice of claim alleging an incident, to set aside a separate, segregated reserve for each such claim, including claim defense. The reserve fund set aside for each claim and for its defense shall be determined by Operator's counsel and WisDOT's counsel. If the two are unable to agree, they shall select a third party to make the determination. In the event they are unable to agree on a third party to make the determination, they shall request an arbitrator be selected by The American Arbitration Association. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to

claims, Operator shall be required to provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position.

(f) Review of Insurance Limits - Operator shall be required to agree that the limits of Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review each year this Agreement is in effect for the purpose of raising or lowering the limits of insurance necessary. The review shall be conducted by WisDOT, Commission and Operator no less than 60 days prior to the expiration date of the policy then in force. The limits of insurance necessary shall be set by WisDOT. In no case, however, shall the limits for freight operations and for excursion operations be set below the limits specified in Section 802(a).

ARTICLE NINE - OBLIGATIONS OF COMMISSION AND OPERATOR

Section 901 - Obligations of Commission

Commission agrees to the maximum extent feasible to:

- (a) Cooperate with and assist Operator to maintain and obtain all necessary permits, clearances, agreements, and other requirements for operation and maintenance.
- (b) Cooperate with the Operator to obtain federal, state or local grants which may be available from time to time for upgrading, improvements, or insuring the continued operation of the railroad.
- (c) Cooperate with and assist the Operator with regard to negotiations with WisDOT, STB, OCR (if applicable) and other federal, state and local government agencies as may be appropriate to insure operational authority and continued and expanded freight service.
- (d) Assist Operator to the maximum extent feasible in a solicitation of additional shipments by rail.
- (e) Provide timely payments of amounts due to the Operator.

Section 902 - Obligations of Operator

- (a) Operator shall be required to assume full responsibility for preserving public order upon the property and for resolving matters concerning trespass upon and from this property to adjacent private lands. Operator may adopt and enforce any necessary rule in order to protect the property. Operator shall have the right to post signs and erect barricades necessary to delineate the property as railroad property and to prevent the entrance upon the property of unauthorized vehicles and individuals.
- (b) Operator shall be required to assume such responsibility as may exist for providing fencing as may be required by applicable state law.

(c) Operator shall be required to assume full responsibility for the eradication, control and removal of all noxious weeds as covered by applicable state law or local ordinance.

(d) Operator shall be required to assume full responsibility for the repair, maintenance, rehabilitation or replacement of all culverts, trestles and bridge structures, thereby insuring the unrestricted flow of applicable waters and the preservation of the necessary drainage systems.

(e) Operator shall be required to assume such responsibility as may exist for the maintenance of all state trunk highway, county highway and local highway crossings, including but not limited to surface, track and warning devices.

(f) Operator may sublet any or all of the above described property subject to prior approval by WisDOT and Commission,

(g) Commission acknowledges and shall require its Operator to acknowledge that WisDOT shall retain complete authority for the issuance of permits allowing public and privately owned utilities the right to construct, place, and operate, repair and replace any power or communications line, gas or other pipeline, water mains and sewers over, across, upon and within the subject property. Such permits shall not be issued without prior notice to Commission and Operator; and shall not unduly interrupt railroad operations, nor shall they cause any uninsured risk of injury to person or property on the railroad facilities. WisDOT shall also retain authority for approving all applications for new public street crossings or other public use of the corridor and shall coordinate with Commission and Operator on matters pertaining to said application.

(h) Commission acknowledges and shall require its Operator to acknowledge that WisDOT employees or its agents on safety or contract compliance inspection assignments shall have the right to enter upon the property at any time for the purpose of discharging their official duties.

(i) Any administrative rule promulgated to implement Sections 85.08 and 85.09, Wis. Stats., subsequent to the date of this Agreement, which incorporates terms other than those herein contained, shall become effective immediately as a part of this Agreement upon approval and appropriate publication.

ARTICLE TEN - TERMINATION

Section 1001 - Termination for Money Default

In the event of any failure on the part of either party to perform its obligations under the terms of this Agreement, including but not limited to, transmittal of scheduled contractual payments under this Agreement, and the continuance by such party in such default for a period of thirty (30) days, the other party shall have the right, at its option, after first giving twenty (20) days written notice thereof by certified

mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement subject to STB requirements and the exercise of such rights shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages. A delinquency in payment shall not be considered a default if the party responsible is making a diligent effort to perform its obligations hereunder.

Section 1002 - Termination for Non-Monetary Default

In the event of any substantial failure on the part of either party to perform its obligations under this Agreement, other than payments for services performed, and the continuance by such party in such default for a period of sixty (60) days, the other party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement subject to the requirements of the STB, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages; provided, however, that default with respect to matters which a party shall, in good faith, have submitted to arbitration hereunder shall not, until thirty (30) days further default by such party after final decision of the arbitrators, be cause for forfeiture as aforesaid.

Section 1003 - Ability to Cure Default

(a) Removal of Default

The Commission and its Operator shall have thirty (30) calendar days from written notification of default to remove the cause of the default. Such correction shall be completed and available for WisDOT review within the thirty (30) day period. Upon written petition by the Commission, or Operator, WisDOT may extend the period for removal of a default condition, and such extension shall not be unreasonably withheld. If the remedial action is satisfactory, WisDOT shall provide appropriate written notice to the Commission and Operator.

(b) Removal by Operator of Commission Default

If for any reason the Commission is in default of an agreement with WisDOT, the Operator shall have thirty (30) days to remove the default on behalf of the Commission and shall have the right to quiet enjoyment of the property until the condition of default is resolved.

Section 1004 - Expenses of Termination

The Commission shall, and require its Operator to, mitigate the expenses of termination to the greatest extent possible. It shall return unused materials to their stores or vendors, and shall otherwise reduce the expenses of termination to the maximum extent possible.

Section 1005 - Contractual Obligation Under Termination

Except as provided by the parties in writing, the Commission's and its Operator's right to occupy the corridor and use the rail property shall cease on the effective date of the termination hereof, but all other obligations of the parties to each other described in the agreement shall remain in full force and effect. This termination shall not abrogate any obligations of the Operator to provide freight rail services under any freight rail easement. All parties shall make reasonable efforts to satisfy their surviving obligations promptly after termination.

Section 1006 - Accounting--Termination

In the event of termination, a final accounting shall be rendered by an independent certified public accountant experienced in railroad accounting, chosen by the Operator, the cost of which shall be equally shared between the parties hereto, and the indicated final settlement shall be paid by the appropriate party within thirty (30) days notice or may be withheld from funds which would otherwise be payable, as such accountant shall deem appropriate.

Section 1007 - Termination Approvals

Both parties recognize that the termination and replacement of Operator may require STB approval before such termination or replacement can be effective, and therefore agree to cooperate in effecting an orderly transfer of responsibilities and to abide by related STB findings.

Section 1008 - Vacating the Property

Upon determination by WisDOT that the remedial action has not removed the default condition, WisDOT shall provide written notice to the Commission and its Operator to vacate the property within ninety (90) days of delivery of such notice, subject to Section 1007 herein. In the event a successor operator is prepared to begin operations, Operator shall cooperate and in no way obstruct the start of subsequent operator's operation while in the process of vacating the line.

Section 1009 - Bankruptcy of Operator

If any proceeding shall be commenced by or against the Operator for any relief which includes, or might result in, any modification of the obligation of Operator hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Operator hereunder shall not have been and shall not continue to be duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Operator, or

for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced, it may be declared cause for default.

Section 1010 - Return of Property Upon Bankruptcy Default

If this Agreement shall terminate pursuant to Section 1009 hereof, Operator shall forthwith deliver possession of the property to Commission. Property so delivered shall be in the same or better operating order, repair and condition as when originally delivered to Operator, reasonable wear and tear in service excepted, shall meet the standards of all applicable laws and shall have removed therefrom at Operator's expense, any addition, modification or improvement which is owned by Operator and for which WisDOT has not made a specific request for it to remain with the property.

ARTICLE ELEVEN - REPRESENTATIONS AND WARRANTIES

Section 1101 - WisDOT

The WisDOT represents and warrants the following:

- (a) WisDOT has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.
- (b) The execution of the Agreement and the operation of the rail freight service will not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body.

(d)

Section 1102 - Commission

Commission represents and warrants the following:

- (a) Pursuant to s. 66.30 and 59.968 Wis. Stats., the Commission has the full power and authority to enter into this Agreement and to carry out the functions which it has undertaken in this Agreement.
- (b) The entering into and performance of this Agreement on the part of the Commission does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

records of rail traffic, receipts and expenditures.

(b) Commission shall require its Operator to establish and maintain a system of accounts as prescribed by the STB or OCR or as determined by WisDOT if the STB or the OCR no longer prescribe a system of accounts. Operator shall make available to WisDOT auditors or agents or auditors of any other governmental agency having jurisdiction over Operator, records related to these accounts.

ARTICLE THIRTEEN - ARBITRATION

Section 1301 - General

In the event of any unresolved disagreements between the parties concerning the construction of the Agreement or performance by each of the parties hereunder, the parties shall submit such disagreement to arbitration.

Section 1302 - Procedure

The party desiring arbitration shall give notice in writing to the other party identifying the matters in issue and designating an individual as their arbitrator. Within ten (10) days thereafter, the other party shall, by written notice to the original party, agree to said arbitrator or appoint a second arbitrator. The two arbitrators so appointed shall, within ten (10) days thereafter, appoint a third arbitrator as mutually agreed, and the three arbitrators shall hold the hearing and commence to determine the matter within thirty (30) days of the appointment of the third arbitrator. If the second arbitrator shall not have been appointed, the first arbitrator shall proceed to commence to determine the matter within thirty (30) days of the failure to so appoint a second arbitrator. If the two arbitrators selected by the parties are unable to agree upon the third arbitrator, the third arbitrator shall be appointed by the American Arbitration Association.

Except as otherwise provided herein, the arbitrators shall arbitrate the issues in accordance with the rules and procedures of the American Arbitration Association, and a determination of the majority of the arbitrators, or of the sole arbitrator as the case may be, shall be final and conclusive between and upon the parties, and judgment upon same may be entered in any court having jurisdiction thereof. The arbitrator(s) shall give written notice of their findings to each party.

ARTICLE FOURTEEN - TAXES

Unless waived or abated, Commission shall be responsible for and pay when due, all taxes due as a result of its possession of the system lines or its assets, including possession of real and personal property, as well as for all taxes due on Commission for real or personal property taxes. WisDOT shall be held harmless from, indemnified against and defended against all claims and liabilities with regard thereto.

ARTICLE FIFTEEN - GENERAL PROVISIONS

Section 1501 - Choice of Law

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the state of Wisconsin.

Section 1502 - Notice

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

Director
Bureau of Railroads & Harbors
Wisconsin Dept. of Transportation
P.O. Box 7914
Madison, WI 53707

Chairman
East Wisconsin Counties
Railroad Consortium
Dodge County Courthouse
Juneau, WI 53039

Section 1503 - Status of Commission

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

Section 1504 - Assignment

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Commission's rights hereunder shall not be assignable whether by way of assignment sublease, license or otherwise, directly or indirectly without WisDOT's prior written consent.

Section 1505 - Severability

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

Section 1506 - Amendment

No term or provision of this Agreement, or any of the attachments to which the Operator is party, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties of this Agreement provided, however, that when an emergency situation arises, such as a change in service frequency or emergency maintenance or rehabilitation, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement, subject to immediate confirmation by telegram or other delivered writing.

Section 1507 - Handicapped

The Commission agrees that no otherwise qualified handicapped individual in the United States, as defined in Section 706(6) of Title 29 USC, shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 1508 - Environmental Protection

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

(b) The Commission agrees to conduct approved projects in compliance with all the requirements of Section 114 of the Clean Air Act, 42, USC 1857c-9, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under said Acts.

(c) The Commission certifies that no facilities which will be utilized or improved as part of an approved project are listed on the Environmental Protection Agency ("EPA") List of Violating Facilities ("List").

(d) The Commission stipulates that it will notify the Commission and WisDOT as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be utilized or improved as part of an approved project is under consideration to be listed on the EPA List.

(e) The Commission agrees to include or cause to be included the criteria and requirements contained in this subsection in any contract or subcontract under which the obligations incurred exceed \$100,000.

(f) No publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state or local significance as so determined by such officials, may be used for an approved project without the prior concurrence of the Administrator of

the EPA.

Section 1509 - Use as Equity or Collateral

The property leased under this Agreement shall not be used in any form or amount as equity or collateral for any borrowing or other means of raising capital by the Commission or its Operator during the time this Agreement is in force.

Section 1510 - Liens Against Property

Commission shall not nor allow its Operator to directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the land or improved property or any interest therein. Operator will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

Section 1511 - Successor to Commission

The Commission intends to be in existence for the entire period of this Agreement, and any extensions thereto. However, should the Commission cease to exist for any reason, any successor Commission or other entity will be obligated under the same terms and conditions.

Section 1512 - Entire Agreement

This Agreement and the attachment(s) hereto contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers as of the date and day designated above.

WISCONSIN DEPARTMENT OF TRANSPORTATION

EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

Chairman

Secretary

STATE OF WISCONSIN)
) s.s.
_____ COUNTY)

Personally came before me this _____ day of _____, 200__, the above
named _____ and _____, to me known to be the
Chairman and Secretary of the above named East Wisconsin Counties Railroad
Consortium and acknowledged that they executed the foregoing instrument as
such Chairman and such Secretary for the uses and purposes therein expressed
pursuant to authorization and direction of the Board of Commissioners of said
East Wisconsin Counties Railroad Consortium.

Notary Public, State of Wisconsin
My Commission:

STATE OF WISCONSIN)
) s.s.
_____ COUNTY)

Personally came before me this _____ day of _____, 200__, the above
named _____, to me known to be the
_____ of the above named Wisconsin Department of Transportation and
acknowledged that he executed the foregoing instrument as such
_____ for the uses and purposes therein.

Notary Public, State of Wisconsin
My Commission:

EXHIBIT

4

LAND USE AGREEMENT
FOR RAIL SERVICE CONTINUATION
ON THE KIEL TO SAUKVILLE RAIL LINE

BY AND BETWEEN

THE EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

AND

THE WISCONSIN & SOUTHERN RAILROAD CO.

AGREEMENT NO. 0490-40-50(G)

(DECEMBER 1, 2004)

CONTENTS

	<u>Page</u>
INTRODUCTION	1
ARTICLE ONE - DEFINITIONS	2
Section 101 - Definitions	2
ARTICLE TWO - RESERVED	3
ARTICLE THREE - RAILROAD SERVICE OPERATION	4
Section 301 - Provision of Railroad Transportation Service	4
Section 302 - Operation Rights and Responsibilities	5
Section 303 - Force Majeure	7
Section 304 - Freight Rates, Revenue Divisions, Switch Charges and Other Agreements	8
Section 305 - Crew Size	8
Section 306 - Occupancy of the Property	8
ARTICLE FOUR - PROPERTY MANAGEMENT	8
Section 401 - Maintenance of Rail Line	8
Section 402 - Maintenance Plan	9
ARTICLE FIVE - DISPOSITION OF PROPERTY AND PROCEEDS	10
Section 501 - Option to Purchase	10
Section 502 - Right of First Refusal	11
Section 503 - Apportionment of Proceeds	12
Section 504 - New Property	13
ARTICLE SIX - RENTAL PAYMENTS TO COMMISSION	13
ARTICLE SEVEN - TERM AND RENEWAL	14
Section 701 - Term	14
Section 702 - Renewal	14
ARTICLE EIGHT - LIABILITY AND INSURANCE	14
Section 801 - Hold Harmless	14
Section 802 - Insurance	15
ARTICLE NINE - OBLIGATIONS OF COMMISSION AND OPERATOR	17
Section 901 - Obligations of Commission	17
Section 902 - Obligations of Operator	17

CONTENTS (Continued)

	<u>Page</u>
ARTICLE TEN - TERMINATION	18
Section 1001 - Termination for Money Default	18
Section 1002 - Termination for Non-Monetary Default	19
Section 1003 - Ability to Cure Default	19
Section 1004 - Expenses of Termination	19
Section 1005 - Contractual Obligation Under Termination	19
Section 1006 - Accounting--Termination	20
Section 1007 - Termination Approvals	20
Section 1008 - Vacating the Property	20
Section 1009 - Bankruptcy of Operator	20
Section 1010 - Return of Property Upon Bankruptcy Default	20
ARTICLE ELEVEN - REPRESENTATIONS AND WARRANTS	21
Section 1101 - Operator	21
Section 1102 - Commission	21
ARTICLE TWELVE - REPORTS AND ACCOUNTS	22
Section 1201 - Financial and Operating Reports	22
Section 1202 - Accounts	23
ARTICLE THIRTEEN - ARBITRATION	23
Section 1301 - General	23
Section 1302 - Procedure	23
ARTICLE FOURTEEN - TAXES	24
ARTICLE FIFTEEN - GENERAL PROVISIONS	24
Section 1501 - Choice of Law	24
Section 1502 - Notice	24
Section 1503 - Status of Operator	25
Section 1504 - Assignment	25
Section 1505 - Severability	25
Section 1506 - Amendment	25
Section 1507 - Handicapped	25
Section 1508 - Environmental Protection	25
Section 1509 - Use as Equity or Collateral	26
Section 1510 - Liens Against Property	26
Section 1511 - Successor to Commission	26
Section 1512 - Entire Agreement	27
SIGNATURES	27

Agreement No. 0490-40-50(G__)

LAND USE AGREEMENT
FOR RAIL SERVICE CONTINUATION
ON THE KIEL TO SAUKVILLE RAIL LINE

BY AND BETWEEN

THE EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

AND

THE WISCONSIN & SOUTHERN RAILROAD CO.

THIS AGREEMENT is made and entered into this ____ day of _____ 2004, by and between the East Wisconsin Counties Railroad Consortium (hereafter referred to as Commission), Dodge County Courthouse, Juneau, Wisconsin 53039, and Wisconsin & Southern Railroad Co. (hereinafter referred to as WSOR or Operator), 5300 N. 33rd St., P.O. Box 9229, Milwaukee, Wisconsin 53209.

WHEREAS Commission and Wisconsin Department of Transportation (hereinafter WisDOT) are working together to provide for continued freight railroad service on several rail line segments under Commission jurisdiction;

WHEREAS, the Commission has expanded its membership to include the Counties of Ozaukee and Sheboygan and has agreed to assume jurisdiction over the Kiel to Saukville rail line followings the acquisitions by WisDOT and WSOR;

WHEREAS, by Quit Claim deed dated ____ day of December, 2004, from the Wisconsin Central Ltd.(WCL), the WisDOT acquired the WCL rail line extending from MP 114.8, near Saukville to MP 151.8, near Kiel, Wisconsin (the "Kiel to Saukville line") without any common carrier freight rail obligation ;

WHEREAS, by Freight Easement dated ____ day of December, 2004, from the Wisconsin Central Ltd.(WCL), the WSOR acquired from WCL an exclusive perpetual common carrier freight rail easement on the rail line extending from MP 114.8, near Saukville to MP 151.8, near Kiel, Wisconsin;

WHEREAS, WisDOT owns the real property and track/railroad facilities, and WSOR owns an exclusive perpetual easement over the property for the purpose of providing common carrier rail freight transportation service;

WHEREAS, in a companion land use agreement WisDOT granted the Commission use of the Kiel to Saukville line so that the Commission can provide access to the Kiel to Saukville line to WSOR to facilitate freight rail service on the line.

NOW THEREFORE, the Commission and WSOR do hereby mutually agree in accordance with the following terms and conditions.

ARTICLE ONE - DEFINITIONS

Section 101 - Definitions. The following words and phrases shall have the following meanings ascribed to them unless the context clearly determines otherwise:

- (1) "Acquisition cost" or "acquisition price" means the amount of money paid to the Wisconsin Central Ltd. to acquire ownership of track, bridges and other improvements to the Kiel to Saukville line.
- (2) "BORAH" or "BR&H" means the Bureau of Railroads and Harbors of WisDOT.
- (3) "Commission's share" means the amount of money equaling 20 percent of the acquisition cost provided by the Commission as matching funds to the grant amount.
- (4) "Commission's interest" means the financial interest the Commission may have in the proceeds of the liquidation or ownership transfer of any property acquired under this grant.
- (5) "Commission revenue" means any monies collected by the Commission through lease or other means made possible through use by the Commission or others of the property made available to the Commission under this grant or by lease from WisDOT.
- (6) "Crew" means the individual train and engine personnel employed to perform the rail freight service.
- (7) "Default" means non-compliance or unsatisfactory compliance with any of the terms or conditions of this Agreement, thereby providing grounds for cancellation of this Agreement and disposal by WisDOT of the property acquired under this grant.
- (8) "Grant amount" means the amount of money or its equivalent in property provided by WisDOT to the Commission for use in railroad service preservation.
- (9) "Land Corridor" means all land upon which the property exists and minimum land clearances thereto (50 feet off the centerline of track unless present corridor is narrower) together with other land which is used or useful in rail service over the Kiel to Saukville line
- (10) "Net liquidation value" means the monetary value of property less all the costs associated with disposing of the property.
- (11) "OCR" means the Wisconsin Office of the Commissioner of Railroads.
- (12) "Operator" means the person with the freight rail easement on the Kiel to Saukville line.
- (13) "Operating revenues" means all income produced from operations on the system lines or portions thereof.

- (14) "Person" means an individual, a partnership, an association, and bodies politic or corporate.
- (15) "Private firm" means any non-governmental entity, for-profit or not-for-profit, which may contract with the Commission for use or purchase of the property acquired under this grant or to financially support the Commission's activities.
- (16) "Private interest(s)" means the financial interest a private firm may have in railroad service revenue derived from the use of the property acquired under this grant or in the proceeds of liquidation or ownership transfer of the property acquired under this grant.
- (17) "Property" means the rails, ties, ballast, track material, bridges, culverts, buildings, signals, switches, structures, and all other non-land property acquired by WisDOT and provided under this grant to the Commission for use in providing railroad service. This term does NOT include land or the land corridor.
- (18) "Rail facility" or "rail facilities" means property.
- (19) "Railroad service" means the operation of trains in revenue service and the conduct of other activities to provide freight transportation by railroad over the properties acquired under this grant and over the railroad lines with which this property connects.
- (20) "Right-of-Way" means land corridor.
- (21) "Routine maintenance" means inspection and light repairs, emergency repairs, and a planned program of periodic maintenance which is necessary to keep the track at FRA Track Safety Standards.
- (22) STB means the Surface Transportation Board or its successor.
- (23) "Useful life" means the time period between the installation of a physical improvement and its reaching an unserviceable condition as defined in Attachment N of the Office of Management and Budget Circular A-102.
- (24) "Value" or "contribution to value" means the dollar cost of improvement or expansion of the physical characteristics of the property and specifically does not include concepts such as good will, customer loyalty, winning of additional traffic to the line, developing new markets, and the like.

ARTICLE TWO - (RESERVED)

ARTICLE THREE - RAILROAD SERVICE OPERATION

Section 301 - Provision of Railroad Transportation Service

The Operator has an obligation to provide rail freight service on

the rail property identified as the Kiel to Saukville line. Provision of rail service shall include but not be limited to:

(a) Maintenance of the track and right-of-way to FRA Track Safety Standards.

(b) Operation of approximately 37 miles of trackage on the Kiel to Saukville line.

Operator shall provide service to regular service users.

Should Operator determine that different service frequency is required, it shall notify affected users in writing of its intent to reduce service, and specify the revised service frequency and said service change to be effective thirty (30) days after such notice is received. (c) Supply freight cars to meet the reasonable demands of shippers on the line.

(d) Performance of all necessary accounting services appropriate to conducting business as a railroad.

(g) Active promotion and solicitation of additional shipments by rail.

(h) Performance of other such activities as are required elsewhere herein and as are appropriate to railroad operations and management of funds provided herein.

Section 302 - Operation Rights and Responsibilities

(a) The Operator warrants that it has all necessary rights to the Kiel to Saukville line and will comply with all appropriate state and federal laws concerning the right to provide railroad service on the Kiel to Saukville line.

(b) The Operator shall have the exclusive operating control of the Kiel to Saukville line during the term of this Agreement and any extensions thereafter.

Operator shall have the right, pursuant to state and federal regulations, to adopt new or modify existing tariffs, rates, routes and divisions (subject to Section 304 herein) and shall have the exclusive control in the management and operation of the rail freight and (subject to WisDOT permitting requirements) passenger excursion service, including but not limited to, labor, dispatching of trains, assignment of cars, assignment of crews, and Operator shall have exclusive operating control of the rail facilities and right-of-way. It shall be entitled to operate all properties in the Kiel to Saukville line which are "used or useful" in rail freight operations. This would include any and all buildings and structures, rail freight offices, car and locomotive shops, equipment or other items as may be required by Operator.

(c) The Operator assures that during the term of this Agreement and, if

improvements are purchased by the Operator, for the useful life of improvement resulting from the funds provided under this grant, any arrangement for transportation service to the public over the property containing the approved project(s) includes sufficient maintenance to:

1. Permit conduct of safe operation for the original approved project purpose of the assisted facility; and

2. Prevent deterioration of the rail service facilities.

(d) The Operator shall promulgate and adopt rules and regulations for the operation of the rail freight service and will comply as necessary with applicable FRA safety rules.

(e) Operator shall facilitate the inspection of the rail line facilities as required by governmental agencies. Operator shall inform WisDOT and Commission of the time and place of any inspection requested by a federal or insurance inspector. Operator shall permit representatives of WisDOT authorized by the Secretary or Director of the Bureau of Railroads and Harbors of WisDOT to accompany the inspector. Operator shall provide access to all documents related to any inspection by any governmental entity or insurance underwriter's agent. Operator shall agree upon reasonable notice to permit inspection of the rail line, and the operating and maintenance practices of Operator and Operator's railroad affiliates performing work on the rail line, by WisDOT or its agents or Commission during normal business hours. Operator shall covenant and agree to furnish WisDOT with copies of all inspection reports from federal agencies or insurance underwriter's agents and safety orders from federal agencies or operating restrictions imposed by insurance underwriter's agents and authorize the Wisconsin Office of the Commissioner of Transportation to furnish WisDOT and Commission any like reports and orders.

(f) Upon emergency notice from WisDOT's Bureau of Railroads and Harbors or Division of State Patrol (by telephone and later confirmed in writing), Operator shall immediately suspend the movement of trains or motive power when, in the reasonable judgment of Commission or WisDOT, after consulting with Operator if possible, operation of trains or motive power would be unsafe or if the liability insurance coverage of Operator lapses, is suspended or is cancelled for any reason or is less comprehensive than is required under Section 802 of this Agreement. Operation of trains and motive power by Operator shall remain suspended until the president or WisDOT contacts general manager of Operator and until the safety hazard is ameliorated or the required insurance coverage is reinstated. Suspension of operations for safety reasons shall be ordered when operations are not or would not be in compliance with Federal Railroad Administration (FRA) safety regulations. At the option of Operator, safety officials of FRA may be called upon to determine the existence or non-existence of any safety hazard cited by WisDOT as a sufficient reason for suspending operations. When FRA is called upon, operations shall be suspended until such determination is made by FRA.

(g) If Operator proposes to operate or allow the operation of any train

over any portion of the rail line which is to carry any person paying a fee for carriage, Operator shall first apply for and receive a written permit from WisDOT. WisDOT may grant or deny a permit based solely upon Operator's compliance with excursion permit requirements issued in writing by WisDOT in guideline, manual, or administrative rules.

(h) Operator shall make necessary and satisfactory arrangements for divisions of revenues with all connecting railroads. Documented evidence of those arrangements shall be furnished to WisDOT and the Commission upon WisDOT's or Commission request. Operator shall adhere to and comply with interline accounting rules of the Association of American Railroads in dividing revenues under through rates among participating carriers. Operator shall remain current on its financial arrangements to connecting railroad companies to the extent connecting railroad companies are current with the operator.

Section 303 - Force Majeure

The parties hereto will be excused from performance of any of their respective obligations hereunder, occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation: conflicting actions of federal, state or local agencies; imposition of conflicting governmental priorities creating impossible burdens; by Acts of God; by strikes or other labor troubles or other causes beyond the reasonable control of the parties; by interruption of service caused by explosions, fires, vandalism, malicious mischief, or unavoidable interruption or cessation of service by a connecting railroad.

Section 304 - Freight Rates, Revenue Divisions, Switch Charges and Other Agreements

(a) The Operator shall be responsible for the negotiation, renegotiation and administration of interline revenue divisions and switch charges.

(b) Unless limited by other agreements now existing between WisDOT and the Commission, the Operator shall undertake the negotiation, renegotiation and administration of easements, trackage rights, equipment leases and other agreements which affect the operation of the facilities in any way, provided, however, that WisDOT shall have the right to review and comment upon all agreements.

Section 305 - Crew Size

The Operator shall determine the size of each crew. This agreement shall be consistent with state law. Negotiation of labor agreements is the responsibility of the Operator. The Operator shall notify WisDOT and the Commission of any resultant change in labor agreements. No employees of the Operator are to be considered or construed as employees of WisDOT, the State of Wisconsin, or the Commission.

Section 306 - Occupancy of the Property

Upon execution of this Agreement, Commission and its Operator may occupy the property. Occupancy and use of the property on a continuing basis shall be governed by the terms of this Agreement. The Operator has paid to WisDOT the amount of \$227,100 for the acquisition of the Kiel to Saukville line, as set forth in Section 503(b).

ARTICLE FOUR - PROPERTY MANAGEMENT

Section 401 - Maintenance of Rail Line

Operator shall perform or cause to be performed all maintenance of the land and property including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the land corridor or property necessary for the safe operation of rail freight service or any other service provided by it and to prevent deterioration of the property

Section 402 - Maintenance Plan

Operator shall prepare or cause to be prepared an annual maintenance plan for the property. The plan shall be prepared in consultation with WisDOT and shall be fully completed and delivered to WisDOT for WisDOT review and reasonable approval not later than February 1 of each year beginning February 1, 2005. The plan required to be submitted shall include the quantities of materials to be installed during the year in which the plan is submitted, the numbers and types of personnel to be employed for the proposed maintenance, the numbers and types of machines to be utilized for performing the proposed maintenance, the location of the proposed maintenance and the schedule for performing the proposed maintenance. Estimated prices for materials, labor and machines shall be included as well as the projected rates of production.

ARTICLE FIVE - DISPOSITION OF PROPERTY AND PROCEEDS

Section 501 - Option to Purchase

(a) Operator shall have the right to exercise an option to purchase the system lines land corridor and improved properties at any time after the start-up of operations under the provisions of s.85.09(4), Stats subject to Wisconsin Central Ltd.'s right of first refusal. This right shall exist throughout the term of this Agreement and any renewals thereto, so long as Operator is not in default at the time of exercise of said option, or at the time of closing of the intended purchase.

(b) If the option is exercised, it shall be for the entire Kiel to Saukville line (unless the parties hereto agree otherwise) and the purchase price for the Kiel to

(c) Saukville line shall be at fair market value, which shall be determined by appraisal.

(c) The terms of payment shall be as follows:

1. At the time of exercise of the option, Operator shall forward to WisDOT a cashier's check in the amount of \$10,000, which shall be considered a good faith deposit and shall be placed in an interest bearing escrow account in favor of the buyer.

In the event the Operator defaults in its purchase, the said \$10,000 amount shall be retained as liquidated damages by WisDOT since it would be extremely difficult, if not impossible, to ascertain the actual damages.

2. At closing, WisDOT shall be paid in cash or in such other manner as WisDOT shall agree, an amount equal to the remainder of the purchase price less any credit allowed under Section 503.

(d) Closing shall be held within 120 days after exercise of option at Madison, Wisconsin or at such other mutually agreed time or place.

(e) All appropriate STB or other governmental approvals must be obtained as a condition precedent to closing.

(f) If the parties cannot agree on one appraiser, then each party shall elect one appraiser and the two selected appraisers shall select a third appraiser within 15 days of their selections. The three appraisers shall then, by majority vote, determine the fair market value of the properties being purchased according to proper appraisal methods then current and approved. If option to purchase is not exercised, the cost of such appraisals shall accrue to the Operator. If option to purchase is exercised, the cost of the third appraisal is shared equally with each party also paying its respective appraiser.

(g) It is understood that title to all segments of the land corridor shall be held by WisDOT, and the title of the track and other improved facilities on the Kiel to Saukville line segment shall be with WisDOT. WisDOT shall relinquish said title upon settlement herein, except the Kiel to Saukville segment which shall be subject to the terms of the Purchase and Sale Agreement between the WCL, WisDOT and WSOR dated ____ day of December, 2004.

Section 502 - Right of First Refusal

(a) Should WisDOT or Commission as the case may be, propose to sell or otherwise transfer all or any part of the system lines to any other person or entity, Operator shall to the extent permitted by law have a right of first refusal for a period of sixty (60) days after written notification of such proposed sale, to substitute itself in place of such proposed bona fide purchaser, subject to all of the terms and conditions of such sale. An exact copy of the agreement under which the bona fide purchaser is intending to purchase, shall be submitted to Operator with the written notification of such proposed sale so that Operator may have an opportunity to review the terms and conditions therein. This

provision shall be subordinate to any conflicting provision in the Purchase and Sale Agreement between the WCL, WisDOT and WSOR dated the _____ day of December 2004.

(b) Written notice of election to exercise this right of first refusal shall be delivered to the Commission or WisDOT as the case may be, within such 60 day period. Should Operator intend to purchase, it shall purchase under the same terms and conditions as set forth in the agreement executed by the bona fide purchaser, which the WisDOT intends to accept. The bona fide purchaser shall, prior to its executing any agreement, be advised that there exists a prior right of first refusal in the Operator. Should the Operator, in writing fail to respond within such 60 day period with notification of Operator's intent to purchase, under the same terms and conditions, such failure to respond shall be considered as the Operator's desire not to purchase. Thereafter, should the sale be consummated with a third party, other than the Operator, the Operator in that event shall nevertheless have the right to receive from the proceeds of such sale, the proportionate amount of proceeds by which the Operator's contribution of money bears to the entire contribution made by either the Commission or WisDOT.

Neither the Commission nor WisDOT shall entertain any offer for transfer or sale of all or any part of the system lines prior to July 1, 2000, except as may be otherwise mutually agreed by the Operator and WisDOT.

Section 503 - Apportionment of Proceeds

(a) Conceptual Basis. WisDOT and Operator have invested in the acquisition of the property. Furthermore, Operator accepts the obligation to physically maintain the property and land corridor so as to maintain its value. Over time, three results are possible: (1) Operator invests in maintenance sufficiently to retain the value of these properties, or (2) Operator, in violation of the terms of this Agreement, under-invests in maintenance thereby reducing the value of these properties, or (3) Operator, on its own initiative, over-invests in maintenance, thereby either maintaining, reducing or enhancing the value of these properties. In the event of liquidation of these properties, both WisDOT and Operator have a claim on the net proceeds of the liquidation in the same proportion as the original acquisition and subsequent, if any, rehabilitation of the improved property.

(b) Computation. The initial investment basis of WisDOT and Operator shall be determined by the financial contributions of each to the cost of acquisition and rehabilitation of property for which grant funds are expended. The initial invest basis in the Kiel to Saukville line for WisDOT is \$1,695,900, for the Commission is \$0.00, and for the WSOR is \$227,100.

(1) No more than 60 days following the closing of a sale of project property by Commission or the failure by Commission or Operator to remove a condition of default, the gross salvage value of improved property on the rail lines or any portion thereof subject to the default shall be determined in accordance with Subparagraph 501(f)

of this Agreement.

(2) The estimated costs of liquidation, which include both direct salvage operation costs and WisDOT administrative costs, shall be deducted from the appraised value.

(3) WisDOT's share shall be determined by multiplying WisDOT's share in the initial acquisition costs and rehabilitation of the improved property by the net liquidation value of the improved property. Operator's share shall be determined by multiplying Operator's share in the acquisition of improved property and rehabilitation payments actually made by the net liquidation value of the property. WisDOT shall receive 100% of the net liquidation value of the Wisconsin land corridor. Neither Commission nor Operator shall receive funds from the liquidation of the land inasmuch as neither has invested its own funds in the acquisition.

(4) In the event the property is liquidated, the net proceeds of the liquidation are used in place of appraised value in steps 1 through 3 except that the estimate of direct salvage cost of liquidation shall not be deducted from the net proceeds under step 3.

(c) Any property installed or funds expended for maintenance of any portion or aspect of rail lines under the jurisdiction of Commission by permit or grant from WisDOT which is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by WisDOT upon sale of the property or transfer of operating rights on the property to another agency or operator.

Section 504 - New Property

The Operator may acquire at its own expense additional facilities deemed necessary to continue railroad service. In the event of liquidation or transfer of ownership, WisDOT shall first determine within a reasonable period of time if any of these additional facilities are needed for the provision of railroad service on this or any other line in the State. If WisDOT determines that they are not needed for such purpose, the owner may dispose of the facilities in any manner it sees fit at its own expense. If WisDOT determines that the facilities are needed, WisDOT, Commission, or the subsequent user of the facilities, shall pay to Operator, or assume the obligation to pay, if assignable, the fair market value of the facilities. Should Operator produce an executed Agreement for such facility from a bona fide purchaser, it shall notify WisDOT, and WisDOT or nominee shall have the right of first refusal to purchase under the same terms and conditions but such purchase must be completed within six months of notice by Operator.

ARTICLE SIX - RENTAL PAYMENTS TO COMMISSION

Operator shall pay rent to Commission for use of the land corridor and rail facilities, and all other rights and privileges under this Agreement, at the rate of \$25 per mile of track operated, not to exceed \$1,000 each year, payable quarterly.

Rent payments shall commence under this Agreement in the appropriate sequence established prior to this Agreement and shall be payable each three month period thereafter.

ARTICLE SEVEN - TERM AND RENEWAL

Section 701 - Term

The term of this Amendment shall commence upon execution and shall be for a period ending December 31, 2050; provided the Operator is not in default, the Operator shall have the right of "quiet enjoyment" of the premises for this period.

Section 702 - Renewals

Provided Operator is not in default, Operator shall have the right to renew this Agreement for successive additional ten (10) year periods as follows:

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

ARTICLE EIGHT - LIABILITY AND INSURANCE

Section 801 - Hold Harmless

Operator shall save and hold WisDOT, Commission and the counties named in the preamble to this Agreement harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or railroad operation of the Operator, or its agents, servants, subcontractors or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about the place where such operation, act or omission is being performed or in the vicinity thereof (1) while Operator is performing its work, or (2) during the period this Agreement between the Operator and Commission is in effect, or (3) while any of the Operator's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of Operator's operations: including without limiting the generality of the foregoing, all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its employees, agents, subcontractors or frequenters, or to any other persons, whether based upon, or claimed to be based upon, statutory (including, without limiting the generality of the foregoing, workmen's compensation), contractual, tort, or other liability of WisDOT, Commission, or any other persons, and whether or not caused or claimed to

have been caused by active or inactive negligence or other breach of duty by WisDOT, its employees, agents, subcontractors or frequenters, Commission, its employees, agents, subcontractors or frequenters, or any other person. Without limiting the generality of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatever.

Section 802 - Insurance.

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

(b) Validation of Coverage and Notice of Cancellation - Upon initial purchase and each renewal of insurance coverage, the insurance carrier shall be subject to approval of WisDOT, such approval shall not be unreasonably withheld. WisDOT shall respond within 60 days of receipt of a request for approval of the proposed insurance carrier. Operator shall provide to WisDOT written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage on or before the effective date and within 60 days thereafter a copy of the Comprehensive Railroad Liability Policy and the other policies of insurance aforesaid. In the event of insurance coverage suspension or cancellation by any insurance carrier, both the insurance carrier and the Operator shall provide WisDOT with notification of such suspension or cancellation of insurance coverage required by Section 802(a) no less than 10 days prior to such suspension or cancellation.

(c) Self-Insured Retention - It is understood and agreed that the comprehensive railroad liability policy to be obtained and kept in force

by Operator may contain a self-insured retention. The figure of \$75,000 per occurrence is hereby approved as the self-insured retention for railroad liability, \$5,000 for FELA, and \$100,000 for property. Operator agrees to confer with WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as the insurer may require review. It is a condition of this Agreement that Operator shall annually provide WisDOT with the financial report required under Section 1201(b) showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention should claims be filed.

(d) Reporting of Incidents and Claims - During the term of this contract and any extension thereof, any damage or injury to person or property occurring on the rail line or from the operation of the equipment of Operator or by the employees of Operator (herein referred to as an "incident") shall be reported to WisDOT and Commission at such time as it is reported to FRA, STB, OCR or its insurance carrier. Operator shall forthwith furnish WisDOT and Commission with copies of any notice of injury or claim of damage made to Operator. Thereafter, Operator shall provide WisDOT and Commission access to copies of any further instruments, reports or records involving such matter and shall report, at least quarterly, to WisDOT and Commission as to further happenings regarding the incident including the final disposition of the matter. Notices of court dates shall be given to WisDOT and Commission upon receipt.

(e) Self-Insured Retention Set Aside - If Operator's Comprehensive Railroad Liability Insurance contains a self-insured retention of more than \$75,000, Operator shall, within 15 days after receiving a claim or notice of claim alleging an incident, set aside a separate, segregated reserve for each such claim, including claim defense. Operator's counsel and WisDOT's counsel shall determine the reserve fund set aside for each claim and for its defense. If the two are unable to agree, they shall select a third party to make the determination. In the event they are unable to agree on a third party to make the determination, they shall request tThe American Arbitration Association select an arbitrator. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to claims, Operator agrees to provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position.

(f) Review of Insurance Limits - Operator agrees that the limits of Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review each year this Agreement is in effect for the purpose of raising or lowering the limits of insurance necessary. WisDOT, Commission and Operator shall conduct the review no less than 60 days prior to the expiration date of the policy then in force. WisDOT shall set the limits of insurance necessary. In no case, however, shall the limits for freight operations and for excursion operations be set below the limits specified in Section 802(a).

ARTICLE NINE - OBLIGATIONS OF COMMISSION AND OPERATOR

Section 901 - Obligations of Commission

Commission agrees to the maximum extent feasible to:

- (a) Cooperate with and assist Operator to maintain and obtain all necessary permits, clearances, agreements, and other requirements for operation and maintenance.
- (b) Cooperate with the Operator to obtain federal, state or local grants, which may be available from time to time for upgrading, improvements, or insuring the continued operation of the railroad.
- (c) Cooperate with and assist the Operator with regard to negotiations with WisDOT, STB, OCR (if applicable) and other federal, state and local government agencies as may be appropriate to insure operational authority and continued and expanded freight service.
- (d) Assist Operator to the maximum extent feasible in a solicitation of additional shipments by rail.
- (e) Provide timely payments of amounts due to the Operator.

Section 902 - Obligations of Operator

- (a) Operator shall assume full responsibility for preserving public order upon the property and for resolving matters concerning trespass upon and from this property to adjacent private lands. Operator may adopt and enforce any necessary rule in order to protect the property. Operator shall have the right to post signs and erect barricades necessary to delineate the property as railroad property and to prevent the entrance upon the property of unauthorized vehicles and individuals.
- (b) Operator shall assume such responsibility as may exist for providing fencing as may be required by applicable state law.
- (c) Operator shall assume full responsibility for the eradication, control and removal of all noxious weeds as covered by applicable state law or local ordinance.
- (d) Operator shall assume full responsibility for the repair, maintenance, rehabilitation or replacement of all culverts, trestles and bridge structures, thereby insuring the unrestricted flow of applicable waters and the preservation of the necessary drainage systems.
- (e) Operator shall assume such responsibility as may exist for the maintenance of all state trunk highway, county highway and local highway crossings, including but not limited to surface, track and warning devices.
- (f) Operator may sublet any or all of the above described property subject to prior approval by WisDOT and Commission,

(g) WisDOT shall retain complete authority for the issuance of permits allowing public and privately owned utilities the right to construct, place, and operate, repair and replace any power or communications line, gas or other pipeline, water mains and sewers over, across, upon and within the subject property. Such permits shall not be issued without prior notice to Commission and Operator; and shall not unduly interrupt railroad operations, nor shall they cause any uninsured risk of injury to person or property on the railroad facilities. WisDOT shall also retain authority for approving all applications for new public street crossings or other public use of the corridor and shall coordinate with Commission and Operator on matters pertaining to said application.

(h) WisDOT employees or its agents on safety or contract compliance inspection assignments shall have the right to enter upon the property at any time for the purpose of discharging their official duties.

(i) Any administrative rule promulgated to implement Sections 85.08 and 85.09, Wis. Stats., subsequent to the date of this Agreement, which incorporates terms other than those herein contained, shall become effective immediately as a part of this Agreement upon approval and appropriate publication.

ARTICLE TEN - TERMINATION

Section 1001 - Termination for Money Default

In the event of any failure on the part of either party to perform its obligations under the terms of this Agreement, including but not limited to, transmittal of scheduled contractual payments under this Agreement, and the continuance by such party in such default for a period of thirty (30) days, the other party shall have the right, at its option, after first giving twenty (20) days written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement subject to STB requirements and the exercise of such rights shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages. A delinquency in payment shall not be considered a default if the party responsible is making a diligent effort to perform its obligations hereunder.

Section 1002 - Termination for Non-Monetary Default

In the event of any substantial failure on the part of either party to perform its obligations under this Agreement, other than payments for services performed, and the continuance by such party in such default for a period of sixty (60) days, the other party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement subject to the requirements of the STB, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party

for the recovery of damages; provided, however, that default with respect to matters which a party shall, in good faith, have submitted to arbitration hereunder shall not, until thirty (30) days further default by such party after final decision of the arbitrators, be cause for forfeiture as aforesaid.

Section 1003 - Ability to Cure Default

(a) Removal of Operator Default

The Operator shall have thirty (30) calendar days from written notification of default to remove the cause of the default. Such correction shall be completed and available for WisDOT review within the thirty(30)day period. Upon written petition by the Commission, or Operator, WisDOT may extend the period for removal of a default condition, and such extension shall not be unreasonably withheld. If the remedial action is satisfactory, WisDOT shall provide appropriate written notice to the Commission and Operator.

(b) Removal by Operator of Commission Default

If for any reason the Commission is in default of an agreement with WisDOT, the Operator shall have thirty (30) days to remove the default on behalf of the Commission and shall have the right to quiet enjoyment of the property until the condition of default is resolved.

Section 1004 - Expenses of Termination

The Operator shall mitigate the expenses of termination to the greatest extent possible. It shall return unused materials to their stores or vendors, and shall otherwise reduce the expenses of termination to the maximum extent possible.

Section 1005 - Contractual Obligation Under Termination

Except as provided by the parties in writing, the Operator's right to occupy the corridor and use the rail property shall cease on the effective date of the termination hereof, but all other obligations of the parties to each other described in the agreement shall remain in full force and effect. This termination shall not abrogate any obligations of the Operator to provide freight rail services under any freight rail easement. All parties shall make reasonable efforts to satisfy their surviving obligations promptly after termination.

Section 1006 - Accounting--Termination

In the event of termination, a final accounting shall be rendered by an independent certified public accountant experienced in railroad accounting, chosen by the Operator, the cost of which shall be equally shared between the parties hereto, and the indicated final settlement shall be paid by the appropriate party within thirty (30) days notice or may be withheld from funds which would otherwise be payable, as such

accountant shall deem appropriate.

Section 1007 - Termination Approvals

Both parties recognize that the termination and replacement of Operator may require STB approval before such termination or replacement can be effective, and therefore agree to cooperate in effecting an orderly transfer of responsibilities and to abide by related STB findings.

Section 1008 - Vacating the Property

Upon determination by WisDOT that the remedial action has not removed the default condition, WisDOT shall provide written notice to the Commission and its Operator to vacate the property within ninety (90) days of delivery of such notice, subject to Section 1007 herein. In the event a successor operator is prepared to begin operations, Operator shall cooperate and in no way obstruct the start of subsequent operator's operation while in the process of vacating the line.

Section 1009 - Bankruptcy of Operator

If any proceeding shall be commenced by or against the Operator for any relief which includes, or might result in, any modification of the obligation of Operator hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Operator hereunder shall not have been and shall not continue to be duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Operator, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced, it may be declared cause for default.

Section 1010 - Return of Property Upon Bankruptcy Default

If this Agreement shall terminate pursuant to Section 1009 hereof, Operator shall forthwith deliver possession of the property to Commission. Property so delivered shall be in the same or better operating order, repair and condition as when originally delivered to Operator, reasonable wear and tear in service excepted, shall meet the standards of all applicable laws and shall have removed therefrom at Operator's expense, any addition, modification or improvement which is owned by Operator and for which WisDOT has not made a specific request for it to remain with the property.

ARTICLE ELEVEN - REPRESENTATIONS AND WARRANTIES

Section 1101 - Operator

The Operator represents and warrants the following:

- (a) Operator has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.
- (b) The execution of the Agreement and the operation of the rail freight service will not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body.
- (c) In the event that termination occurs and Commission requires the Operator to do so, Operator will support any and all Commission efforts to provide a replacement freight service, including, but not limited to, the preparation and filing of any application for appropriate regulatory authority; provided, however, that Commission shall pay the Operator promptly for all services necessary to accomplish this undertaking including, but not limited to, reasonable attorney's fees, reasonable consulting fees, filing fees and all expenses incurred in connection therewith.
- (d) That all non-federal funding required for completion of the objectives of this Agreement and/or required under the terms of the grant agreement, by and between WisDOT and FRA (rail service continuation subsidy, routine maintenance, accelerated maintenance, rehabilitation or improvement, substitute service and/or construction on these rail facilities) will be provided by the Operator from sources other than federal program prohibited from use as match for other federal program funds.
- (e) The Operator will cooperate with the Commission in the preparation of applications for state and federal financial assistance.

Section 1102 - Commission

Commission represents and warrants the following:

- (a) Pursuant to Wis. Stats. 66.30 and 59.968, the Commission has the full power and authority to enter into this Agreement and to carry out the functions that it has undertaken in this Agreement.
- (b) The entering into and performance of this Agreement on the part of the Commission does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.
- (c) Commission has entered into separate agreements with WisDOT pertaining to the system lines, which will inure to the benefit of Operator, including rights of first refusal to purchase properties, which rights as applicable are hereby assigned to the Operator, and Operator

shall have full power and authority to exercise these rights as long as Operator is not in default.

(d) The Commission will cooperate with the Operator in the preparation of applications for state and federal financial assistance.

ARTICLE TWELVE - REPORTS AND ACCOUNTS

Section 1201 - Financial and Operating Reports

(a) Operator shall submit the following information to WisDOT within 45 days after the end of each quarter year.

1. An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance.
2. A summary of originating and terminating traffic by commodity, by line segment.
3. A statement of major traffic gains or losses and a summary of maintenance activity.
4. A report of income generated from activities other than rail transportation of freight which is excluded from gross operating revenues, including but not limited to rail car storage fees, building rent, excursion trains, and the like. The report shall describe the amounts received and the duration of the period for which the income is received.

(b) Operator shall submit the following to WisDOT:

1. Independently audited financial statements for each year ending December 31, to be submitted on or before June 30 each year.
2. A certificate of insurance submitted on or before each insurance coverage renewal date appropriately showing that all the terms and conditions of Section 802 of this Agreement are fully met; and
3. Appropriate documentation showing any changes in operating status or authority 30 days prior to its effective date.
4. Notice of damage or injury to persons or property as required under Section 802 of this Agreement.

Section 1202 - Accounts.

(a) Operator shall arrange to establish and perform all necessary accounting services appropriate to conducting business as a railroad and to comply with this Agreement. Operator shall permit access by WisDOT and its agents to all documents related to the business operation of Operator including, but not limited to, agreements for leases, loans, and records of rail traffic, receipts and expenditures.

(b) Operator shall establish and maintain a system of accounts as prescribed by the STB or OCR or as determined by WisDOT if the STB or the OCR no longer prescribe a system of accounts. Operator shall make available to WisDOT auditors or agents or auditors of any other governmental agency having jurisdiction over Operator, records related to these accounts.

ARTICLE THIRTEEN - ARBITRATION

Section 1301 - General

In the event of any unresolved disagreements between the parties concerning the construction of the Agreement or performance by each of the parties hereunder, the parties shall submit such disagreement to arbitration.

Section 1302 - Procedure

The party desiring arbitration shall give notice in writing to the other party identifying the matters in issue and designating an individual as their arbitrator. Within ten (10) days thereafter, the other party shall, by written notice to the original party, agree to said arbitrator or appoint a second arbitrator. The two arbitrators so appointed shall, within ten (10) days thereafter, appoint a third arbitrator as mutually agreed, and the three arbitrators shall hold the hearing and commence to determine the matter within thirty (30) days of the appointment of the third arbitrator. If the second arbitrator shall not have been appointed, the first arbitrator shall proceed to commence to determine the matter within thirty(30)days of the failure to so appoint a second arbitrator. If the two arbitrators selected by the parties are unable to agree upon the third arbitrator, the American Arbitration Association shall appoint the third arbitrator.

Except as otherwise provided herein, the arbitrators shall arbitrate the issues in accordance with the rules and procedures of the American Arbitration Association, and a determination of the majority of the arbitrators, or of the sole arbitrator as the case may be, shall be final and conclusive between and upon the parties, and judgment upon same may be entered in any court having jurisdiction thereof. The arbitrator(s) shall give written notice of their findings to each party.

ARTICLE FOURTEEN - TAXES

Unless waived or abated, Operator shall be responsible for and pay when due, all taxes due as a result of its possession of the system lines or its assets, including possession of real and personal property, as well as for all taxes due on Operator for real or personal property taxes. Commission shall be held harmless from, indemnified against and defended against all claims and liabilities with regard thereto.

ARTICLE FIFTEEN - GENERAL PROVISIONS

Section 1501 - Choice of Law

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the state of Wisconsin.

Section 1502 - Notice

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

Director
Bureau of Railroads & Harbors
Wisconsin Dept. of Transportation
P.O. Box 7914
Madison, WI 53707

Chairman
East Wisconsin Counties
Railroad Consortium
Dodge County Courthouse
Juneau, WI 53039

President
Wisconsin & Southern Railroad Co.
5300 N. 33rd St.
P.O. Box 9229
Milwaukee, WI 53209

Section 1503 - Status of Operator

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

Section 1504 - Assignment

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Operator's rights hereunder shall not be assignable whether by way of assignment sublease, license or otherwise, directly or indirectly without Commission's and WisDOT's prior written consent.

Section 1505 - Severability

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

Section 1506 - Amendment

No term or provision of this Agreement, or any of the attachments to which the Operator is party, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties of this Agreement provided, however, that when an emergency situation arises, such as a change in service frequency or emergency maintenance or rehabilitation, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement, subject to immediate confirmation by telegram or other delivered writing.

Section 1507 - Handicapped

The Operator agrees that no otherwise qualified handicapped individual in the United States, as defined in Section 706(6) of Title 29 USC, shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 1508 - Environmental Protection

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

(b) The Operator agrees to conduct approved projects in compliance with all the requirements of Section 114 of the Clean Air Act, 42, USC 1857c-9, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under said Acts.

(c) The Operator certifies that no facilities, which will be utilized or improved as part of an approved project, are listed on the Environmental Protection Agency ("EPA") List of Violating Facilities ("List").

(d) The Operator stipulates that it will notify the Commission and WisDOT as soon as it or any subcontractor receives any communication from the EPA indicating that any facility, which will be utilized or improved as part of an approved project, is under consideration to be listed on the EPA List.

(e) The Operator agrees to include or cause to be included the criteria and requirements contained in this subsection in any contract or subcontract under which the obligations incurred exceed \$100,000.

(f) No publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state or local significance as so determined by such officials, may be used for

an approved project without the prior concurrence of the Administrator of the EPA.

Section 1509 - Use as Equity or Collateral

The property leased under this Agreement shall not be used in any form or amount as equity or collateral for any borrowing or other means of raising capital by the Operator during the time this Agreement is in force.

Section 1510 - Liens Against Property

Operator shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the land or improved property or any interest therein. Operator will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

Section 1511 - Successor to Commission

The Commission intends to be in existence for the entire period of this Agreement, and any extensions thereto. However, should the Commission cease to exist for any reason, any successor Commission or other entity will be obligated under the same terms and conditions.

Section 1512 - Entire Agreement

This Agreement and the attachment(s) hereto contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers as of the date and day designated above.

EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

Chairman

Secretary

WISCONSIN & SOUTHERN RAILROAD CO.
President

STATE OF WISCONSIN)
) s.s.
_____ COUNTY)

Personally came before me this _____ day of _____, 200__, the above
named _____ and _____, to me known to be the
Chairman and Secretary of the above named East Wisconsin Counties Railroad
Consortium and acknowledged that they executed the foregoing instrument as
such Chairman and such Secretary for the uses and purposes therein expressed
pursuant to authorization and direction of the Board of Commissioners of said
East Wisconsin Counties Railroad Consortium.

Notary Public, State of Wisconsin
My Commission:

STATE OF WISCONSIN)
) s.s.
_____ COUNTY)

Personally came before me this _____ day of _____, 200__, the above
named _____, to me known to be the
_____ and acknowledged that he executed the foregoing instrument as
such _____ for the uses and purposes therein.

Notary Public, State of Wisconsin
My Commission:

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