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DEC 14 2010
STB

December 10, 2010

Ms. Cynthia T Brown,
Chief of Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

FILED
DEC 14 2010
SURFACE
TRANSPORTATION BOARD

RE: STB Finance Docket No. 35455
Wisconsin Department of Transportation – Petition for Declaratory
Ruling – Almena, Cameron, Rice Lake Rail Line in Barron County, WI

Dear Ms. Brown:

On behalf of the Wisconsin Department of Transportation, I submit this Petition for Declaratory Order, and attachments, and Petition for Fee Waiver. Enclosed are ten (10) copies of all submissions. Fees are included, subject to return if waived.

Sincerely yours,

Kathleen Chung

Kathleen Chung, State Bar no. 1032802
Assistant General Counsel

FEE RECEIVED

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**SURFACE
TRANSPORTATION BOARD**

Enclosures

cc: Mr. Lon Van Gemert, PGR

FILED
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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

DEC 14 2010

STB FINANCE DOCKET NO. 35455

WISCONSIN DEPARTMENT OF TRANSPORTATION
--PETITION FOR DECLARATORY ORDER--
RAIL LINE IN BARRON COUNTY, WI

PETITION FOR FEE WAIVER
OF
WISCONSIN DEPARTMENT OF TRANSPORTATION

ENTERED
Office of Proceedings
DEC 14 2010
Part of
Public Record

The State of Wisconsin Department of Transportation, an executive agency of the State of Wisconsin ("WisDOT") respectfully petitions the Surface Transportation Board (the "Board") pursuant to 49 C.F.R. 1002.2(e)(1) to waive the filing fee for WisDOT's Petition for Declaratory Order, which is submitted with this Petition for Fee Waiver. As the designated state agency in rail matters in the State of Wisconsin, WisDOT is a state governmental entity. *See* 49 U.S.C. Appx. § 1654(a) (formerly § 1654(j)), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats.

The regulation authorizes the Board to grant a request by a state or local governmental entity for waiver of the otherwise applicable filing fees when that waiver would be in the public interest. WisDOT is involved in this matter to facilitate continued freight rail service in the State of Wisconsin as part of the national freight rail system. WisDOT avers that its involvement in this matter satisfies the “best interest of the public” standard of 49 CFR 1002.2(e)(2)(ii), and is thus entitled to waiver of the fee under that regulation.

WisDOT neither owns nor operates as a common carrier or transportation entity. WisDOT does not intend to and will not operate as a common carrier railroad. WisDOT’s actions in this matter are being undertaken in accordance with the Board’s regulations authorizing fee waivers. 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 Finance Docket No. 34181_0 (STB served August 1, 2002), and State of Wisconsin Department of Transportation – Petition for

Declaratory Order, STB Finance Docket No. 35195 (STB served April 22, 2009).

The subject transaction involves a the acquisition by WisDOT of two rail line segments from Progressive Railroad Incorporated, (“PGR”): (1) from Milepost 80.88 near Almena, WI to Milepost 97.80 near Cameron, WI, and (2) from Milepost 49.0 near Cameron, WI to Mile Post 56.05 near Rice Lake, WI. The total distance is approximately 23.97 miles. The subject property will be will be conveyed to WisDOT by PGR, whereupon PGR will continue to provide rail service. WisDOT intends to acquire the line segments, and PGR will retain the common carrier operating authority to provide rail freight service to a number of industries that desire rail service on the Line.

WisDOT and PGR have executed a contract wherein PGR agrees to sell and WisDOT agrees to purchase the line segments. The transaction, pursuant to the Purchase and Sale Agreement¹ will not be closed without a ruling from the Board that it does not have jurisdiction over the proposed acquisition.

This Petition is being filed in support of WisDOT’s request for a waiver of the otherwise applicable filing fee in conjunction with the Petition

for a Declaratory Ruling that WisDOT intends to file in connection with its acquisition of the line segments seeking a declaration that the acquisition will not subject it to the Board's jurisdiction as a common carrier pursuant to Maine, DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C. 2d 835 (1991). *See*, proposed Petition for Declaratory Ruling (Attachment 2, without attachments).

Respectfully Submitted,



Kathleen Chung, State Bar no. 1032802
Assistant General Counsel
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, Wisconsin 53707-7910
(608) 266-8810

Dated: December 10, 2010

¹ The Purchase and Sale Agreement is Attachment 1 to the Petition for Declaratory Order, which is Attachment 1 to this Petition for Fee Waiver.

ATTORNEY CERTIFICATION OF SERVICE

I, Kathleen Chung, an attorney-at-law of the State of Wisconsin, hereby Certify under penalty of perjury that I served a copy of the within pleading upon the following person by mail on December 10, 2010:

Mr. Lon Van Gemert, Chief Executive Officer
Progressive Rail Incorporated, d/b/a Wisconsin Northern Railroad
21778 Highview Avenue
Lakeville, MN 55044



Kathleen Chung, State Bar no. 1032802
Assistant General Counsel
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, Wisconsin 53707-7910
(608) 266-8810

Dated: December 10, 2010

DEC 14 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENTERED
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STB FINANCE DOCKET NO. 35455

WISCONSIN DEPARTMENT OF TRANSPORTATION
--PETITION FOR DECLARATORY ORDER--
RAIL LINES NEAR ALMENA, CAMERON AND RICE LAKE, BARRON
COUNTY, WI

EXPEDITED CONSIDERATION REQUESTED

FEE RECEIVED
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Attorney for Petitioner

Dated: December 10, 2010

FILED
DEC 14 2010
SURFACE
TRANSPORTATION BOARD

DEC 14 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB FINANCE DOCKET NO. 35366

WISCONSIN DEPARTMENT OF TRANSPORTATION
--PETITION FOR DECLARATORY ORDER--
RAIL LINES NEAR ALMENA, CAMERON AND RICE LAKE, BARRON
COUNTY, WI

EXPEDITED CONSIDERATION REQUESTED

I.

INTRODUCTION

The Wisconsin Department of Transportation ("WisDOT") is a governmental entity. WisDOT is the designated state agency in rail matters in the State of Wisconsin. 49 U.S.C. Appx. § 1654(a) (formerly § 1654(j)), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats. WisDOT has negotiated an agreement with Progressive Rail, Inc d/b/a Wisconsin Northern Railroad,

("PGR"), to purchase portions of rail track and underlying right of way from PGR in and near the Cities of Almena, Cameron and Rice Lake, in Barron County, Wisconsin.

WisDOT hereby petitions the Surface Transportation Board ("the Board") to issue a declaratory order stating the Board need not exercise its regulatory authority over this acquisition of 23.97 miles of railroad ("the Rail Lines") by WisDOT from PGR, because the parties have intentionally and specifically structured the transaction to comport with the terms and conditions of State of Maine DOT -- Acquisition Exemption -- Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991) ("State of Maine"); State of Georgia, DOT -- Acquisition Exemption -- Georgia Southwestern Railroad, Inc., STB Finance Docket No. 33876 (STB served July 7, 2000) ("State of Georgia"); and State of Wisconsin Department of Transportation -- Petition for Declaratory Order, STB Finance Docket No. 34623 (STB served December 23, 2004) ("State of Wisconsin -- Plymouth Line"); and State of Wisconsin Department of Transportation -- Petition for Declaratory Order, STB Finance Docket No. 35195 (STB served April 22, 2009) ("State of Wisconsin -- Kohler Line"); and State of Wisconsin Department of Transportation -- Petition for Declaratory Order, STB Finance Docket No. 35301 (STB served December 11, 2009) ("State of Wisconsin -- Janesville

Lines”) whereby a governmental entity may acquire the physical assets of a rail line(s) without also acquiring the common carrier obligation, which is to remain with PGR as operator of the rail line in this proposed transaction.

On April 2, 2010, WisDOT filed its original Petition for Declaratory Order in this proceeding. On September 23, 2010, the Board issued its Decision granting the Petition but denying the requested relief, finding that this proposed transaction was covered by State of Maine, but also stating that WisDOT could submit a new Petition correcting the deficiencies the Decision identified. See State of Wisconsin Department of Transportation – Petition for Declaratory Order, STB Finance Docket No. 35366 (STB served September 23, 2010) (“September 23rd Decision.”). The Decision identified areas in the proposed transaction documents that failed to sufficiently specify that the common carrier obligation was to remain with PGR, and not pass through the Commission nor WisDOT, and that PGR’s easement to provide rail freight service over the Lines was permanent and exclusive.

In response to the Board’s September 23rd Decision, the parties to this proceeding and WWRTA have revised the transaction documents to more fully comport with State of Maine, and its progeny. The intention of the parties has always been for the common carrier obligation to remain with PGR as operating railroad, and not pass through WisDOT or the

Commission. WisDOT consulted with the Board's Office of Public Assistance, Governmental Affairs, and Compliance and with PGR counsel in an effort in an effort to redress the concerns identified in the Board's September 23rd Decision.

For the reasons set forth in Section IV below, WisDOT requests expedited consideration of this Petition, granting WisDOT's request for a declaratory order within 30 days from the date of filing this Petition so that closing costs will not be unduly increased.

II.

FACTUAL BACKGROUND

The subject Rail Lines are within and near the Cities of Almena, Cameron and Rice Lake, Barron County, WI and consist of the following two track segments: (1) from Milepost 80.88 near Almena, WI to Milepost 97.80 near Cameron, WI, and (2) from Milepost 49.0 near Cameron, WI to Mile Post 56.05 near Rice Lake, WI.

The total distance of the two segments is approximately 23.97 miles. The Rail Lines are more fully described by the Deed and Map¹.

¹ The Deed and Map are Exhibits A and D, respectively, of the Purchase and Sale Agreement, which is Attachment 1 to this Petition.

PGR is a Class III railroad, and a Minnesota corporation. PGR was established in 1996, when owner Dave Fellon purchased the Airlake Terminal spur line from the Canadian Pacific Railway Company mainline near Lakeville, MN, and developed the business from 600 cars to over 7000 today. In the transaction agreements, annexed hereto and made a part hereof as Attachments, PGR is the Operator, or Operating Railroad.²

WisDOT and PGR have executed Purchase and Sale Agreement between PGR and WisDOT pursuant to which PGR will sell and WisDOT will purchase the Rail Lines. *See* Attachment 1, ("Purchase Agreement"). This Purchase Agreement will not be consummated without a ruling from the Board that it need not exercise regulatory authority over the proposed acquisition. The Quitclaim Deed that accompanies the Purchase Agreement has been revised to reflect that PGR, ("Seller"), retains a permanent exclusive operating easement, subject to PGR maintaining its common carrier authority from the Board.

² The Transaction Agreements are Attachment 1: the Purchase and Sale Agreement between PGR and WisDOT ("Purchase Agreement,"); Attachment 2: The Land Use Agreement By and Between the Wisconsin West River Transit Authority, ("Land Use Agreement"); Attachment 3: The Grant Agreement For Rail Service Continuation By and Between Wisconsin West River Transit Authority and Wisconsin Department of Transportation, Agreement No. 0499-01-76 (B-3); and Attachment 4: The Operating Agreement For Rail Service Continuation By and Between Wisconsin West River Transit Authority and Progressive Rail, Inc., d/b/a Wisconsin Northern Railroad, Agreement No. 0499-01-76 (C-3).

WisDOT and the Wisconsin West Rail Transit Authority (the “Commission”)³ have entered into a Land Use Agreement, which grants the Commission the use of the land and improved property for the purpose of providing freight rail service. *See* Attachment 2, Land Use Agreement by and between Wisconsin West Rail Transit Authority and WisDOT, (“Land Use Agreement”). WisDOT and the Commission have also entered into a Grant Agreement, which grants the use of the land and improved property to the Commission, and the authority to contract with an Operator, here PGR, for the provision of freight rail service. *See* Attachment 3, Grant Agreement for Rail Service Continuation By and Between Wisconsin West River Transit Authority and Wisconsin Department of Transportation, Agreement No. 0499-01-76 (B-3), (“Grant Agreement”).

The Commission and PGR have entered into a corresponding Operating Agreement, by which the Commission leases to PGR the land and improved property, subject to PGR’s permanent exclusive operating easement, for the purpose of providing freight rail service. *See* Attachment 4, Operating Agreement for Rail Service Continuation By and Between

³ The Commission is a public entity and consortium of interested Wisconsin counties, created under the provisions of Wisconsin Statutes Section 66.0301, which was established, in part, to oversee the preservation of rail service on certain rail lines acquired by the State of Wisconsin. The Commission 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.

Wisconsin West River Transit Authority and Progressive Rail, Inc., d/b/a Wisconsin Northern Railroad, Agreement No. 0499-01-76 (C-3), (“Operating Agreement”).

The Purchase Agreement, the Land Use Agreement, the Grant Agreement and the Operating Agreement collectively are referred to as the “Transaction Agreements.”

WisDOT now submits to the Board this Petition for Declaratory Order (the “Petition”) requesting the Board’s ruling stating that it need not exercise its authority over the transaction set forth in the Transaction Agreements.

III.

THE SUBJECT TRANSACTION

Pursuant to the terms and conditions of the Transaction Agreements, WisDOT shall acquire the Rail Lines and improvements thereon from PGR without acquiring the common carrier authority on the segment of operating railroad running upon the Real Estate.⁴ WisDOT has intentionally and specifically structured the transaction to comport with the terms and conditions of State of Maine, State of Georgia, and State of Wisconsin cases.

⁴ This transaction was contemplated when PGR purchased the Rail Lines from Wisconsin Central, Ltd., (“WCL”), and was noted in Progressive Rail Incorporated--Acquisition Exemption--Rail Lines of Wisconsin Central, Ltd., STB Finance Docket No. 35257, slip op. at 1 n.2 (STB served Aug. 28, 2009).

All Transaction Documents have been revised pursuant to State of Maine and State of Wisconsin – Barron Co. to explicitly provide that the common carrier authority shall be retained by PGR and shall not pass through WisDOT or the Commission.

The Land Use Agreement was revised to more carefully express the parties' understanding that the Operating Railroad's permanent exclusive operating easement, and common carrier obligation may not be disturbed without Board authority. WisDOT and the Commission entered into this revised Land Use Agreement on December 10, 2010. Pursuant to this revised Land Use Agreement, the Commission shall contract with PGR to provide common carrier freight rail service over the Rail Lines and receive financial assistance from WisDOT.

The Land Use Agreement, Section 1, provides that the Commission shall establish, construct, develop, and *contract for* the maintenance and operation of railroad services on the property subject to the terms contained in the Grant Agreement between WisDOT and the Commission. (Emphasis supplied.) By Sections 11 and 13, WisDOT retains rights regarding sale or disposal of the property, and the authority to issue easements, but all subject to PGR's (Operator's) permanent exclusive operating easement. Additionally, Section 33 provides that the parties' intent is that this

agreement comports with the terms of State of Maine, and subsequent ambiguities shall be construed accordingly. The purpose of the Land Use Agreement is to allow the Commission access to the land, for the purpose of securing rail service pursuant to the Operating Agreement. *See*, Attachment 4, "Operating Agreement".

The terms of the Land Use Agreement are subject to the Grant Agreement for the Rail Service Continuation dated December 10, 2010 between the Commission and WisDOT, which include the subject Rail Lines. *See* Attachment 3, Grant Agreement.

Here again, the Grant Agreement has been revised to explicitly provide that PGR's permanent exclusive operating easement is subject only to the Board's authority, not the terms of the Grant Agreement. In accordance with the revised Grant Agreement, the Commission shall contract with an operator, PGR, to provide freight rail service and shall be financially assisted by WisDOT. Pursuant to Sec. 2.1, WisDOT grants to the Commission the authority to lease to PGR the improved property. This grant of authority is explicitly "subject to the Operator's [here PGR] permanent exclusive Operating Easement, which Operating Easement was or shall be reserved or acquired by Operator [PGR] . . ." *See also* Sec. 5.2, which requires the Commission or Operator to obtain or maintain the

requisite operating authority from the Board. Section 5 details the requirements of the operator regarding railroad operations. Section 5.1(b) of the Grant Agreement requires the Commission to enter into and maintain in force a contract, approved by WisDOT for the provision of common carrier freight rail service. This section continues to provide that the Operator, PGR, “shall have the power to exclusively control, manage, staff and plan for the provision of freight rail service.”⁵ The agreement also allows the Commission to grant to PGR the power to effect changes and improvements in the trackage and property, adopt or promulgate rules governing access to, use of, and operation of the land and improvements. See The Port of Seattle – Acquisition Exemption – Certain Assets of BNSF Railway Company, STB Finance Docket No. 35128, (STB served October 27, 2008) (“Port of Seattle”).

Grant Agreement Section 7, Termination or Suspension, has also been redrafted to recognize that any vacation or discontinuance of service in any event, such as default by PGR must be preceded by Board adverse abandonment or discontinuance authority

Pursuant to Sections 5 and 7 of the revised Operating Agreement, entered into by the Commission and PGR on December 10, 2010, the

⁵ See sec 5.1(b), Grant Agreement, Attachment 3.

Commission leases to PGR the land and improved property for PGR to operate on the Rail Lines, subject to PGR's permanent exclusive operating easement. The Operating Agreement closely parallels the Grant Agreement, and has been similarly revised to recognize the Operator's permanent exclusive operating easement, and corresponding common carrier authority. Other sections of the Operating Agreement have been revised to conform to revised Sections 5 and 7.

The reservations to WisDOT and the Commission provided for in Section 2.2 of the Operating Agreement are carefully tailored to require consultation with the Operator, determination that the affected property is not reasonably required for the preservation of railroad services (e.g., outside 33 feet of the center line of the main track), or is subject to the right of the Operator to provide service.⁶ Thus, the transaction agreements carefully protect against undue interference with Operator's common carrier obligation by the Commission or WisDOT.

The Purchase Agreement has been amended to specifically provide that PGR (Seller) retains for itself a "permanent exclusive OPERATING EASEMENT for rail purposes." (Emphasis in original). This easement, moreover, is "subject to Buyer's or other appropriate party's right to bring a

⁶ See secs. 2.2(a), (b), (c) and (h) of the Operating Agreement, Attachment 4. Section (h) specifically provides that "[n]o change shall interfere with the Operator's duty to provide service unless the Operator and Commission agree to such change."

proceeding before the [Board] against [PGR] for adverse abandonment or discontinuance authority.” *See* Sec. 6(A)(14). The Termination Provision of the Purchase Agreement, Section 15(D), has been amended to specify that an adverse Board Decision in this proceeding will provide the parties with a basis for terminating this transaction.

Finally, the Quitclaim Deed has been revised to reflect PGR’s retention of a permanent exclusive Operating Easement, and the common carrier authority to operate the Rail Lines.

WisDOT has redrafted the Transaction Documents to ensure that WisDOT does not assume any common carrier liability by contracting with the Commission, thus enabling the Commission to contract with PGR to operate the Rail Lines as the common carrier. As a result, the conveyance of the Rail Lines to WisDOT is not the acquisition of a “railroad line” within the intent and meaning of 49 USCS § 10901, thus, the exercise of the Board’s regulatory authority in this proceeding is not necessary to preserve and protect the National Transportation Policy of the United States as reflected in 49 USCS § 10101.

WisDOT has previously acquired a number of rail lines, primarily during the course of the bankruptcy proceedings involving the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Generally, the rail lines

currently owned by the State of Wisconsin were acquired *after* they had been authorized for abandonment by the Surface Transportation Board or its predecessor agency. It has always been WisDOT's and the Commission's intention to preserve service over light density or abandoned rail lines without incurring a common carrier obligation, and these parties have successfully structured their previous rail line transactions to comport with avoiding the imposition of this obligation. Nevertheless, these Transaction Documents have been clarified to carefully comply with State of Maine requirements. PGR will operate the Rail Lines subject to the terms and conditions of the revised Transaction Documents so that the common carrier obligation shall continue to reside with PGR after consummation of this Transaction.

IV.

EXPEDITED CONSIDERATION REQUESTED

The Parties seek the expedited consideration of this Petition and a Decision to be issued within 30 days of the filing of this Petition granting WisDOT's request for a declaratory order stating that the contemplated conveyance of the Rail Lines by PGR to WisDOT is not an acquisition of a "railroad line" within the intent and meaning of 49 U.S.C. 10901 and thus does not require Board approval.

The acquisition of the Rail Lines by PGR from Wisconsin Central Ltd., ("WCL"), is dependent on the ability of WisDOT to subsequently and immediately acquire the Rail Lines from PGR. WCL has indicated to PGR that WCL considers time to be of the essence in consummating their Line Sale. Thus, expedited consideration would enable the parties to comply with WCL terms for the transaction.

Additionally, granting this request for expedited consideration will further the Rail Transportation Policy of the United States insofar as: 1) no objectors are likely to come forth, as the transaction involves no changes to the existing freight service currently being provided by PGR, and 2) the transaction is in the public interest as the transfer of ownership will enable the State, acting through its lawfully constituted political sub-divisions, to budget for operating costs and capital investment to maintain or improve the Rail Lines as part of the national rail system.

CONCLUSION

For the above stated reasons, and based upon the above cited authorities, *to wit* State of Maine, State of Georgia, State of Wisconsin and Port of Seattle; WisDOT hereby requests the Board issue a Declaratory Order providing that WisDOT will not incur any common carrier obligation

in connection with this transaction, which common carrier obligation shall remain at all times with PGR as the operator of the Rail Lines, and for such other and further Relief as the Board deems appropriate and just.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kathleen Chung', written in a cursive style.

Kathleen Chung, State Bar no. 1032802
Assistant General Counsel
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, Wisconsin 53707-7910
(608) 266-8810

Dated: December 10, 2010

ATTORNEY CERTIFICATION OF SERVICE

I, Kathleen Chung, an attorney-at-law of the State of Wisconsin, hereby Certify under penalty of perjury that I served a copy of the within pleading upon the following parties by mail on December 10, 2010:

Mr. Lon Van Gemert, Chief Executive Office
Progressive Rail Incorporated, d/b/a Wisconsin
Northern Railroad
21778 Highview Avenue
Lakeville, MN 55044

Mr. Neil Lundgren, Chairman
Wisconsin West Rail Transit Authority
C/O Barron County
330 East LaSalle Avenue, Room 2510
Barron, WI 54812-1433



Kathleen Chung, State Bar no. 1032802
Assistant General Counsel
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, Wisconsin 53707-7910
(608) 266-8810

Dated: December 10, 2010

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") dated this 9th day of December, 2010, by and between Progressive Rail Incorporated, a Minnesota corporation, ("Seller"), and the State of Wisconsin - Wisconsin Department of Transportation, ("Buyer").

WHEREAS, Seller owns or has an interest in certain right-of-way and associated property and track/railroad facilities located thereon between Milepost 80.88 near Almena, WI and Milepost 97.80 near Cameron, WI (the "Almena line"), and between Milepost 49.0 near Cameron, WI and Milepost 56.05 near Rice Lake, WI (the "Rice Lake line"), and an easement between Milepost 56.0 and Milepost 56.85 near Rice Lake, WI (the "Easement"), all of which Seller acquired pursuant to the Purchase and Sale agreement between Seller and Wisconsin Central, Ltd. ("WCL") dated October 21, 2009; and

WHEREAS, Buyer desires to purchase the aforesaid Almena and Rice Lake lines right-of-way (hereinafter "Real Property") and the track/railroad facilities located thereon (hereinafter "Rail Assets"), subject to the fiber optic easement described in Section 6(A)(13), and the Operating Easement, described in Section 6(A)(14); and

WHEREAS, Seller is willing to sell its interest in the Subject Property and Easement to Buyer,

NOW, THEREFORE, Seller and Buyer, intending to be legally bound, hereby agree as follows:

1. **Transactions.** Subject to the terms and conditions hereof, at Closing, Seller shall sell, transfer, assign and convey to Buyer and Buyer shall purchase from Seller on an "as is, where is" basis, all right, title and interest of Seller, if any, in or to the Subject Property as more particularly described in Section 3 herein. At Closing, Seller shall deliver to Buyer a duly executed quitclaim deed substantially in the form of Exhibit A hereto (the "Deed") and a duly executed Bill of Sale substantially in the form of Exhibit B hereto.

2. **Requisite Authorities.**

A. Seller hereby represents and warrants to Buyer that Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota. Buyer hereby represents and warrants to Seller that Buyer is an administrative agency of the State of Wisconsin government authorized to enter into this agreement.

B. At Closing, Seller shall have the requisite authority to enter into this Agreement and to convey its interests, if any, in the Subject Property to Buyer. At Closing, Buyer shall have the requisite authority to enter into this Agreement and to acquire Seller's interest, if any, in the Subject Property in its own name and for its own account, and to assume the contracts, agreements, leases and licenses identified on Exhibit C hereto (the "Contracts").

3. **Description of Property.** The property to be purchased by Buyer consists of Seller's right-of-way and associated property between Milepost 80.88 near Almena, WI and Milepost 97.80 near Cameron, WI, and between Milepost 49.0 near Cameron, WI and Milepost 56.05 near Rice Lake, WI as shown on Exhibit D and as more specifically described on Exhibit A attached hereto. Also conveyed herein, is all of Seller's interest in the Easement, acquired in the Purchase and Sale by SELLER from WCL in 2009, from Milepost 56.0 to Milepost 56.85 near Rice Lake. The Subject Property shall include any and all tracks, rails, ties, switches, crossings, bridges (including, but not limited to, the bridge located at the end of spur track to Bessie Forest Products in Rice Lake, WI), trestles, culverts, buildings and fixtures thereon, signals, crossing protection devices, communication lines and poles and articles of personal property that are affixed to the land between the above-described points, and within the Easement, as of the date of this Agreement. Excluded from the Subject Property are any and all railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery, office and computer equipment, radios, furniture, tools, inventories, materials and supplies, located on the Subject Property as of the date of this Agreement or on the Closing Date (the "Excluded Assets"). Within ninety (90) days after Closing, Seller shall remove from the Subject Property all Excluded Assets. Any Excluded Assets not removed within said ninety (90) days shall be the property of Buyer.

4. **Purchase Price.** For the conveyance of the Subject Property to Buyer, Buyer shall pay Seller the sum of two million four thousand four hundred seventy seven dollars (\$2,004,477.00), plus SELLER loan origination fees, accrued interest and other fees incurred by SELLER related to this transaction and their related acquisition from WCL. The current estimates of fees are: (1) Bank Loan Fee: \$100,000 for first ninety (90) days; (2) Interest: \$29,655, and (3) Legal Fees: \$25,000. Subject to the terms and conditions contained in this Agreement, Buyer shall deliver the aforesaid sum to Seller in immediately available United States funds at Closing.
5. **Governmental Authority.** Buyer shall be responsible for obtaining any necessary authority from or approval of any governmental authority with jurisdiction over Buyer's acquisition of the Subject Property. Buyer shall file a Petition for Declaratory Order with the Surface Transportation Board as required for Buyer's acquisition of the Subject Property. Buyer shall be solely responsible for any attorney, consultant or filing fees with respect to its acquisition of the Subject Property. Seller shall reasonably cooperate with Buyer in obtaining any such approval or exemption.
6. **Conveyance.**
- A. Conveyance of the Subject Property to Buyer shall be made by quitclaim deed substantially in the form of Exhibit A hereto, without any warranty, express or implied, other than that the conveyance is free and clear of all mortgages, deeds of trust and other like financial

liens, and that the Subject Property is sufficient to enable a Railroad Operator to conduct rail operations thereon substantially in the same manner that Seller conducts operations on the Subject Property as of the date of this Agreement, and shall be made 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. If Subject Property is locally assessed for the year in which the Deed is delivered, the taxes for such year shall be prorated as of the Closing Date on the basis of the most recent tax bill, unless the payment of taxes has been assumed by a tenant. If the Subject Property is assessed as railroad operating property by the State of Wisconsin, then Seller agrees to pay, when due, taxes for the year in which the deed is delivered and prior years, assessed in Buyer's or Buyer's subsidiary's name;

- (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 Subject Property by any governmental authority having jurisdiction thereof;
- (6) Roads and highways, if any;
- (7) Judgment liens; however, any judgment against Seller which may appear of record as a lien against the Subject Property shall be settled and satisfied by Seller if and when it is judicially determined to be finally valid, and Seller shall indemnify Buyer for all loss arising out of Seller'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) Retained Agreements identified on Exhibit E attached hereto and made a part hereof;
- (10) The rights of any owner of the mineral estate in said Subject Property, if any. If, however, it is found that Seller has a mineral right in the Subject Property, such rights will not be

retained by Seller but will pass to Buyer by the Deed from Seller as set forth in Section 1 herein;

(11) 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;

(12) Acts, by through or under Buyer; and

(13) A reservation by WCL pursuant to its purchase agreement with Seller, for WCL, its successors and assigns, of a perpetual nonexclusive easement 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 WCL, 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. WCL further reserves the right to assign, provided notice of assignment is

given to Buyer, 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 Buyer's safe and efficient use of the Subject Property, or any improvements thereon. WCL 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 Seller at least five (5) days written notice prior to commencing such work. The foregoing notice requirements 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 the reasonable and customary safety procedures required by Buyer for similar construction projects on its railroad. Seller shall notify Buyer within twenty-four (24) hours of any contact from WCL related to the Fiber Optic Easement and any work pursuant to the Easement, and shall provide Buyer with copies of all written notices from WCL related to the Fiber Optic Easement and any work pursuant to the Easement.

(14) Seller hereby retains a permanent exclusive OPERATING EASEMENT for rail purposes, for the benefit of itself and authorized third parties, to use the Land and rail lines for the operation of its trains, engines and cars, including track inspection cars and work or wreck equipment, for rail operations pursuant to its common carrier obligation, including:

- (i) interchanging traffic with any railroad company and any railroad now or in the future connecting to the rail line;
- (ii) providing overhead service; (iii) using the Land and rail lines to directly serve any existing or new customers or businesses located adjacent to or on trackage connecting to the rail lines;
- or (iv) providing common carrier and/or freight rail service on the Land and rail lines.

Seller's permanent exclusive OPERATING EASEMENT is subject to Buyer's or other appropriate party's right to bring a proceeding before the United States Surface Transportation Board (STB) against Seller for adverse abandonment or discontinuance authority. In the event such a proceeding results in the termination of Seller's operating authority, then the permanent exclusive OPERATING EASEMENT shall pass to a replacement operator, upon the replacement operator obtaining operating authority in its own right from the STB.

B. Each party hereto shall bear and pay any and all costs and expenses for any title inspections, subdivision approvals or surveys required by it. Buyer shall bear and pay any and all costs and expenses for any transfer taxes, fees, stamps, charges, sales and use taxes, and all documentary, recording or filing fees, relating to its acquisition of the Subject Property.

7. **Loss, Damage, Destruction or Condemnation of Assets.** If between the date of this Agreement and the Closing Date, any Rail Assets are lost, destroyed, condemned or damaged, and if the cost to restore or replace such Rail Assets to their condition immediately prior to such loss, destruction, condemnation or damage exceeds Five Thousand Dollars (\$5,000) in the aggregate, then, at the option of Buyer, the Purchase Price shall be reduced by (i) the restoration cost, or (ii) the replacement cost less salvage value, if any, of any Rail Assets that cannot be restored following such loss, destruction, condemnation or damage.

8. **Proration of Taxes and Charges.** All property taxes, special assessments assessed or payable in respect of the Subject Property shall be prorated, adjusted and apportioned between Buyer and Seller as of the Closing Date.

9. **Assignment of Agreements.**

A. No later than fifteen (15) days before Closing, Seller shall make available to Buyer for review the Contracts identified on Exhibit C hereto. Except as noted below, at Closing, Seller shall deliver to

Buyer and Buyer shall deliver to Seller duly executed counterparts of an Assignment and Assumption Agreement substantially in the form of Exhibit C hereto. Buyer shall be solely responsible for obtaining any necessary third party consents for assignment of the Contracts to Buyer. Any and all prepaid fees, charges, rent or income under any of the Contracts to be assigned to Buyer due or payable prior to the Closing Date and received by Seller shall be retained by Seller.

- B. Seller shall retain all interests in those contracts, agreements, leases, and licenses pertaining in whole or in part to the Subject Property identified on Exhibit E (the "Retained Agreements"). It is understood by the parties hereto that the Retained Agreements, *inter alia*, may grant or confer to others, not party to this Agreement, rights, interests and privileges in or pertaining to the Subject Property, and that, from and after the Closing Date Buyer shall not cause or suffer any interference with the enjoyment and use of the rights, interests and privileges granted or conferred in the Retained Agreements, and Buyer shall not cause or suffer any breach of any of the Retained Agreements.
- C. In the event that subsequent to Closing, Seller locates any contracts, agreements, leases or licenses which should have been included on Exhibit C but were omitted, Buyer shall accept assignment thereof in the manner provided for in Section 9(A) and the Assignment and Assumption Agreement. Any contracts, agreements, leases or

licenses that should have been included on Exhibit E shall be handled in the manner designated for Retained Agreements in Section 9(B) hereof.

D. Within thirty (30) days after the Closing Date, Seller shall deliver to Buyer the originals of the Contracts identified on Exhibit C together with all original valuation maps, track charts, bridge and other drawings, track and bridge inspection reports, deeds and other similar documents relating to the Subject Property in the possession of Seller, provided however that if any such document shall also relate to property retained by Seller, or if Seller does not have the original of any Contract or document, Seller may at its expense provide a legible copy of such document or Contract to Buyer in lieu of the original.

10. Environmental Representation and Indemnity.

Seller has no knowledge of any condition with respect to the Subject Property or the operation of the railroad business being conducted thereon that would reasonably be likely to give rise to any action, suit or proceeding before any court or any federal, state or municipal or other governmental agency under any environmental law, statute, ordinance or any rule or regulation promulgated thereunder. For purposes of this subsection, the term "knowledge" shall mean the knowledge of Seller's Management, after reasonable investigation.

11. Waiver of Warranties as to Condition of Subject Property. Buyer acknowledges that Seller has made and will make no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Subject Property, the physical, environmental or other condition thereof, or its merchantability or suitability for any use or purpose whatsoever other than that the Subject Property is sufficient to enable a Railroad Operator to conduct rail operations thereon substantially in the same manner that Seller conducts operations on the Subject Property as of the date of this Agreement.

12. General Claims Indemnity.

A. Seller shall defend, indemnify, and hold harmless Buyer, its respective officers, agents and employees, from and against any and all liability, cost and expense arising out of or connected with any personal injury, property loss or damage occurring prior to Closing on or about the Subject Property, except for any such claim, liability, cost or expense arising out of or connected with any action of Buyer, its officers, agents or employees on or about the Subject Property prior to the Closing Date.

B. Nothing contained in this Section 12 shall be construed as modifying the provisions of Sections 10 or 11 hereof. This Section 12 is not intended to create any obligation by Seller to indemnify Buyer with respect to the physical or environmental condition of the Subject

Property, or its merchantability or suitability for any use or purpose whatsoever or for any liability, cost or expense arising out of or connected with the exercise of rights granted in Section 6 hereof.

13. **Conduct of Rail Business.** Except in the ordinary course of business, prior to Closing Seller shall not (i) sell, lease, transfer, or otherwise dispose of any of the Subject Property that has an aggregate book value in excess of Five Thousand Dollars (\$5,000); (ii) replace or substitute rail or any other Rail Asset other than with material of similar kind and quality; or (iii) modify, amend or terminate any Contract (other than associated with renewals in the ordinary course of business on no less favorable terms).
14. **Right of First Refusal.** In the event that at any time within forty (40) years after the date of this Agreement, Buyer shall desire to sell all or a part of the Subject Property, Buyer shall first give written notice by certified mail of such intention to WCL pursuant to clause 7.A(13) of its Purchase and Sale Agreement with Seller, dated October 21, 2009, along with the relevant terms and conditions of the proposed sale. WCL shall have a right of first refusal to repurchase the Subject Property under the same terms and conditions. WCL shall have forty-five (45) days from the date of receipt of such notice in which to advise by certified mail of its intention to repurchase. WCL may give notice of its intention not to repurchase the Subject Property during such forty-five (45) day period. The failure of WCL to notify Buyer of its intention not to repurchase, or the giving of express notice by WCL of its intention not to repurchase, shall release Buyer from any further obligation to WCL, and

Buyer may thereafter sell the Subject Property, to any person(s) and upon the term(s) set forth in the notice. The repurchase price of the Subject Property shall be the Net Liquidation Value of the applicable portion of the Subject Property, as calculated pursuant to 49 §1152.34(c)(1)(iii) at the time of the exercise of the right of first refusal. Buyer shall take the Subject Property subject to this right of first refusal which shall be deemed to run with the Subject Property.

15. **Termination.** This Agreement may be terminated prior to the Closing by Seller or Buyer, without further liability or obligation to either of them, in the event (but only in the event) of any of the following:

A. Claims, litigation or work stoppage shall be pending in connection with the transactions contemplated by this Agreement;

B. Either an arbitration award or a judgment arising out of any governmental authority's imposition of labor protection conditions on the transactions contemplated in this Agreement imposes any obligation or expense on Seller or Buyer which is unacceptable to that party;

C. The Closing has not occurred on or before July 1, 2011 for any reason, including a stay of any governmental authority's orders or the issuance of an injunction prohibiting the consummation of the transactions contemplated herein; provided that a party in default

hereunder may not utilize its own failure to close as cause for termination; or

D. An adverse decision by the Surface Transportation Board ("STB") in response to Buyer's Petition for Declaratory Order stating that STB does not have regulatory authority over the transactions contemplated in this Agreement because Buyer will not assume common carrier obligations, or any adverse decision or ruling by a governmental agency or entity with jurisdiction or regulatory authority over the transactions contemplated in this Agreement denying authorization or an exemption for Buyer's acquisition of the Subject Property.

E. Buyer determines, for any reason, that it is dissatisfied with any of the terms or conditions of the Contracts identified in Exhibit C.

16. **Closing.** Subject to the rights of termination expressly provided in this Agreement, the closing under this Agreement (the "Closing") shall be held at a mutually agreeable location on a mutually agreeable date, but no later than thirty (30) days after the STB issues an order stating it does not have regulatory authority over Buyer's acquisition of the Subject Property (the "Closing Date"). The Closing Date may only be extended by the mutual written agreement of the parties who recognize that time is of the essence in this Agreement.

17. **Entire Agreement.** This Agreement and the Exhibits hereto shall constitute the entire understanding and agreement between the parties hereto with

respect to the subject matter hereof and supersede all other prior understandings and agreements, both written and oral, between Buyer and Seller with respect to the subject matter of this Agreement. This Agreement may be supplemented, amended or modified at any time and in any and all respects only by an instrument in writing executed by Buyer and Seller.

18. **Expenses.** Except as otherwise provided herein, any and all expenses incurred by Seller or Buyer in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses. Seller and Buyer have not incurred and each agrees that it will not incur any obligation that would result in either or both of the other parties being liable for any brokerage, finder's fee or similar fee in connection with the transactions contemplated hereby.
19. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin, without regard to its conflicts of laws principles.
20. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. By executing this Agreement in counterparts and sending such executed counterpart to the other parties via facsimile, the sending party intends to be bound by the terms, conditions and provisions of this Agreement. The sending party shall provide the other parties with an executed original counterpart of this

Agreement within three (3) business days after the facsimile transmission. This Agreement shall not become effective until executed by all parties hereto.

21. **Assignment, Survivors and Third Party Beneficiaries.** This Agreement shall be binding upon Seller and Buyer and their respective successors and assigns; provided, however, that Buyer shall not assign its respective interests under this Agreement in whole or in part without the prior written consent of Seller, which shall not be unreasonably withheld. The terms and conditions of this Agreement shall survive delivery of the Deed, whether or not the Deed so states. Subsequent to Closing, this Agreement may not be terminated or rescinded unless mutually agreed to by the parties in writing. Nothing contained in this Agreement is intended nor shall it be construed to confer upon any party other than Seller or Buyer and their respective successors and assigns any right or benefit under or by reason of this Agreement. It is understood that the Subject Property may be conveyed to Buyer at Closing subject to mortgages, deeds of trust or other like financial liens in effect prior to Closing, in which event Seller shall remove or release same within a reasonable time after Closing, not to exceed one hundred eighty (180) days, at no cost or expense to Buyer.

22. **Notices.** All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by mail (certified or registered mail, return receipt requested), by national overnight

delivery service or by facsimile transmission (receipt of which is confirmed by transaction report or equivalent thereof):

(a) If to Seller, to:

CEO Lon Van Gemert, or successor
Progressive Rail Incorporated
21778 Highview Avenue
Lakeville, Minnesota 55044
(952)985-7245, FAX (952) 985-5911

(b) If to Buyer, to:

Ronald E. Adams, Chief
Wisconsin Department of Transportation
Rails and Harbors Section
P.O. Box 7914
Madison, WI 53707-7914
(608) 267-9284, FAX (608) 267-3567

or to such other person or address as a party shall specify by notice in writing to the other parties. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date on which so hand-delivered, on the third business day following the date on which so mailed, on the first business day following the date on which sent by national overnight delivery service or on the date on which faxed and confirmed, except for a notice of change of address, which shall be effective only upon actual receipt thereof.

23. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be enforceable and valid under applicable

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

24. **No Third-Party Beneficiaries.** This Agreement is not intended and shall not be deemed to confer upon or give any person except the parties hereto and their respective successors and permitted assigns any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.
25. **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
26. **Incorporation of Exhibits.** The Exhibits attached to this Agreement are incorporated herein by reference and made a part hereof.
27. **Strict Construction.** The language used in this Agreement shall be deemed the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed and delivered this Purchase and Sale Agreement as of the day and year first above written.

WITNESS:

Name: Neil Wundt

PROGRESSIVE RAIL INCORPORATED

By: [Signature]

Name: LOW VAN GEMERT

Title: CEO

WITNESS:

Name: Frank Huntington

WISCONSIN DEPARTMENT OF

TRANSPORTATION

By: Ronald E. Adams

Name: Ronald E. Adams, Chief
- Railroads & Harbors Section
Wisconsin Depart. of Transportation

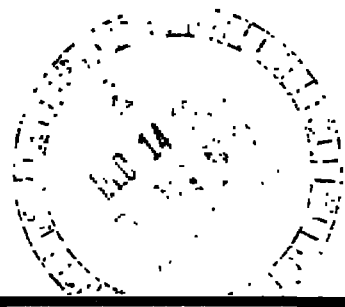
Title:

EXHIBITS

Exhibit A	Deed
Exhibit A1	Quit Claim Deed
Exhibit B	Bill of Sale
Exhibit C	Contracts
Exhibit D	Map
Exhibit E	Retained Agreements

Exhibit A

**QUITCLAIM
DEED**



**DOCUMENT
NUMBER:** _____

PROGRESSIVE RAIL, INCORPORATED, a Minnesota corporation, located at 21778 Highview Avenue, Lakeville, MN 55044, hereinafter referred to as "Grantor."

**STATE OF WISCONSIN –
WISCONSIN DEPARTMENT OF TRANSPORTATION**,
Located at P.O. Box 7914, Madison, WI 53707-7914,
hereinafter referred to as "Grantee."

Return to:

WI Dept. of Transportation
Rails & Harbors Section
P.O. Box 7914
Madison, WI 53707-7914

WITNESSETH:

In consideration for the sum of One and no/100 Dollars (\$1.00) 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 80.88 near Almena, WI and milepost 97.80 near Cameron, WI and between milepost 49.0 near Cameron, WI and milepost 56.05 near Rice Lake, WI in Barron County. Also conveyed herein, is all of Grantor's interest in the Easement from Milepost 56.0 to Milepost 56.85 near Rice Lake. This property is more particularly described in the attached Legal Description for Line Sale to Department of Transportation in Barron County, WI (pp. 6 – 9 of this deed).

The subject property shall include all 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, right-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, and (iii) contiguous property not used for railroad purposes; all of which is situated in Barron County 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.

NOTWITHSTANDING the foregoing conveyance, Grantor hereby retains a permanent exclusive OPERATING EASEMENT for rail purposes, for the benefit of itself and authorized third parties, to use the Land and rail lines for the operation of its trains, engines and cars, including track inspection cars and work or wreck equipment, for rail operations pursuant to its common carrier obligation, including: (i) interchanging traffic with any railroad company and any railroad now or in the future connecting to the rail line; (ii) providing overhead service; (iii) using the Land and rail lines to directly serve any existing or new customers or businesses located adjacent to or on trackage connecting to the rail lines; or (iv) providing common carrier and/or freight rail service on the Land and rail lines.

Grantor's permanent exclusive OPERATING EASEMENT is subject to Grantee's or other appropriate party's right to bring a proceeding before the United States Surface Transportation Board (STB) against Grantor for adverse abandonment or discontinuance authority. In the event such a proceeding results in the termination of Grantor's operating authority, then the permanent exclusive OPERATING EASEMENT shall pass to Grantor's replacement operator, upon the replacement operator obtaining operating authority in its own right from the STB.

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 optic 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 reservation by Wisconsin Central Ltd., ("WCL") pursuant to its purchase agreement with Grantor, for WCL, its successors and assigns, of a perpetual nonexclusive easement 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 WCL, 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. WCL further reserves the right to assign, provided notice of assignment is given to Grantor, 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 Grantor's safe and efficient use of the Subject Property, or any improvements thereon. WCL 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 Grantor at least five (5) days' written notice prior to commencing such work. The foregoing notice requirements 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 the reasonable and customary safety procedures required by Grantor for similar construction projects on its railroad. Grantor shall notify Grantee within twenty-four hours of any contact from WCL related to the Fiber Optic Easement and any work pursuant to the Fiber Optic Easement, and shall provide to Grantee within twenty-four hours copies of all written notices from WCL related to the Fiber Optic Easement or any work pursuant to the Fiber Optic Easement.
- (13) The Grantor's permanent exclusive OPERATING EASEMENT for rail purposes, described above.

**LEGAL DESCRIPTION FOR LINE SALE TO
WISCONSIN DEPARTMENT OF TRANSPORTATION IN
BARRON COUNTY, WI**

Commencing at the point of intersection of the centerline of the Grantor's main track in the County of Barron, State of Wisconsin, on the east-west line of the NW $\frac{1}{4}$, Section 24, Township 34 North, Range 14 West, which point is also known as the Railroad Engineer's Survey Station 4378+69 (milepost 80.88), and extending easterly and northerly along said centerline a distance of approximately 16.92 miles in and through Barron County, Wisconsin, and terminating at the point of intersection of the centerline of the Grantor's main track in the SE $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 22, Township 34 North, Range 11 West, which point is also known as Railroad Engineer's Survey Station (approximately) 5272+10 (milepost 97.80), all of which is more particularly described on right-of-way maps designated V-1-Wisc./11 through 15, all of which are made a part hereof by reference.

ALSO

Commencing at a point on the centerline of the Grantor's main track in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 28, Township 34 North, Range 11 West, at Cameron, Barron County, Wisconsin, which point is known as Railroad Engineer's Survey Station 427+46 (milepost 49.00), and extending northerly approximately 7.05 miles in and through Barron County along the centerline of the track, and terminating 270 feet south of the north line of Govt. Lot 4 (milepost 56.05) in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, Township 35 North, Range 11 West, all of which is more particularly described on the station map designated V-11-Wisc./13 through 15, all of which are made a part of hereof by reference.

ALSO

Part of Lots number Three (3) and Four (4) in Section number Twenty-one (21), Township Thirty-five (35) North, Range Eleven (11) West, described as follows, to-wit:

A strip of land Twenty (20) feet wide South of Red Cedar River, the West line of which said strip is described as follows: Commencing at a point Three Hundred Fifty-Four and $\frac{5}{10}$ (354.5) feet East of the extended West line of Main Street and Nine Hundred Sixty-nine (969) feet south of the extended South line of Messenger Street, and Ten (10) feet West of the center of the Railroad track; thence South Two (2) degrees Thirty-three (33) minutes West One Hundred Thirty-four and $\frac{5}{10}$ (134.5) feet; thence South One Hundred Eighty-one (181) feet; thence South Nine (9) degrees Fifty-five (55) minutes West One Hundred (100) feet; thence South Twenty (20) degrees Ten (10) minutes West One Hundred (100) feet; thence South Thirty (30) degrees Two (2) minutes West One Hundred (100) feet to a point Ten (10) feet Westerly of the center of said Railroad track and being the same property described as tract No. 2 in deed from Wisconsin Power Company to Minneapolis, St. Paul & Sault Ste Marie Railway Company dated June 22, 1904 and recorded in Volume 36, page 232;

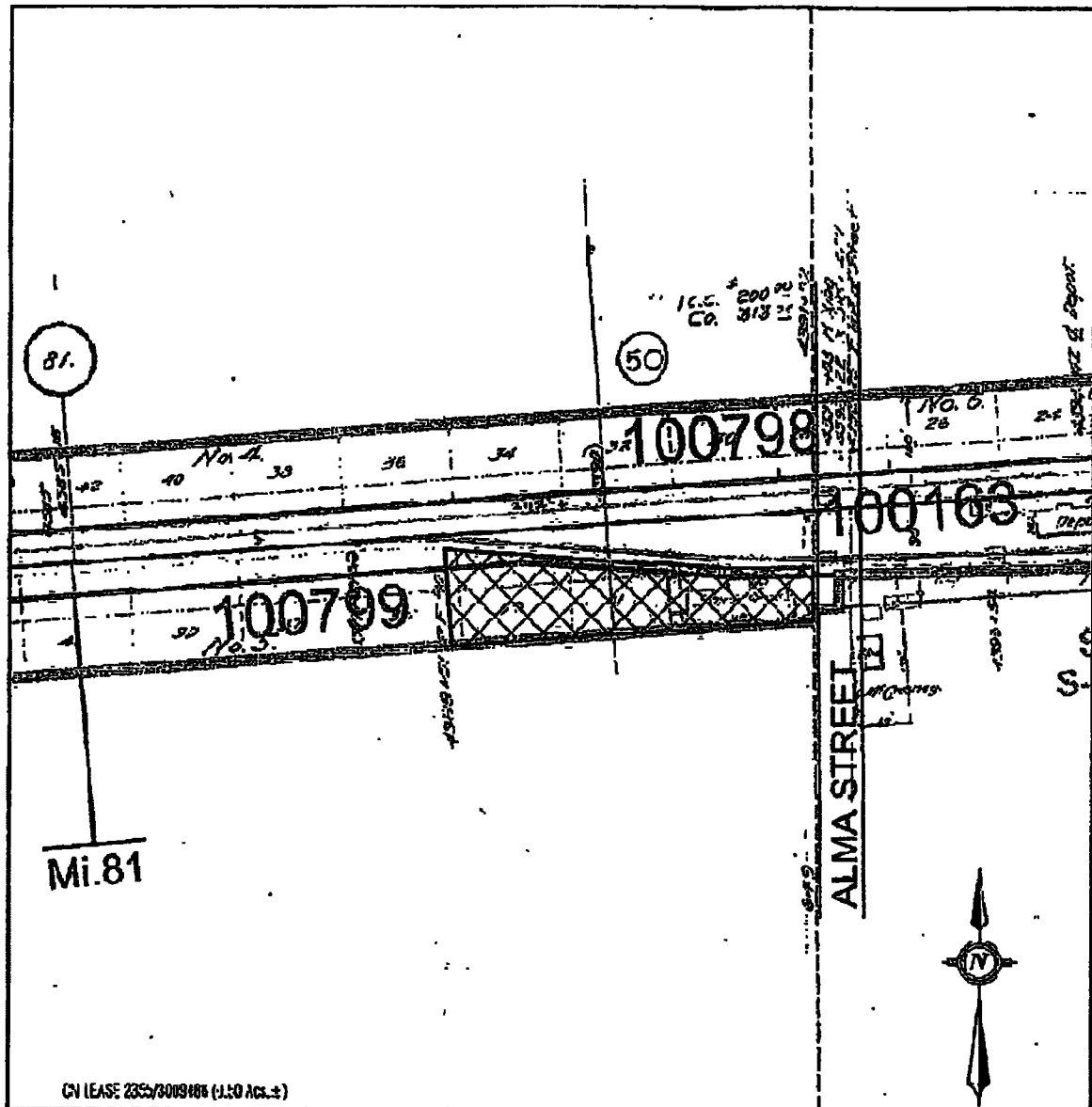
ALSO

All of Grantor's right, title and interest, if any, in any portion of the Southeast Quarter of the Southwest Quarter (SE ¼ SW ¼) and the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section 21, Township 35 North, Range 11 West, lying Easterly of the Rice Lake to Cameron Branch Line right of way; LESS AND EXCEPT the hereinabove last described 20 foot wide strip of land.

PROPERTY EXCEPTED

EXCEPTING, HOWEVER, a parcel of land covered by Wisconsin Central Ltd. ("WCL") lease number 3009486 on Seller's parcel numbers 1000799 and 1000163 at milepost 81.06 to 81.13 in Almena, WI and a parcel of land covered by WCL's station Lot 21 and the westerly portion of station Lot 23 on WCL's parcel numbers 100405 and 100162 at milepost 90.82 in Barron, WI, as shown on the attached maps labeled Property Excepted Map 1 and Map 2.

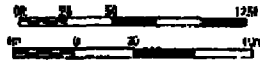
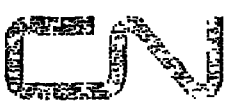
PROPERTY EXCEPTED - MAP 1



DESCRIPTION: Alameda State of Wisconsin United States of America		Property Excepted - Map 1	
THIS IS NOT A PLAN OF SURVEY CECI N'EST PAS UN PLAN D'AUTENTIFICATION		SUBDIVISION: Barron (45)	
		SPUR / ANTENNE: WA	
		MILEAGE / MILLIAIRE: 81.08 - 81.13	
		DATE: May 20, 2008	
☒ Subject Lands/Terrain Sujet		SCALE / ÉCHELLE: 1:1500	

435 0789d40 RM LS 211/OUT:Ernest 1

PROPERTY EXCEPTED - MAP 2

		8TH STREET	7TH STREET
RAILWAY AVENUE NORTH			
100405		LOT 19	LOT 23
100162			
RAILWAY AVENUE SOUTH			
PART OF 2355/MIPR/100405 (0.14 Acs. ±) PART OF 2355/MIPR/100405 (0.05 Acs. ±) TOTAL (0.19 Acs. ±)			
DESCRIPTION: Barren State of Wisconsin United States of America		Property Excepted - Map 2	
THIS IS NOT A PLAN OF SURVEY CECI N'EST PAS UN PLAN D'AMENAGEMENT		SUBDIVISION: Barron (495) SPUR / ANTENNE: NA MILEAGE / MILLAIRE: As Shown DATE: May 28, 2000	
 Subject Lands/Terrain Sujet		 SCALE / ÉCHELLE: 1, 000	
			

495 0369.dwg (E) LS 11LYOUT-Except2

**LEGAL DESCRIPTION FOR LINE SALE TO
WISCONSIN DEPARTMENT OF TRANSPORTATION IN
BARRON COUNTY, WI**

Commencing at the point of intersection of the centerline of the Grantor's main track in the County of Barron, State of Wisconsin, on the east-west line of the NW $\frac{1}{4}$, Section 24, Township 34 North, Range 14 West, which point is also known as the Railroad Engineer's Survey Station 4378+69 (milepost 80.88), and extending easterly and northerly along said centerline a distance of approximately 16.92 miles in and through Barron County, Wisconsin, and terminating at the point of intersection of the centerline of the Grantor's main track in the SE $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 22, Township 34 North, Range 11 West, which point is also known as Railroad Engineer's Survey Station (approximately) 5272+10 (milepost 97.80), all of which is more particularly described on right-of-way maps designated V-1-Wisc./11 through 15, all of which are made a part hereof by reference.

ALSO

Commencing at a point on the centerline of the Grantor's main track in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 28, Township 34 North, Range 11 West, at Cameron, Barron County, Wisconsin, which point is known as Railroad Engineer's Survey Station 427+46 (milepost 49.00), and extending northerly approximately 7.05 miles in and through Barron County along the centerline of the track, and terminating 270 feet south of the north line of Govt. Lot 4 (milepost 56.05) in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, Township 35 North, Range 11 West, all of which is more particularly described on the station map designated V-11-Wisc./13 through 15, all of which are made a part of hereof by reference.

ALSO

Part of Lots number Three (3) and Four (4) in Section number Twenty-one (21), Township Thirty-five (35) North, Range Eleven (11) West, described as follows, to-wit:

A strip of land Twenty (20) feet wide South of Red Cedar River, the West line of which said strip is described as follows: Commencing at a point Three Hundred Fifty-Four and $\frac{5}{10}$ (354.5) feet East of the extended West line of Main Street and Nine Hundred Sixty-nine (969) feet south of the extended South line of Messenger Street, and Ten (10) feet West of the center of the Railroad track; thence South Two (2) degrees Thirty-three (33) minutes West One Hundred Thirty-four and $\frac{5}{10}$ (134.5) feet; thence South One Hundred Eighty-one (181) feet; thence South Nine (9) degrees Fifty-five (55) minutes West One Hundred (100) feet; thence South Twenty (20) degrees Ten (10) minutes West One Hundred (100) feet; thence South Thirty (30) degrees Two (2) minutes West One Hundred (100) feet to a point Ten (10) feet Westerly of the center of said Railroad track and being the same property described as tract No. 2 in deed from Wisconsin Power Company to Minneapolis, St. Paul & Sault Ste Marie Railway Company dated June 22, 1904 and recorded in Volume 36, page 232;

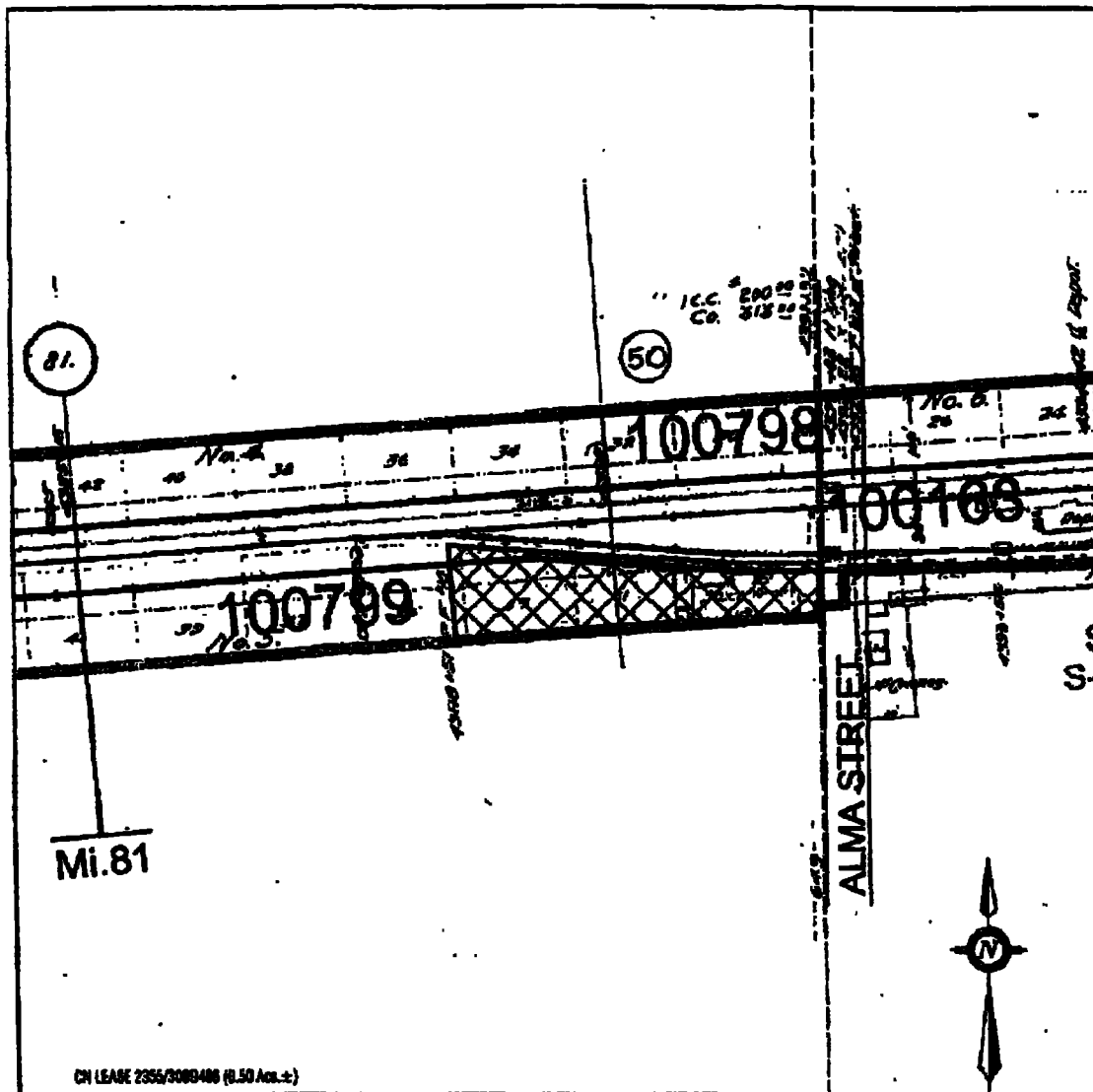
ALSO

All of Grantor's right, title and interest, if any, in any portion of the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) and the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 21, Township 35 North, Range 11 West, lying Easterly of the Rice Lake to Cameron Branch Line right of way; LESS AND EXCEPT the hereinabove last described 20 foot wide strip of land.

PROPERTY EXCEPTED

EXCEPTING, HOWEVER, a parcel of land covered by Wisconsin Central Ltd. ("WCL") lease number 3009486 on Seller's parcel numbers 1000799 and 1000163 at milepost 81.06 to 81.13 in Almena, WI and a parcel of land covered by WCL's station Lot 21 and the westerly portion of station Lot 23 on WCL's parcel numbers 100405 and 100162 at milepost 90.82 in Barron, WI, as shown on the attached maps labeled Property Excepted Map 1 and Map 2.

PROPERTY EXCEPTED - MAP 1



CN LEASE 2355/3080486 (0.50 Acs.±)

DESCRIPTION

Alma
State of Wisconsin
United States of America

THIS IS NOT A PLAN OF SURVEY
Ceci n'est pas un plan d'arpentage

☒ Subject Lands/Terrain Sujet

Property Excepted - Map 1

SUBDIVISION:	Bonan (405)
SPUR / ANTENNE:	N/A
MILEAGE / MILLIAIRE:	81.00 - 81.13
DATE:	May 20, 2008

SCALE / ÉCHELLE: 1:1500

CN

PROPERTY EXCEPTED - MAP 2

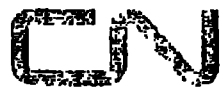
		8TH STREET	7TH STREET
RAILWAY AVENUE NORTH			
100405		LOT 19	LOT 23
100162			
RAILWAY AVENUE SOUTH			
PART OF 23.56/WPBY100405 (3.14 Acs. ±) PART OF 23.56/WPBY100405 (2.06 Acs. ±) TOTAL (5.19 Acs. ±)			
DESCRIPTION: Baron State of Wisconsin United States of America		Property Excepted - Map 2	
THIS IS NOT A PLAN OF SURVEY Ceci n'est pas un plan d'arpentage		SUBDIVISION: Baron (495)	
		SPUR / ANTENNE: NA	
		MILEAGE / MILLIARDE: As Shown	
		DATE: May 28, 2018	
☒ Subject Lands/Terrain Sujet			
			
		SCALE / ÉCHELLE: 1:1000	

Exhibit B

BILL OF SALE

KNOW ALL PERSONS BY THESE PRESENTS, that Progressive Rail Incorporated., a Corporation of the State of Minnesota, with offices at located at 21778 Highview Avenue, Lakeville, MN 55044, hereinafter referred to as "Seller," for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, to it in hand paid, does hereby GRANT, SELL and TRANSFER unto the State of Wisconsin Department of Transportation, with a mailing address of P.O. Box 7914, Madison, WI 53707-7914, hereinafter referred to as "Buyer," all its right, title and interest in and to (i) all the personal property (as defined under the laws of the State of Wisconsin) located on the right-of-way to be sold by Seller to Buyer (the "Subject Property"), as more particularly described in a deed of even date herewith conveying said Subject Property to Buyer, including but not limited to all rail, other track materials and all other Rail Assets, but no Excluded Assets (as those terms are defined in the Purchase and Sale Agreement between Seller and Buyer, dated as of _____, 2010 ("Purchase Agreement") located on the Subject Property on the date hereof, and (ii) all rail and other track materials in any track owned by Seller that connects with the Subject Property but which is located on the property of a third party; subject however upon and to the covenants, conditions and restrictions hereinafter contained, to which Buyer, for itself, its successors and assigns, agrees to be bound as part of the consideration hereof.

FIRST: Except as expressly provided otherwise in the Purchase Agreement, that the said personal property is conveyed by Seller and accepted by Buyer as is and where is, and without any warranties or representations of any nature or kind expressed or implied by Seller.

SECOND: Except as expressly provided otherwise in the Purchase Agreement, as of the date of this Bill of Sale, Buyer or its designee will assume all liability for future maintenance, repair or removal of said personal property.

The words "Seller" and "Buyer," as used herein, shall be deemed to include at all times and in all cases their respective successors or assigns.

IN WITNESS WHEREOF, Seller has executed this Instrument on this ____ day of _____, 2010.

WITNESS:

PROGRESSIVE RAIL, INCORPORATED

BY: _____

Exhibit C

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

This ASSIGNMENT AND ASSUMPTION OF CONTRACTS ("Agreement") entered into this ____ day of _____, 2010, by and between Progressive Rail Incorporated, a corporation ("Progressive") and the State of Wisconsin Department of Transportation ("State of Wisconsin").

WITNESSETH:

WHEREAS, Progressive and the State of Wisconsin are parties to that certain Purchase and Sale Agreement, dated as of _____, 2010 ("Purchase Agreement"), pursuant to which Progressive shall sell to the State of Wisconsin, and the State of Wisconsin shall purchase from Progressive, Progressive's Real Property and Rail Assets (as those terms are defined in the Purchase Agreement); and

WHEREAS, pursuant to the Purchase Agreement, Progressive desires to assign to the State of Wisconsin, and the State of Wisconsin is willing to assume, on the terms and subject to the conditions set forth in the Purchase Agreement and in this Agreement, all rights and obligations of Progressive in and under the Contracts (as that term is defined in the Purchase Agreement).

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Defined Terms.** All capitalized terms herein shall have the meanings ascribed to them in the Purchase Agreement unless expressly defined herein.

2. **Assignment.** Subject to the terms and conditions of the Purchase Agreement, and to the fullest extent it lawfully may, Progressive hereby assigns, transfers and sets over unto the State of Wisconsin, its successors and assigns, effective as of 12:01 a.m. on the day immediately following the Closing Date, all right, title and interest of Progressive in and to the Contracts identified on the list attached to this Agreement. Subject to the terms and

conditions of the Purchase Agreement, the State of Wisconsin accepts the foregoing assignment and hereby assumes all rights and obligations of Progressive under the Contracts arising after and attributable to the period on and after 12:01 a.m. on the day immediately following the Closing Date.

3. Contracts Identified After Closing. In the event that Progressive or the State of Wisconsin determines after Closing that one or more contracts, agreements, leases or licenses between Progressive and any third party relating to the Assets were not included on the list of Contracts attached to this Agreement (an "Omitted Agreement"), then, such Omitted Agreement shall be assigned by Progressive to the State of Wisconsin as of 12:01 a.m. on the day following the Closing Date, upon such Omitted Agreement's identification to the State of Wisconsin in writing.

4. Warranty. The assignment of the rights and obligations under the Contracts from Progressive to the State of Wisconsin is made without representation or warranty, except as expressly provided in the Purchase Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

PROGRESSIVE RAIL, INCORPORATED.

STATE OF WISCONSIN –
DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Its: _____

Its: _____

Contracts

Exhibit C

Contract No.	Other Business Partner	File No.	Old Unit	Sub-Type	Mile From	Mile To	Annual Rent
3003227	NEW SKELGAS INC.	WCSA 19444	1074917	Not assigned	0.00	0.10	0.00
3003813	BELL LUMBER & POLE CO	WCSA 636-P	1083939	Not assigned	0.00	0.28	0.00
3004413	CHIBARDUN TELEPHONE COOP	1078-W	1010380	Wire	48.00	0.00	0.00
3004182	CHIBARDUN TELEPHONE COOP	1081-W	1007790	Wire	48.31	0.00	0.00
3004180	CHIBARDUN TELEPHONE COOP	1088-W	1007781	Wire	48.31	0.00	400.00
3004831	CHIBARDUN TELEPHONE COOP	3838-W	1021372		48.35	0.00	0.00
3004188	VILLAGE OF CAMERON	1073-W	1007708	Pipe Xng	48.41	0.00	0.00
3004174	NORTHERN STATES POWER CO	1080-W	1007787	Encroachment	48.50	0.00	25.00
3004183	VERIZON - MINNESOTA	1072-W	1007893	Wire	48.51	0.00	0.00
3004187	NORTHERN STATES POWER CO	1074-W	1007714	Wire	48.51	0.00	0.00
3004173	VILLAGE OF CAMERON	1078-W	1007748	Pipe Xng	48.62	0.00	0.00
3004171	R. R. BURTON	1878-W	1007731	Pipe Xng	48.62	0.00	0.00
3008123	BADGER STATE LUMBER	WCSA1070W	1072401	Side Track	48.63	0.00	0.00
3008854	F. S. FARMS INC	1084-W	1007891	Not assigned	48.78	48.77	0.00
3008854	F. S. FARMS INC.	1084-W	1007891	Encroachment	48.78	0.00	0.00
3004178	CHIBARDUN TELEPHONE COOP	1088-W	1007773	Wire	48.78	0.00	0.00
3004178	CHIBARDUN TELEPHONE COOP	1081-W	1007788	Wire	48.88	0.00	0.00
3004186	VILLAGE OF CAMERON	1070-W	1007722	Pipe Xng	48.88	0.00	0.00
3002402	CHIBARDUN TELEPHONE COOP	2048-W	928981	Wire	48.90	0.00	0.00
3001889	CHIBARDUN TELEPHONE COOP	1083-W	924832	Wire	48.94	0.00	0.00
3001891	RED CEDAR VALLEY ELEC	1871-W	924824	Wire	48.98	0.00	0.00
3008488	MARCUS CABLE	2810-W	938788	F.O Xng	48.98	0.00	1,418.00
3004211	CHARTER COMMUNICATIONS	3788-W	1007880	F.O Xng	50.80	0.00	0.00
3001886	NORTHERN NATURAL GAS CO	1083-W	924841	Pipe Xng	50.82	0.00	0.00
3008889	CHIBARDUN TELEPHONE COOP	2731-W	933281	F.O Xng	52.31	0.00	0.00
3001881	CITY OF RICE LAKE	1180-W	923281	Pipe Xng	54.34	0.00	0.00
3004254	MARCUS CABLE	3132-W	1007888	F.O Xng	54.34	0.00	0.00
3008010	SHADOW PLASTICS INC.	WCSA 6287W	1083088	Side Track	54.40	0.00	0.00
3008012	SHADOW PLASTICS INC.	WCSA 6287X	1083101	Side Track	54.40	0.00	0.00
3001837	CITY OF RICE LAKE	1188-W	923214	Pipe Xng	54.62	0.00	0.00
3001848	CITY OF RICE LAKE	1178-W	923287	Pipe Xng	54.62	0.00	0.00
3001836	CITY OF RICE LAKE	1171-W	923228	Wire	54.63	0.00	0.00
3008888	CHIBARDUN TELEPHONE COOP	2882-W	924811	Pipe Xng	54.63	0.00	0.00
3004188	MARCUS CABLE	2832-W	1007888	Wire	54.88	0.00	0.00
3001821	RED CEDAR VALLEY ELEC	1158-W	925134	Wire	55.04	0.00	0.00
3008134	MASCOTT FOOD PRODUCTS	WCSA 1181W	1072587	Side Track	55.32	0.00	0.00
3001831	CITY OF RICE LAKE	1182-W	925185	Pipe Xng	55.40	0.00	0.00
3001843	CITY OF RICE LAKE	1173-W	925348	Wire	55.40	0.00	0.00
3001827	VERIZON NORTH INC.	1140-W	925188	Wire	55.41	0.00	0.00
3001833	CITY OF RICE LAKE	1188-W	925183	Pipe Xng	55.41	0.00	0.00
3001841	CITY OF RICE LAKE	1172-W	925281	Pipe Xng	55.41	0.00	0.00
3001847	AMERICAN EXCELSIOR	1178-W	925285	Encroachment	55.55	0.00	0.00
3008128	AMERICAN EXCELSIOR	WCSA 1132W	1072508	Side Track	55.55	0.00	0.00
3008133	AMERICAN EXCELSIOR	WCSA 1150W	1072508	Side Track	55.55	0.00	0.00
3001823	RED CEDAR VALLEY ELEC	1137-W	925142	Wire	55.58	0.00	0.00
3001836	CITY OF RICE LAKE	1188-W	925208	Wire	55.88	0.00	0.00
3001848	CITY OF RICE LAKE	1178-W	925273	Pipe Xng	55.71	0.00	0.00
3001825	CITY OF RICE LAKE	1138-W	925181	Pipe Xng	55.84	0.00	0.00
3001828	CITY OF RICE LAKE	1144-W	925177	Pipe Xng	55.84	0.00	0.00
3004198	CHIBARDUN TELEPHONE COOP	2834-W	1007898	Wire	55.84	0.00	0.00
3004184	CITY OF RICE LAKE	1183-W	1007811	Pipe Xng	55.85	0.00	0.00
3001819	CITY OF RICE LAKE	1138-W	925128	Pipe Xng	55.85	0.00	0.00
3008138	MASTERCRAFT INDUSTRIES	1482-W	928479	Not assigned	55.85	55.85	100.00
3008138	MASTERCRAFT INDUSTRIES	1482-W	928479	Encroachment	55.85	0.00	100.00
3004180	CITY OF RICE LAKE	2052-W	1007853	Monitoring Well	55.87	0.00	0.00
3008115	MASTERCRAFT INDUSTRIES	1025-W	924713	Not assigned	55.87	55.88	360.00
3008115	MASTERCRAFT INDUSTRIES	1025-W	924713	Warehouse	55.87	0.00	360.00
3008297	UNITED BLDG. CENTERS	WCSA 20528	1078910	Side Track	56.00	0.00	0.00
3008033	BESSE FOREST PRODUCTS	WCSA5477W	1104808	Side Track	56.00	0.00	0.00
3008127	STEIN BROTHERS HIDE	WCSA1131W	1072485	Side Track	56.01	0.00	0.00

3006128	AMERICAN EXCELSIOR	WCSA1133W	1072518	Side Track	58.61	0.00	0.00
3005858	VILLAGE OF ALMENA	18138	981783	Sewer/Water	61.13	0.00	0.00
3005824	COUNTRYPRIDE COOP	5738-C	940086	Not assigned	61.14	61.18	0.00
3006224	INDLAND COOP SERVICES	22088	922251	Wire	61.16	0.00	0.00
3006054	NORTHERN STATES POWER CO	18012	953568	Wire	61.17	0.00	0.00
3006044	NORTHERN STATES POWER CO	18048	951807	Encroachment	61.28	0.00	0.00
3006173	VILLAGE OF ALMENA	13737	948046	Sewer/Water	61.28	0.00	0.00
3006188	VILLAGE OF ALMENA	1843-W	926831	Not assigned	61.58	61.58	0.00
3006188	VILLAGE OF ALMENA	13884	947563	Sewer/Water	61.68	0.00	0.00
3006858	CHIBAUDUN TELEPHONE COOP	3837-W	1000561	Wire	61.68	0.00	0.00
3006144	SHIRLAIR ALLEN	1528-W	926831	Not assigned	61.68	61.78	578.90
3006728	CHIBAUDUN TELEPHONE COOP	22778	983472	Wire	61.72	0.00	0.00
3006283	CHIBAUDUN TELEPHONE COOP	19588	988243	Wire	61.73	0.00	0.00
3006283	CHIBAUDUN TELEPHONE COOP	21703	981881	Wire	61.73	0.00	0.00
3007582	CLINTON TOWN OF CLERK	21881-A	981881	Road Crossing - P	62.17	0.00	0.00
3006888	VILLAGE OF ALMENA	21827	981882	Sewer/Water	62.17	0.00	38.00
3006283	CHIBAUDUN TELEPHONE COOP	4216-W	1107181	Wire	63.68	0.00	0.00
3006018	CHIBAUDUN TELEPHONE COOP	2488-W	981881	Fibre Optic	65.30	0.00	0.00
3004184	NORTHERN STATES POWER CO	5158	958018	Wire	66.37	0.00	0.00
3006042	NORTHERN STATES POWER CO	18098	981688	Wire	66.80	0.00	0.00
3001507	DAIRYLAND POWER COOPERAT	636-W	981740	Encroachment	68.84	0.00	1,080.00
3006741	TELEPHONE USA OF WISCONSIN	3947-W	1023178	Wire	68.88	0.00	0.00
3004412	BARRON ELECTRIC COOP	8872	942148	Wire	68.88	0.00	7.00
3004888	DAIRYLAND POWER COOPERAT	11477	948891	Wire	68.78	0.00	5.00
3006378	DAIRYLAND POWER COOPERAT	20312	958018	Wire	68.78	0.00	7.00
3006848	JEROME FOODS INC	18048	951833	Oil/Gas Pipe	68.80	0.00	0.00
3004410	BARRON ELECTRIC COOP	8870	942137	Wire	68.87	0.00	7.00
3004878	CITY OF BARRON	18381	1011884	Sewer/Water	69.28	0.00	0.00
3006882	CITY OF BARRON	22810	982871	Wire	69.48	0.00	7.00
3006887	CITY OF BARRON	221-W	918228	Wire	69.53	0.00	0.00
3004888	CITY OF BARRON	9781	943382	Sewer/Water	69.53	0.00	0.00
3004847	CITY OF BARRON	12153	948130	Sewer/Water	69.53	0.00	0.00
3006882	CITY OF BARRON	17878	948891	Sewer/Water	69.53	0.00	0.00
3003327	CHIBAUDUN TELEPHONE COOP	2730-W	953872	Fibre Optic	69.64	0.00	0.00
3004888	CITY OF BARRON	11283	943291	Sewer/Water	69.68	0.00	0.00
3002881	GTE NORTH INCORPORATED	2483-W	958888	Wire	69.74	0.00	0.00
3003306	VERIDON NORTH INC.	2718-W	933134	Fibre Optic	69.74	0.00	0.00
3004384	CITY OF BARRON	6513	941778	Sewer/Water	69.74	0.00	0.00
3002214	VERIDON NORTH INC.	1785-U	927318	Wire	69.78	0.00	0.00
3004334	CITY OF BARRON	7060	941370	Sewer/Water	69.78	0.00	0.00
3006014	CITY OF BARRON	17788	948122	Sewer/Water	69.81	0.00	0.00
3006180	FENNELLOAS INC	73725-E	948037	Not assigned	69.87	69.91	2,142.30
3006319	OLSON OIL COMPANY	6585-B	938888	Not assigned	69.91	69.93	838.53
3006078	AMOCO CORPORATION	188-M	918808	Not assigned	69.93	69.98	682.38
3001081	BARRON MUNICIPAL UTILITIES	383-W	928883	Sewer/Water	61.00	0.00	0.00
3001083	BARRON MUNICIPAL UTILITIES	387-W	928881	Sewer/Water	61.00	0.00	0.00
3004878	CITY OF BARRON	8881-A	941843	Sewer/Water	61.00	0.00	0.00
3006738	CITY OF BARRON	3848-W	1023181	Wire	61.00	0.00	0.00
3001088	WISCONSIN GAS COMPANY	382-U	928846	Oil/Gas Pipe	61.12	0.00	0.00
3007380	JEROME FOODS INC	418-W	928888	Road Crossing - P	61.18	0.00	0.00
3006871	CHARTER COMMUNICATIONS	22388	962744	Wire	61.28	0.00	7.00
3006273	CITY OF BARRON	18548	988138	Wire	61.38	0.00	5.00
3006227	WISCONSIN GAS COMPANY	17888	954388	Oil/Gas Pipe	61.40	0.00	0.00
3004888	BARRON ELECTRIC COOP	11084	944888	Encroachment	61.40	0.00	70.00
3004884	BARRON ELECTRIC COOP	10348	943738	Wire	61.48	0.00	7.00
3006811	CITY OF BARRON	21948	962040	Wire	61.67	0.00	14.00
3006878	CITY OF BARRON	23401	964774	Wire	61.88	0.00	30.00
3006438	BARRON ELECTRIC COOP	20888	980882	Wire	61.88	0.00	7.00
3004888	BARRON FARMERS UNION COO	11308	946338	Sewer/Water	61.81	0.00	0.00
3006285	CITY OF BARRON	18820	981058	Sewer/Water	62.02	0.00	4.00
3006331	CHIBAUDUN TELEPHONE COOP	2732-W	933248	Fibre Optic	62.03	0.00	0.00
3006148	CITY OF BARRON	18534	958571	Sewer/Water	62.03	0.00	0.00
3006378	CITY OF BARRON	20338	958388	Sewer/Water	62.03	0.00	0.00
3006871	CITY OF BARRON	23402	964782	Wire	62.67	0.00	30.00
3004112	WISCONSIN GAS CO	3838-W	938074	Oil/Gas Pipe	63.63	0.00	0.00

3008673	NORTHERN NATURAL GAS CO I	18245	851888	Oil/Gas Pipe	93.41	0.00	0.00
3008672	NORTHERN NATURAL GAS CO I	18244	951957	Oil/Gas Pipe	93.93	0.00	0.00
3004899	BARRON ELECTRIC COOP	11676	944933	Wire	94.60	0.00	5.00
3004804	BARRON ELECTRIC COOP	9321	943736	Wire	95.02	0.00	18.00
3008280	NORTHERN STATES POWER CO	14488-B	948021	Encroachment	95.02	0.00	101.50
3003193	WISCONSIN GAS COMPANY	2336-W	932553	Oil/Gas Pipe	95.03	0.00	0.00
3008008	WISCONSIN GAS COMPANY	2336-W	930884	Oil/Gas Pipe	95.49	0.00	0.00
3004161	MARCUS CABLE	2853-W	934049	Wire	95.49	0.00	0.00
3008003	VILLAGE OF CAMERON	23482	984942	Sewer/Water	95.53	0.00	38.00
3004099	CHIBAUDIN TELEPHONE COOP	3574-W	937872	Wire	95.98	0.00	0.00
3004280	CAMERON FARMERS TELEPHONE	6758	940537	Wire	96.03	0.00	0.00
3008078	BUSH & GILLES FURNITURE	187-W	918599	Not assigned	96.03	96.04	595.98
3008085	VILLAGE OF CAMERON	12723	948887	Sewer/Water	96.04	0.00	0.00
3004913	VILLAGE OF CAMERON	11818	948830	Sewer/Water	96.08	0.00	0.00
3008000	KINCKOP ROGER	17288	954182	Not assigned	96.13	96.14	850.94
3008080	NORTHERN STATES POWER CO	21579	981412	Wire	96.15	0.00	0.00
3008042	RANDALL ROBERT PETERSON VA	347-N	988933	Not assigned	96.15	96.20	778.28
3008238	NORTHERN STATES POWER CO	14133	948671	Wire	96.18	0.00	5.00
3004291	NORTHERN STATES POWER CO	7098	940828	Encroachment	96.17	0.00	5.00
3008010	VILLAGE OF CAMERON	12891	948710	Sewer/Water	96.19	0.00	0.00
3001108	CHIBAUDIN TELEPHONE COOP	438-W	920810	Wire	96.23	0.00	0.00
3008089	MARCUS CABLE	2853-W	930890	Wire	96.23	0.00	0.00
3004788	VILLAGE OF CAMERON	10990	944748	Sewer/Water	96.23	0.00	0.00
3008089	CHIBAUDIN TELEPHONE COOP	3835-W	1020872	Wire	96.23	0.00	0.00
3008034	CHIBAUDIN TELEPHONE COOP	21438	981218	Wire	96.24	0.00	0.00
3008088	DAVID M & CATHERINE M HAGE	10388-O	943762	Not assigned	96.27	96.28	282.20
3001851	NORTHERN STATES POWER CO	1947-W	924910	Encroachment	96.38	0.00	200.00
3008734	VILLAGE OF CAMERON	18488	982887	Sewer/Water	96.41	0.00	0.00
3000781	VILLAGE OF CAMERON	7-W	918128	Sewer/Water	96.43	0.00	50.00
3004676	WISCONSIN GAS CO (STANLEY)	3848-W	1008508	Oil/Gas Pipe	96.47	0.00	0.00
3008438	FERRILL GAS INC	10322-B	947181	Not assigned	96.48	96.48	115.57
3008463	CHARTER COMMUNICATIONS	2827-W	933621	Fiber Optic	96.50	0.00	1,567.88
3004699	VILLAGE OF CAMERON	11188	945127	Sewer/Water	96.51	0.00	8.00
3002222	NORTHERN STATES POWER CO	1787-U	927367	Encroachment	96.54	0.00	0.00
3008008	WISCONSIN DEPARTMENT OF T	12881	947028	Sewer/Water	96.58	0.00	0.00
3008481	VILLAGE OF CAMERON	18438	950485	Sewer/Water	96.58	0.00	0.00
3004781	SKELLY OIL CO	10883	944888	Sewer/Water	96.67	0.00	0.00
3000788	VILLAGE OF CAMERON	8-W	918137	Sewer/Water	96.79	0.00	50.00
3000787	VILLAGE OF CAMERON	10-W	918185	Sewer/Water	96.79	0.00	357.00
3000788	VILLAGE OF CAMERON	9-W	918146	Sewer/Water	96.81	0.00	50.00
3008108	WELCHER ROY A	808-W	921571	Not assigned	96.94	96.95	117.88
3008029	NORTHERN STATES POWER CO	239-W	918959	Wire	97.04	0.00	0.00
3004884	NORTHERN STATES POWER CO	12388	946481	Wire	97.14	0.00	5.00
3004871	CHARTER COMMUNICATIONS (S	3789-W	1007888	Fiber Optic	97.23	0.00	0.00
3008882	BARRON ELECTRIC COOP	23888	958887	Wire	97.28	0.00	30.00
3008877	NORTHERN NATURAL GAS CO I	18288	952881	Oil/Gas Pipe	97.38	0.00	0.00
W001103	Wisconsin DOT			Grade Crossing	Cameron	0.00	0.00
W001348	Wisconsin DOT			Spur track	Rice Lake	0.00	0.00
W000887	Wisconsin DOT			Crossing Surface	Barron	0.00	0.00
W000888	Wisconsin DOT			Crossing Surface	Barron	0.00	0.00
W002054	Wisconsin DOT			Crossing Surface	Barron	0.00	0.00
W002054	Wisconsin DOT			Crossing Surface	Barron	0.00	0.00

Map

Exhibit D

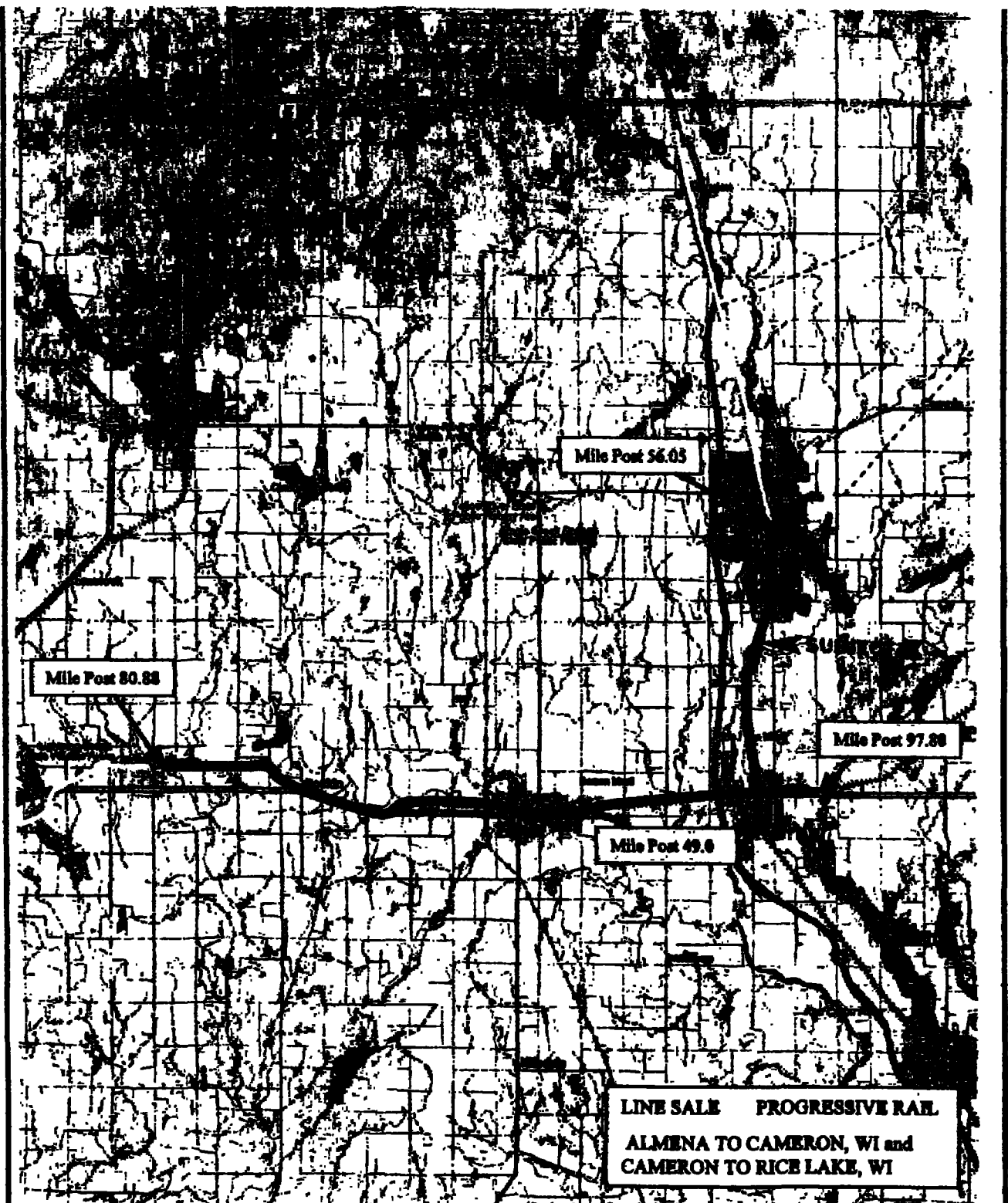


Exhibit E

RETAINED AGREEMENTS

NONE

LAND USE AGREEMENT
BY AND BETWEEN
WISCONSIN WEST RAIL TRANSIT AUTHORITY
AND
WISCONSIN DEPARTMENT OF TRANSPORTATION



Agreement No. 0499-01-76(A-3)

This Agreement is made and entered into, by and between the Wisconsin West Rail Transit Authority, hereinafter referred to as "Commission," and the Wisconsin Department of Transportation, hereinafter referred to as "WisDOT," collectively "Parties."

WHEREAS, the Wisconsin legislature finds that rail service continuation has widespread public interest and support, and is significant towards the preservation of a sound economic base and in the maintenance of a balanced transportation system, and that private capital and local government financial capabilities are insufficient to prevent further erosion of rail service, and that a broad public benefit is derived by state acquisition of abandoned private railroad property for continued or future railroad purposes; and,

WHEREAS, WisDOT has the authority under Wis. Stat. §§ 84.09, 85.08 and 85.09 to acquire, improve, preserve and maintain land, improved property and interests necessary therein for transportation purposes such as restoration of railroad services; and,

WHEREAS, Commission was established pursuant to Wis. Stat. §§ 59.58 (formerly 59.968) and 66.0301 (formerly 66.30) for the purpose of supporting continued rail service to its member counties, and with authority to acquire Rail Lines by purchase, lease or otherwise, and to provide for the operation of freight rail service thereon by contract or otherwise; and to establish, acquire, preserve and maintain and contract for the operation of a local freight rail transportation system; and

WHEREAS, WisDOT has acquired from Progressive Rail Incorporated d/b/a Wisconsin Northern Railroad ("PGR") pursuant to a Purchase and Sale Agreement dated December 9, 2010, for railroad purposes certain railroad property in Barron County, WI formerly owned by the Wisconsin Central LTD ("WCL"), a wholly-owned subsidiary of the CN which PGR acquired pursuant to Purchase and Sale Agreement between PGR and WCL dated October 21, 2009; and,

WHEREAS, WisDOT has identified the lands and improved property subject to this Agreement as being all those lands and improved property acquired between Cameron, milepost 49.0, and Rice Lake, milepost 56.10; Cameron, milepost 97.80, and Barron, milepost 89.04, as more fully described in Attachment A, attached hereto; and,

NOW, THEREFORE, Commission and WisDOT do hereby mutually agree that the Land Use Agreement by and between the WisDOT and Commission numbered 0499-01-76(A-2), dated February 1, 2010 is superseded in its entirety by this Agreement, and in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

1. Operating Right. Commission shall establish, construct, develop, and contract for the maintenance and operation of railroad services on, over and across these properties for railroad purposes, and should have use and access to the property, subject to the conditions contained herein or in Grant Agreement No. 0499-01-76(B-3) by and between the Wisconsin West Rail Transit Authority and the Wisconsin Department of Transportation dated the 9th day of December, 2010 (herein after called Grant Agreement) and any amendments thereto. Commission shall contract with an Operator that holds the common carrier obligation for the Rail Line, pursuant to authority granted by the U.S. Surface Transportation Board (STB), and Operator shall possess a permanent exclusive Operating Easement to operate on the Rail Line, and the associated common carrier obligation.
2. Land Description. The description of the Land granted to Commission for its use for the purposes of developing, maintaining and operating railroad service shall be attached as Attachment A within 90 days of execution of this Agreement.
3. Term. The term of this Agreement shall run for so long as Commission provides railroad service over the Land, or contracts with Operator for same. Provision of railroad service shall be construed in accordance with the Grant Agreement.
4. Amount. In consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Commission may use the Land described in Attachment A for the provision of freight rail service for the terms set forth above.
5. Public Order and Trespass. Commission 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. Commission may adopt and enforce any necessary rule in order to protect the property. Commission 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.
6. Fencing. Commission shall assume such responsibility as may exist for providing fencing as may exist to third parties for providing the fencing required under Wis. Stat. ch. 90, local ordinance, or contract. Fences rebuilt or reconstructed shall be along the Land boundaries.

7. Vegetation Control. Commission shall assume full responsibility as may exist for the eradication, control and removal of vegetation on the Land required by applicable state law or local ordinance.
8. Bridges. Commission shall assume full responsibility for the inspection, repair, maintenance, rehabilitation or replacement of all culverts, trestles and bridge structures, and with meeting FRA requirements with regard to such structures and facilities thereby insuring the unrestricted flow of applicable waters and the preservation of the necessary drainage systems. (Commission shall be eligible for aid under existing state and federal financial assistance programs for the above purpose.)
9. Public Highway and Street Crossings.
 - a. Maintenance. Commission 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. Commission shall notify WisDOT in writing of plans to install or redesign a public crossing, and shall submit crossing designs and plans to WisDOT for WisDOT's prior approval. (The Commission shall be eligible for aid under existing state and federal financial assistance programs for the above purpose.)
 - b. Approval. WisDOT, Commission and Operator shall coordinate on matters pertaining to public crossings submitted to the Wisconsin Office of the Commissioner of Railroads.
10. Private Crossings. Commission may, according to applicable statutory provisions, abrogate any private crossing established by agreement, which interferes substantially with operative aspects of the railroad services. Commission shall obtain authorization from WisDOT and, if necessary, the Office of the Commissioner of Railroads, prior to permitting any additional private crossings.
11. Easements, Permits, Licenses and Leases. Commission has no authority to enter into easements, permits, licenses, or leases affecting the Land, nor may it sublet any of the Land, whether under the use of Commission or outside the use of Commission, without specific prior written approval provided by WisDOT to Commission, subject to the permanent exclusive Operating Easement of Operator.
12. Buildings. In the event it becomes desirable to construct buildings or other structures on the Land, they may be constructed by Commission at its expense, subject to receiving WisDOT's prior written approval.

13. Sale or Transfer of Land. WisDOT shall retain complete and final authority regarding sale or disposal of the Land except as may otherwise be provided in the Grant Agreement, which sale or disposal shall be subject to permanent exclusive Operating Easement of Operator.
14. Use of Land as Collateral. The Land shall not be used by Commission or Operator in any form or amount as equity, security or collateral for any borrowing or other means of raising capital by Commission or Operator or as collateral for any other purpose.
15. Utility Permits. WisDOT shall retain complete authority to require and issue or deny 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.
16. Other Uses. Except where authority rests with the Office of the Commissioner of Railroads, WisDOT shall retain authority for approving all applications for other uses of the Land, including the setting of design and specification requirements, and shall coordinate with Commission on matters pertaining to an application.
17. Inspections. 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. This provision shall not relieve Commission or Operator of their responsibilities to inspect and maintain.
18. Liability and Insurance. Commission agrees to be bound under this Agreement by the same terms and conditions regarding hold harmless and insurance as is set forth in Article 6 of the Grant Agreement.
19. Operator's Ability to Remove Default. If for any reason the Commission is in default of an agreement with WisDOT, Operator shall have thirty (30) days to remove the default on behalf of Commission and Operator shall have the right to quiet enjoyment of the property until the condition of default is resolved.
20. Administrative Rule. Any administrative rule promulgated to implement Wis. Stat. §§ 85.08 and 85.09, 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. (As a part of this implementation process for permanent rules, a formal hearing process is available.)

21. Choice of Law. This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of either of the counties which are a part of Commission. When applicable, this Agreement or portions thereof may be enforced through mandamus.
22. Notice. Any notice required or permitted under this Agreement shall be personally served on or mailed by certified United States mail, return receipt requested, postage prepaid, to the following addressed persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

Chief, Railroads and Harbors Section
Wisconsin Department of Transportation
P. O. Box 7914
Madison, Wisconsin 53707

Chairman & Executive Secretary
Wisconsin West Rail Transit Authority
c/o Barron County
330 East La Salle Avenue, Room 2510
Barron, WI 54812-1433

23. Status of Commission and Operator. Commission and Operator (including officers, directors, employees, agents or representatives thereof) are independent contractors, and in no way shall either or both be deemed an affiliate, partner, joint venturer, or associated in any manner whatsoever with WisDOT.
24. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Commission and Operator'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.
25. 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.
26. Amendments, Consents, and Approvals. No term or provision of this Agreement, or any of its attachments to which Commission is a party, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties to this Agreement. Consents and approvals required under this instrument

and interpretations of this instrument may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

27. Captions. The captions used in this Agreement are used for convenience and identification purposes only and do not form a part of this Agreement.
28. Vacating the Land. Commission agrees to be bound under this Agreement by the same terms and conditions regarding vacating the Land as are set forth in Section 7.7 and 7.8 of the Grant Agreement.
29. Specific Performance. WisDOT and Commission shall have the right, as provided by law, to require specific performance by the other party of the other party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days from the time WisDOT or Commission has first notified the other party of the other party's obligation to perform.
30. Cancellation. This Agreement may be terminated by either party upon failure of the other party to perform according to the terms and conditions set forth herein or in any other agreements between Commission and WisDOT.
31. Effective Date. This Agreement shall become effective upon the execution and recording of all necessary documents transferring ownership and title to the Land and Improved Property to WisDOT. Transfer of the Land and Improved Property shall not occur unless and until a determination has been issued by the STB that WisDOT will not become a common carrier railroad operator by acquiring the Land as described in Attachment A hereto, and the Improved Property, defined as the buildings and trackage located upon the Land.
32. Entire Agreement. This Agreement together with those documents referred to herein contain the entire agreement of the parties and supersedes any and all prior agreements and draft agreements, or oral understandings between the parties.
33. Statement of Parties Intent. The Parties have intentionally structured this Agreement to comply with the principles enunciated in the United States Surface Transportation Board's **State of Maine** Decision, (State of Maine DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C. 2d 835 (1991)), wherein a public entity was authorized to acquire a railroad line comprising part of the National Rail System threatened with abandonment, without commensurately acquiring the common carrier obligation. Any ambiguities in the transaction documents should be resolved and construed in favor of an outcome complying with the STB's **State of Maine** requirements.

IN WITNESS WHEREOF, the Wisconsin West Rail Transit Authority, by its Board of Directors, has caused this Agreement to be signed by its duly authorized officers, this 9 day of December, 2010.

WITNESS:

Sandra K. Perry

Sandra K. Perry

WISCONSIN WEST RAIL TRANSIT AUTHORITY

Neil Lundgren
Neil Lundgren, Chairman

Charles Walker
Charles Walker, Secretary

IN WITNESS WHEREOF, the Wisconsin Department of Transportation has caused this Agreement to be signed by its duly authorized officer, this 10th day of Dec., 2010.

WITNESS:

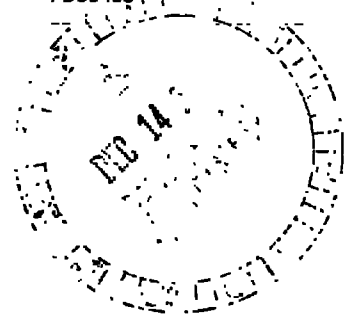
Frank Huntington

WISCONSIN DEPARTMENT OF
TRANSPORTATION

Ronald E. Adams
Ronald E. Adams, Chief
Railroads and Harbors Section

ATTACHMENT A
PROPERTY DESCRIPTION

GRANT AGREEMENT
FOR RAIL SERVICE CONTINUATION



BY AND BETWEEN

WISCONSIN WEST RAIL TRANSIT AUTHORITY

AND

WISCONSIN DEPARTMENT OF TRANSPORTATION.

AGREEMENT NO. 0499-01-76(B-3)

DECEMBER 2010

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GRANT AGREEMENT

This Agreement made and entered into this 9th day of December, 2010, by and between the Wisconsin West Rail Transit Authority, established in accordance with Wis. Stat. § 66.0301 (formerly Sec. 66.30), having its principal office at 330 East LaSalle Avenue, Room 2510, Barron, WI 54812-1433 ("Commission"), and the Wisconsin Department of Transportation, P.O. Box 7914, Madison, Wisconsin 53707 ("WisDOT").

WITNESSETH:

WHEREAS, the Canadian National Railway (CN) rail line between Almena, Cameron and Rice Lake has been threatened with potential abandonment of service and has been leased by Wisconsin Central LTD (WCL), a wholly-owned subsidiary of CN to Progressive Rail Inc., d/b/a Wisconsin Northern Railroad (PGR), since August 23, 2004; and

WHEREAS, the Wisconsin West Rail Transit Authority (WWRTA) was created by the Counties of Barron and Chippewa for the purpose of taking steps necessary and desirable to ensure rail service along the Cameron to Almena and Cameron to Rice Lake rail lines owned by the CN, and the Cameron to Eau Claire rail line owned by the Union Pacific (UP) Railroad is preserved.

WHEREAS, the WWRTA, with assistance from the PGR, has prepared and submitted an application to the Wisconsin Department of Transportation (hereinafter referred to as WisDOT) for assistance in acquiring this rail line under the State's Freight Railroad Preservation Program; and

WHEREAS, as a result of the approval of this application, WisDOT has acquired ownership of the Rail Line as defined under Section 1.0(s) of this Agreement; and

WHEREAS, WisDOT owns the Rail Line in Wisconsin, and the Commission by this Agreement has been granted the authority to contract with the Operator to provide rail freight service over the Improved Property and the Land of the Principal Line Segments in Wisconsin subject to all the conditions and limitations set forth in the Land Use Agreement identified in Section 1.0(m); and

WHEREAS, the parties hereto have negotiated and agreed to a grant agreement which is this instrument; and,

WHEREAS, Operator has been furnished copies of and reviewed the Land Use Agreement by and between Commission and WisDOT and this Grant Agreement for Rail Service Continuation By and Between Commission and WisDOT; and,

WHEREAS, Commission and Commission's Operator have inspected the Rail Line and are knowledgeable as to its needed repairs, maintenance and possible rehabilitation and are making certain financial commitments relating thereto which are hereinafter set forth in this Agreement; and,

WHEREAS, Wis. Stat. §§ 66.0301 and 59.58 provide Commission the legal authority to enter into this Agreement; and,

WHEREAS, Wis. Stat. §§ 85.02, 85.08(2)(b), 85.08(4) and 20.395 provide WisDOT the legal authority to engage in and provide financial assistance for rail service preservation; and,

NOW, THEREFORE, the parties do hereby mutually agree that the Grant Agreement for Rail Service Continuation by and between the WisDOT and Commission numbered 0499-01-76(B-2), dated February 1, 2010 is superseded in its entirety by this Agreement and that the parties will be mutually benefited in that the Commission shall contract for the provision of freight rail service and shall be financially assisted by WisDOT in accordance with the following terms and conditions, and in consideration of the promises and the mutual covenants contained herein, the parties hereto covenant and agree as follows:

ARTICLE 1.0 - DEFINITIONS.

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

(a) "AREMA" means American Railway Engineering and Maintenance-of-Way Association.

(b) "Building" means any structure built to stand more or less permanently with columns or walls and designed to support a roof, and constructed as either an addition which increases the outside dimensions of another structure, or as a detached entity which is not physically connected to another structure and which was primarily intended and designed for human use, occupancy or the storage of goods and materials.

(c) "Commencement Date" means the date the Operating Agreement between Commission and Operator becomes effective which shall be the date that Agreement is approved in writing by WisDOT on the Signature Page of that Agreement or the date upon which ownership and title to the Land and Improved Property is transferred to WisDOT, whichever date occurs later.

(d) "Commission" means the Wisconsin West Rail Transit Authority.

(e) "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.

(f) "CN" means Canadian National Railway Company, and its subsidiaries, assigns and successors, if any.

(g) RESERVED.

(h) "FRA" means the Federal Railroad Administration of the United States Department of Transportation.

(i) "Grant Agreement" or "Agreement" means this Agreement entitled Grant Agreement For Rail Service Continuation No. 0499-01-76(B-3) By And Between The Wisconsin West Rail Transit Authority And The Wisconsin Department Of Transportation, and any amendments thereto.

(j) "Gross Operating Revenues" means all income produced from operations on the Rail Line which shall include freight bill revenues from complete on-line hauls, switching revenues, freight bill revenues retained by Operator under a division of revenues with other rail lines, shipper contract charges, surcharges, net equipment per diem, demurrage, and equipment storage. Specifically excluded is income received from contract car repair, building of or scrapping of rail equipment, and excursion trains. Gross Operating Revenues shall be computed on an accrual basis.

(k) "Improved Property" means Buildings and Trackage located upon the Land of the Rail Line.

(l) "Land" means the real estate, generally 100 feet in width, the use of which is provided to Operator by Commission, upon which the trackage that is leased to Operator under this Agreement is located and which is the subject of the Land Use Agreement.

(m) "Land Use Agreement" means the Land Use Agreement No. 0499-01-76(A-3) by and between the West Wisconsin Rail Transit Authority and the Wisconsin Department of Transportation, dated 9th day of December, 2010, and any amendments thereto.

(n) "Operator" means Progressive Rail Inc., d/b/a Wisconsin Northern Railroad and its successors, if any.

(o) "Operating Agreement" means the Operating Agreement For Rail Service Continuation No. 0499-01-76(C-3) By And Between The Wisconsin West Rail Transit Authority And Progressive Rail Inc., d/b/a Wisconsin Northern Railroad, dated 9th day of December, 2010, and any amendments thereto.

(p) RESERVED.

(q) "Person" means an individual, a partnership, an association, or bodies politic or corporate.

(r) "Principal Line Segment" means one of the following as defined by their beginning and end points:

- i. Cameron, Milepost 49.00 to Rice Lake, Milepost 56.10.
- ii. Cameron, Milepost 97.80 to Barron, Milepost 89.04 (CTH T).

(s) "PGR" means Progressive Rail Inc., d/b/a Wisconsin Northern Railroad.

(t) "Rail Line" means the Principal Line Segments in aggregate.

(u) "RHS" means Railroads and Harbors Section of WisDOT.

(v) "STB" means the Surface Transportation Board of the United States Department of Transportation, or its successors, if any.

(w) "Trackage" means the rails, ties, ballast, track material, bridges, switches, culverts, signals, and all other non-Land property acquired by WisDOT and provided under grant to the Commission subject to certain express conditions and limitations. This term does not include Land.

(x) "UP" means the Union Pacific Railroad and its successors, if any.

(y) "WCL" means Wisconsin Central Ltd., an indirectly, wholly-owned subsidiary of CN, and its successors, if any.

(z) "WisDOT" means the Wisconsin Department of Transportation.

ARTICLE 2.0 - LEASE, LICENSE, TERM AND RESERVATION.

Section 2.1 - Lease, License and Term.

(a) WisDOT hereby grants to Commission the use of Improved Property, and the authority to contract with Operator to manage the Improved Property and Land and operate rail service thereon, subject to Operator's permanent exclusive Operating Easement, which Operating Easement was or shall be reserved or acquired by Operator, for the benefit of itself, its successors and assigns, to use the Rail Line for the purpose of providing freight rail service and for all other purposes incidental to the foregoing, subject, however, to the uses and reservations identified in Section 2.2 hereafter and further subject to the uses and reservations set forth in the governing Land Use Agreement.

(b) This Agreement is to be executed upon authorization of the Board of Directors of the Commission, and the authorization of the Chief of RHS. This Agreement shall commence upon execution of this Agreement, subject to Section 13.14 of this agreement, and shall be perpetual; provided, however, that either party may terminate this Agreement under Article 7.0.

Section 2.2 - Reservation.

The Land and Improved Property involved in this Agreement are the Land and Improved Property defined in Section 1.0(k) and (l), herein. Future operations may show WisDOT that portions of the Land or Improved Property are not needed for railroad use or are of sufficient width to allow other uses as co-uses.

Land and Improved Property used predominantly in generating income not included within Gross Operating Revenues shall be deemed not used for railroad purposes. Partial use of the line by Commission and Operator for future Commuter Passenger Service is possible if first authorized under a separate operating agreement in the manner set forth in Section 2.2(g). During the term of this Agreement some consolidation of yards, interchanges and terminal facilities of the various railroads serving

the particular area may require relocation of Improved Property and other facilities which could affect portions of the Rail Line. WisDOT may, upon request from Commission, Operator or others, determine that the use of the Rail Line for railroad purposes is such that the width of the Land at particular points also permits recreational or scenic uses. WisDOT hereby makes this grant of use subject to the following conditions:

(a) Subject to Section 2.2(b) below, the right is retained for WisDOT to sell or lease Land, Improved Property or both that WisDOT determines is not needed for the continuation of freight rail service, subject to prior approval by Commission and Operator. Such determination shall not affect Operator's permanent exclusive Operating Easement.

(b) In the event WisDOT, with the concurrence of Commission and Operator, determines that certain parcels of Land or Improved Property are not reasonably required for the preservation of railroad services, WisDOT may, upon its own initiative, sell, permit, or lease such Land or Improved Property located outside 33 feet of the center line of the main track to any party. Before a sale, WisDOT must first offer the Land or Improved Property to Commission and Operator and to other state and local government units under the provisions of Wis. Stat. § 85.09. Commission shall promptly notify Operator in writing whether it intends to exercise any right to purchase Land and Improved Property offered by WisDOT. If Commission does not elect to exercise such right, Operator may, within thirty (30) days following receipt of the foregoing notice, supply Commission with the purchase funds, and Commission shall purchase the Land and Improved Property to the extent that it may be accomplished under Wis. Stat. § 85.09, and convey same to Operator; provided that Commission shall not be required to purchase such Land and Improved Property on behalf of Operator if in its reasonable judgment Commission determines that the Land and Improved Property will not be used for a public purpose, in which case the funds furnished by Operator to Commission shall be promptly returned.

(c) WisDOT retains the right to retake or retain possession of any of the Rail Line under lease to third parties for itself, subject to the Operator's permanent exclusive Operating Easement to provide service. In the Land Use Agreement, WisDOT retains the right to approve all leasing of Land and to conduct all the leasing of Land subject to the approval of Commission and Operator. If there are sidetracks on any of the Land leased to third parties, WisDOT shall provide Commission and Operator with the right of continued use of the sidetrack and Land 16.5 feet from the center line on each side of the side track.

(d) The right to lease Land, which is not under license and lease to Operator or not presently leased to third parties is retained for WisDOT.

(e) Any building or other structure presently on the Land being used for railroad purposes or previously built for railroad purposes, except as may be specifically excluded elsewhere herein or in an existing lease or by law, will be available for use by Commission and Operator. If any such building or buildings are not needed by Commission or Operator for their operation, WisDOT reserves the right to lease any such building or buildings to third parties for periods not to exceed two (2) years. In some instances, this might involve leasing a portion of the building with Operator using the other

portion. WisDOT agrees to obtain approval of Commission and Operator in making such leases.

(f) The transfer of use of the Land to Commission and Operator is subject to existing utility easements, street and highway easements, and other existing easements, permits or licenses of grant or use. WisDOT retains the right to grant future utility easements. WisDOT retains to itself all easement and right-of-way rental, purchase price, or other easement, right-of-way or property transfer payments.

(g) Commission has the right to contract for the use of the Rail Line or portions thereof for Commuter Passenger Service. Such contract may be with Operator or a governmental unit or Commission may provide that service itself. Commission shall not allow Operator or any other operator to provide Commuter Passenger Service over any portion of the rail line without first entering into a separate agreement authorizing that service. Before Commuter Passenger Service may begin, Commission must sign the authorizing agreement, and WisDOT must approve it. Any plan or proposal for Commission itself to operate Commuter Passenger Service shall also be subject WisDOT review and approval. Further, it is a condition of this reservation that Commission may contract with a third party respecting the provision of Commuter Passenger Service only if reasonable advance notice is given to Operator and Operator is afforded the opportunity of participation in the negotiating and establishing of the conditions of the co-use of these facilities. The granting of such co-use is on the further condition that any upgrading or changing of the Rail Line or other facilities to accommodate the co-use shall be first approved by WisDOT in accordance with Commission's obligations under the Land Use Agreement and shall not involve any additional cost to Operator and that a reasonable division of costs for the servicing, maintaining and repairing of the trackage and other facilities for the co-use shall be established. It is a further condition that such a joint use shall not restrict the use of the particular facilities by Operator. This joint use may involve testing or trial operations as well as permanent operations.

(h) As to the planning operations and the changes which might occur because of planning operations, in any agreement with Operator or any other operator, Commission shall reserve to WisDOT, itself and the governmental entities along the Rail Line the right to do such planning and to provide for relocation of facilities, including Improved Property and the elimination of certain trackage, buildings and other facilities, in order to carry out the determinations arrived at from such planning. The Commission shall reserve to itself and WisDOT, the right to negotiate the contract as to such matters, but may do so on the condition that Operator be given notice and the opportunity to act as a participant or an observer at any such negotiations and that the following factors are controlling insofar as they affect Operator: Commission shall require Operator to agree that it will cooperate in implementing any agreements made by WisDOT or Commission as to the matters set forth in this subsection providing that the alternate facilities made available to Operator are approximately equal to those released by Operator; and, that the cost of these changes shall not be imposed on Operator. No change shall interfere with Operator's duty to provide service unless Operator and Commission agree to such change.

(i) It is understood that no lease money or sale receipts are to accrue to Operator in the event of any sales or leases of Land or Improved Property.

(j) Commission shall require Operator to receive a written permit from WisDOT before Operator itself provides passenger rail service. This section does not limit Operator's ability to provide freight services. 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 for the passenger operation on the Rail Line. WisDOT in consultation with Commission may grant or deny a permit based solely upon any of the following: adequacy of liability insurance coverage, terms and amount as set forth in Section 6.2 below; trackage condition; proposed speed of operation; preparations for crowd control, parking and clean-up; and sufficiency of consumer protection assurances associated with each use by Operator of any portion of the Rail Line subject to this Agreement to be operated over by Operator or by an affiliate, subcontractor or lessee of Operator. The permit may be denied if not requested in writing a minimum of ten days prior to the proposed use date, or if a fully executed copy of an acceptable certificate of binding insurance is not submitted for Commission and WisDOT review ten days prior to the proposed use date, or if insurance coverage is inadequate or flawed in the reasonable judgment of Commission or WisDOT, or if a prior fee remains unpaid in whole or in part.

ARTICLE 3.0 - RENT.

Commission shall be permitted to charge Operator a lease or rental fee for use of the Land and Improved Property, and all other rights and privileges granted Operator under the Operating Agreement.

ARTICLE 4.0 - REVENUE DIVISIONS, TRackage RIGHTS, INTERCHANGES AND COORDINATION WITH OTHER LINES.

Section 4.1 - Division of Revenues and/or Switch Fees.

Commission shall receive assurances from Operator that Operator has made necessary and satisfactory arrangements for divisions of revenues and/or switch fees as are needed with all connecting railroads. Such assurances shall show that Operator has obligated itself to make arrangements for division of revenues and/or switch fees as are needed if there are other interchange points needed for proper operation of the Rail Line and Commission shall require Operator to furnish Commission and WisDOT documented evidence of such divisions and/or switch fees after being obtained.

Section 4.2 - Trackage Rights.

(a) Commission and Operator have the responsibility for obtaining the necessary trackage rights required to permit the operation over the Rail Line that is required to perform the necessary freight rail service for shippers along the Rail Line. Commission and Operator shall use their best efforts to obtain such rights or to purchase such additional trackage and land or both as are necessary to provide access by Operator to the Improved Property. This section shall not be construed to require Commission to expend funds, or acquire property or rights. Commission shall require Operator to file all trackage rights agreements with the STB as may be required by law.

(b) Commission shall require Operator to furnish Commission and WisDOT copies of trackage rights or lease agreement(s) allowing Operator to operate over:

- i. UP property between Cameron and Norma. .
- ii. Such other railroad property as is or as may become necessary to operate the Rail Line.

Section 4.3 - Interchange Agreements.

It is recognized that Operator may enter into interchange agreements and/or switch agreements with UP or other railroad companies in order to facilitate the service to the Rail Line. Commission shall require Operator to supply WisDOT and Commission with documented evidence of the interchange agreements and/or switching agreements and any amendments thereto after obtaining the same.

Section 4.4 - Interline Divisions.

(a) Commission shall require Operator to adhere to and comply with Railway Accounting Rules of the Association of American Railroads in dividing revenues, among participating carriers on freight moving under through rates where PGR is a participant in the route. Commission shall require Operator to covenant and agree to make such divisions at the time and in the manner provided herein.

(b) Commission shall require Operator to remain current on its financial obligations to connecting railroad companies.

ARTICLE 5.0 - RAILROAD OPERATIONS.

Section 5.1 - Authority to Operate.

(a) Commission shall require Operator to obtain or maintain the requisite operating authority from the STB for the railroad operations and to keep such authority in full force and effect throughout the term of their Agreement. Commission shall require Operator to make all required filings and reports to the STB and the Wisconsin Office of the Commissioner of Railroads.

(b) Commission, or Operator, has or shall acquire and maintain a permanent exclusive Operating Easement for freight railroad service and the associated STB common carrier obligation to fully exercise its Operating Easement over the Principal Line Segments and provide shippers with common carrier freight railroad service. Commission shall contract with Operator for Operator to exclusively control, manage, staff and plan for the provision of freight rail service on the Principal Line Segments. Commission shall contract with Operator for Operator to provide exclusive originating and terminating freight rail service on the Principal Line Segments, including line-haul and switching services to shippers, pursuant to Operator's permanent exclusive Operating Easement. As a part of its operation, Operator shall have power to effect such additions, changes, betterments,

and repairs to the Improved Property as Operator may, in its judgment, deem necessary, expedient or proper to assist or improve rail service over the Principal Line Segments. Operator shall coordinate with Commission regarding any such additions, changes, betterments, and repairs. Commission shall grant Operator the authority to adopt and promulgate rules governing access to, use of, and operation of the Land and Improved Property.

Section 5.2 - Agreement of Commission to Provide for Operations, and Agreements and Covenants as to Commission and Operator.

The Commission agrees to provide, through contractual agreement with Operator, freight rail service on the Rail Line. Provision of rail service shall include but not be limited to:

(a) Service. Operator shall provide revenue freight rail service to current and future shippers and receivers connected to or on the Rail Line including provision of rail cars made available by connecting carriers or supplied by Operator, switching, line haul and other related services and including bridge traffic. Current and future shippers and receivers connected to or on the Rail Line shall be provided freight rail services upon the same terms and conditions as such service is provided to other shippers and receivers served by Operator, or as otherwise agreed between Operator and any shipper or receiver. Failure to provide minimum service required or agreed to hereunder or required under Section 7.10 shall, at WisDOT's option, require Commission to find Operator in default of the Operating Agreement between Commission and Operator.

(b) Maintenance. Commission shall perform or cause Operator to perform all maintenance of the Rail Line including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the Land or Improved Property reasonably necessary for the safe operation of freight rail service or any other service provided by Operator. Tracks shall be maintained to FRA Class II standards, or to a standard determined by WisDOT after consultation with Operator, as of an inspection date prior to sixty (60) days following the Commencement Date. Upon its completion, a list of line segments that shall be maintained to FRA Class II standards and a list of line segments that shall be maintained to FRA Class I standards shall be included as Attachment 3 to this Agreement. Any Principal Line Segment that has been rehabilitated as part of a WisDOT assisted project after the date of this Agreement shall be maintained to the WisDOT maintenance specifications specified as part of the contract covering WisDOT assistance to that rehabilitation project. In the event of a dispute between Operator and WisDOT as to the condition of the trackage following the inspection referred to above, Operator and WisDOT shall jointly request FRA to determine the FRA track safety classification. Bridges shall be maintained in compliance with Chapter 7, Part 3 of the Manual for Railway Engineering, as amended, published by AREMA. Operator may be declared in default, as hereinafter provided, or in the case of buildings, may lose the right of possession and occupancy, if a deviation from the applicable maintenance standards or local and state building codes remains uncorrected for more than ninety (90) days after notification of the deviation as hereinafter provided or if Operator has not diligently commenced to correct such deviation within the 90 day period. Operator is prohibited from using trackage located in sidetracks, sidings or other location as maintenance material unless prior written permission to do so is

requested from and first granted by WisDOT. Compensation to WisDOT or Commission from Operator for materials used with or without permission may be required by WisDOT. Any costs of trackage installed on or funds expended for maintenance of any portion or component of the Rail Line under the jurisdiction of Commission or Operator by grant from WisDOT that is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by WisDOT upon sale of the Rail Line or transfer of operating rights over the trackage to another operator.

(c) Safety and Other Inspections. 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 of WisDOT or Chief of the Railroads and Harbors Section of WisDOT and representatives of Commission authorized by Commission chairman to accompany the inspector. Operator shall provide WisDOT access to all documents related to any inspection by any governmental or insurance agency. Operator shall upon reasonable notice during normal business hours permit inspection of the Rail Line, the rolling stock and maintenance equipment, and the operating and maintenance practices of Operator and Operator's affiliates performing work on the Rail Line, by WisDOT or its agents or Commission. Operator shall furnish Commission and WisDOT with copies of all inspection reports from federal agencies or insurance agencies and safety orders from federal agencies or insurance agencies and shall furnish WisDOT and Commission any like reports and orders from the Wisconsin Office of the Commissioner of Railroads.

(d) Equipment. Operator shall provide and maintain at its own expense all suitable locomotives, cars and other rail equipment as are necessary in the operation of this freight rail service. Operator shall be solely responsible for and shall provide all tools and other equipment necessary to properly maintain the operating equipment, Improved Property, and Land on the Rail Line.

(e) Operating Personnel. Operator shall obtain and maintain the necessary personnel for operation and management of its operations over the Rail Line. Said personnel shall be under the sole control and direction of Operator. It is understood and agreed that no personnel of Operator are agents, employees, servants or subcontractors of WisDOT or Commission. All such personnel shall be qualified and properly trained for such service, but this shall be the sole responsibility of Operator.

(f) Accounting Services. Operator shall 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 Commission and their agents to all documents related to the business operation of Operator including, but not limited to, agreements for leases, loans, revenue divisions and records of rail traffic, receipts and expenditures.

(g) Use of Property. Operator shall have use of all the Land and Improved Property under the ownership or control of Commission, including buildings, which are reasonably required for the operation of the Rail Line, and shall perform its common carrier obligations as required by law. This shall not, however, negate any reservations held or any actions taken by Commission or WisDOT under the reservations set forth in

Section 2.2 of this Agreement. Operator shall provide maintenance and upkeep for any such buildings. In the event it becomes desirable to construct buildings or other structures on the Land, the same may be constructed by Operator at its expense, subject to WisDOT's approval. Improvements made and financed by Operator may be leased or otherwise made available to customers of Operator for appropriate compensation, which shall be included in gross operating revenues. Except as provided herein, Operator shall have no authority to enter into easements, permits, licenses, leases or subleases affecting the Land or Improved Property whether under the use of Operator or outside the use of Operator. Commission understands that any agreement for leasing Land is subject to the Land Use Agreement as to securing authority and approval from WisDOT and as to the division of rents.

(h) Promotion of Business. Operator shall use its best efforts to promote the use of freight rail services by customers located along the Rail Line and in the immediate vicinity and agrees to diligently seek new freight rail business and customers for such services.

(i) Use of Land or Trackage as Collateral. Neither the Land for which a license to use is granted nor the Improved Property the use of which is granted under this Agreement shall be used by Commission or Operator in any form or amount as equity, security, or collateral for any borrowing or other means of raising capital by Commission or Operator or as collateral for any other purpose.

(j) Public Order. Operator shall assume full responsibility for preserving public order upon the subject property and for resolving matters concerning trespass upon or from the Land and Improved Property adjacent to private lands. Operator may adopt and enforce any necessary rules in accordance with Section 5.1(b) in order to protect the Rail Line. Operator shall have the right to post signs and erect barricades necessary to delineate the Rail Line as railroad property and to prevent entrance upon the subject Rail Line by unauthorized vehicles or individuals.

(k) Fencing. Operator shall assume such responsibility as may exist to third parties for providing fencing required under Chapter 90, Wis. Stats., local ordinance or contract.

(l) Vegetation Control. Operator shall assume such responsibility as may exist for the eradication, control and removal of vegetation as required by applicable state law or local ordinance.

(m) Crossing over Waters and Drainage Systems. Operator shall assume full responsibility for the ordinary repair and maintenance of all culverts, trestles and bridge structures on the Rail Line.

(n) Highways and Streets. Operator shall assume full responsibility on the Rail Line for the maintenance of trackage, warning devices, and railroad highway crossings whenever crossing maintenance is required by law from Commission or Operator.

(o) Private Crossings. Operator may, according to applicable statutory provisions, abrogate any private crossing established by agreement, which interferes substantially

with Operator's performance of freight rail services. Operator shall obtain authorization from WisDOT and, if necessary, the Office of the Commissioner of Railroads, prior to permitting any additional private crossings.

(p) Maintenance Plan.

- i. Commission shall prepare or cause to be prepared an annual maintenance plan for the Rail Line. This plan shall be combined with like plans for any and all other rail lines provided to Operator by any other rail transit commission existing in Wisconsin. The plan shall be prepared in consultation with WisDOT and shall be fully completed and delivered by Operator to WisDOT for WisDOT review and reasonable approval not later than February 1 of each year. 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.
- ii. A maintenance plan shall not be eligible for WisDOT approval unless the sum of expenses and the capitalized maintenance expenditures called for in the plan during each calendar year are a minimum of 10 percent of Gross Operating Revenues. Notwithstanding the above, in the event maintenance is required to meet the track classification levels required under Section 5.2(b), sufficient funds to achieve the classification level required shall be expended. The Plan or modification shall be revised and resubmitted within 30 days following a WisDOT request so as to overcome the deficiencies, if any, identified by WisDOT.
- iii. Commission or Operator shall respond to inquiries from WisDOT concerning Operator's implementation of the approved Maintenance Plan. Operator shall provide WisDOT with a revised Maintenance Plan within 10 days following WisDOT's request for revisions following a review in accordance with Section 5.2(b).

(q) Liens Against Rail Line. Neither Commission nor Operator shall 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, except as expressly approved in writing by WisDOT. 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.

(r) Rail Banked Lines. The obligation of Operator under this and other sections of this Agreement shall not apply to Principal Line Segments classified as rail banked lines.

ARTICLE 6.0 - LIABILITY AND INSURANCE.

Section 6.1 - Hold Harmless.

Except to the extent that the same arises from or is related to co-uses permitted by WisDOT pursuant to Section 2.2(g) above, 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 Operator, or its agents, servants, subcontractors, officers 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 WisDOT 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 liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to any other persons, whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of WisDOT) under Federal or State statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the 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 whatsoever. Commission shall cause Operator, at Operator's own expense to investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

Section 6.2 - Insurance.

(a) Required Coverage. During the term of this Agreement, Operator shall maintain, at Operator's own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$25,000,000 per any one accident, or other form approved by WisDOT. WisDOT and its officers, employees, and agents shall be named as additional insureds under such policy. Operator shall maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Further, Operator shall carry

fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All such insurance shall cover Commission, Commission's member counties and WisDOT to the extent of their ownership in any of said properties and to include under such coverage buildings, and trackage owned by WisDOT and Commission and leased to Operator, even though some of said buildings or structures might not be included in the property used by the Operator, except that coverage need not be maintained on improvements sold, leased, licensed or otherwise disposed of by WisDOT or Commission to any third party. Items of coverage for WisDOT may be waived by a letter from WisDOT to the Commission and Operator.

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

(c) Self-Insured Retention. It is understood and agreed that the Comprehensive Railroad Liability Policy to be obtained and kept in force by Operator may contain a self-insured retention. The figure of \$25,000 per any one accident is hereby approved as the self-insured retention. Operator shall be required to confer with Commission and WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer. It is a condition of this Agreement that Operator shall be required to annually provide Commission and WisDOT with a written opinion, or footnote disclosure of an independent auditor indicating the financial capability of the Operator to be sufficient to satisfy the self-insured retention.

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

(e) Self-Insured Retention Set Aside. Operator shall, within 30 days after receiving a claim or notice of claim alleging an incident or after being notified of a claim or notice of claim being received by Commission, a member county of Commission, or a WisDOT employee alleging an incident, set aside a separate, segregated reserve for each claim, including claim defense. The reserve fund set aside for each claim and for its defense shall be determined by Commission's counsel, Operator's counsel and WisDOT's counsel. If the counsels are unable to agree, they shall select a fourth party to make the determination. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to claims, Operator shall provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position. In the event that the ratio of Operator's current assets to current liabilities, including claim reserves, as determined from General Ledger Trial Balance sheets filed with Commission and WisDOT within 45 days after the end of each quarter is less than 1.1 to 1 as determined by WisDOT, Commission shall reserve the right in its Operating Agreement with Operator to find the Operator in default in accordance with Section 7.1 below. Upon receipt of such notice of default Operator shall have the right to cure said default by (i) purchasing, at its own cost and expense, such insurance as WisDOT and Commission shall deem necessary in their reasonable judgment or by (ii) causing the equity owners of Operator to contribute such additional amounts to the capital of Operator as are required to increase such ratio to 1.1 to 1.

(f) Review and Modification of Liability Insurance. The coverage limits of Operator's Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review by Commission and WisDOT no more than once every twelve months. Modifications to self-insured retention amounts shall be governed by Section 6.2(c) herein. Modifications increasing coverage limits shall be effective upon notice by WisDOT to Commission and Operator. Any modifications decreasing coverage limits may not, in any event, reduce the requisite insurance coverage below that required under Section 6.2(a) herein and shall be effective only upon WisDOT approval and upon amendment to this Agreement. Review of liability insurance shall be conducted by Commission, Operator, and WisDOT no less than 30 days prior to the expiration date of the policy then in force, except that a special review may be conducted in the event Operator experiences a cancellation of or a modification or a refusal to renew its liability insurance. Such special review shall be governed solely by Section 6.2(f), (iv), (v), and (vi) herein. The following conditions shall apply to the review and modification of Operator's Comprehensive Railroad Liability Insurance:

- i. WisDOT may require Operator to expend up to a fixed percentage of Operator's Gross Revenue, as determined under Sections 6.2(f)(ii) and 6.2(f)(iii) herein, to purchase comprehensive railroad liability insurance covering the liability as is required and naming the additional insureds as is required under Section 6.2(a) herein. Operator's decision to obtain insurance beyond that which is required under Section 6.2(a) herein for any aspect of coverage shall not result in Operator purchasing any less insurance coverage for any other aspect of coverage required under Section 6.2(a) herein.

- ii. A base percentage of Gross Operating Revenue expended for the purchase of comprehensive railroad liability insurance is established for the duration of this Agreement at 4% of Operator's Gross Operating Revenue for the Operator's most recent fiscal year, as determined by independent audit. Commission or WisDOT may require Operator to expend up to an amount equal to 150% of the base percentage, which amount is 6% of Gross Operating Revenues, for comprehensive railroad liability insurance. The amount of liability insurance coverage purchased by this sum shall be maintained in force by Operator until next modified under the terms of this section.

At no time, however, may this base percentage or the review and modification procedure established under Section 6.2(f) herein be used to reduce the requisite insurance amounts and coverages below that required under Section 6.2(a) herein. -Those insurance requirements stated in Section 6.2(a) herein are minimal requirements and shall be met regardless of the base percentage of Gross Operating Revenue calculation or of the review and modification procedures described in this section.

- iii. The amount of the increase, if any, in the Operator's expenditure for liability insurance required by Commission or WisDOT may be used to adjust coverage limits or self-insured retention limits or both and shall only be required upon the approval of the increase by two of the following three entities: Commission, Operator, and WisDOT. In the event one of these three entities takes a position on the approval of the required increase contrary to the other two, the entity holding the minority position may require the required increase to be subject to arbitration through the use of the American Arbitration Association and its procedures. The arbitrator shall determine what liability insurance coverage is sufficient for (1) the reasonable and full compensation of the public and persons who may be injured or damaged, (2) the protection of the interests of the Commission, WisDOT, and Operator, and their officers, employees, and agents, including their interests as indemnities and for contribution, in the event of property damage, personal injury, or other loss that may occur, and (3) the availability of that coverage to the Operator in the insurance market place pursuant to the limitations established under Section 6.2(f)(ii). The arbitrator shall then determine the amount of expenditure increase that is reasonably necessary to acquire the liability insurance coverage the arbitrator has so determined to be sufficient. In determining the amount of expenditure increase, the arbitrator is limited to the expenditure level increase required by the majority of the three entities, or the one proposed by the minority entity, neither of which shall exceed the increase allowed under Section 6.2(f)(ii). The arbitrator's determination shall be final and binding on Commission, WisDOT, and Operator as to the amount of the expenditure

increase required. The arbitrator shall render a decision within 30 days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than 50 days prior to the expiration of the insurance coverage then in effect. The cost of arbitration shall be paid equally by Commission, Operator, and WisDOT.

- iv. Operator shall at a minimum expend such amounts as may be required to maintain liability insurance coverage limits no less than that in force at the time of review.
- v. Commission, WisDOT, and Operator shall establish the coverage level to be obtained by Operator and shall amend this and companion agreements in accordance thereto in the event insurance coverage limits in effect at the time of the review cannot be maintained due to the refusal by insurance carriers to issue a policy of insurance at that coverage limit to Operator.
- vi. In the event the three entities are unable to reach a common position on the amount of insurance coverage to be obtained, under Section 6.2(f)(v) herein, any one of them may require arbitration in accordance with Section 6.2(f)(iii) herein to determine the required amount of insurance coverage.
- vii. Notwithstanding any other provision regarding insurance contained herein, Operator shall, at a minimum, obtain and maintain liability insurance coverage and limits no less than that required now or in the future by the laws of the State of Wisconsin and no less than that required now or in the future by the laws or regulations of the federal government or its agencies, naming WisDOT and Commission and their officers, employees, and agents as additional insureds.

Modification to the comprehensive railroad liability insurance limits for excursion operations shall be established by Commission, Operator and WisDOT under the process set forth in Section 6.2(f)(iii) herein, but in no event shall the coverage limit be less than \$25,000,000 per any one accident, or other form approved by WisDOT, or the coverage limit then in effect for freight operations, whichever is greater.

ARTICLE 7.0 - TERMINATION OR SUSPENSION.

Section 7.1 - Declaration of Default.

(a) Default. A condition of default exists (1) when either party to this Agreement fails to abide by or perform in a material respect any one or more of its terms and conditions, (2) when Operator's insurance coverage lapses, is suspended, is canceled, or

fails to satisfy all the terms and conditions of Section 6.2 of this Agreement or any amendment thereto, or (3) when Operator files for protection under any bankruptcy statute. In the event of default on the part of the Commission, the right of recovery against the Commission or against any of the municipal bodies (counties) that are a part of the Commission shall be limited to the right of WisDOT to re-enter and to take possession and reclaim title to the Improved Property that is the subject of this Agreement. It is further agreed by the parties that in no event shall the Commission or the municipal bodies that make up the Commission be liable for any damages should the liquidation of the property as a result of such re-entry and reclaiming of title result in a loss to WisDOT. A delinquency in payment shall not be considered a default if the party responsible is making a diligent effort to perform its obligations hereunder. Notwithstanding this provision, the Commission shall require in its agreement with Operator that Operator may not terminate service until it obtains authority from the STB to discontinue service or WisDOT or the Commission obtains authority from the STB for the adverse discontinuation of Operator's service.

(b) Notice of Default. A declaration of default shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 13.2 below. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice of default or the date required insurance coverage ceased or the date of filing for bankruptcy protection, whichever occurs first.

Section 7.2 - Termination for Default.

In the event of any default described in Section 7.1 above, the non-defaulting party shall have the right to and at its option may, after first giving the required notice to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof or concurrent breach, terminate this Agreement, unless the breach is cured within the period set forth in Section 7.3 below, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages whether arising under this Agreement or otherwise.

Section 7.3 - Ability to Cure Default.

(a) Removal of Commission or Operator Default. Commission shall have thirty (30) calendar days from written notification by WisDOT of default by Commission or Operator or from the date required insurance coverage ceased or from the date Operator filed for bankruptcy, whichever occurs first, to remove the cause of the default. Such correction shall be completed and available for WisDOT review within the thirty (30) day period. Upon written petition by Commission or Operator, WisDOT may extend the period for removal of a default condition. Such extension shall only be given in writing and may not be unreasonably withheld. If the remedial action is satisfactory, WisDOT shall provide appropriate written notice to Commission and Operator.

(b) Removal by Operator of Commission Default. If for any reason Commission is in default of an agreement with WisDOT, Commission shall so notify Operator, and Operator shall have such time as WisDOT allows in writing from the date of notification of

Commission to remove the default on behalf of Commission and shall have the right to quiet enjoyment of the Land and Improved Property within the allowed time period until the condition of default is resolved.

Section 7.4 - Contractual Obligations Upon Termination.

Except as otherwise agreed to by the parties in writing, the obligations of Commission to WisDOT to provide freight rail service and to maintain the Land and Improved Property under this Agreement shall cease as provided for in the following Section 7.9, but all other obligations of the parties shall remain in full force and effect until all operations of Commission and Operator hereunder have been terminated in accordance with this Agreement. Both parties agree to make reasonable efforts to satisfy their surviving obligations promptly after termination. Upon termination, however, Commission's rights as grantee and Operator's rights as a lessee of the Improved Property and its lease and license to use the Land and Improved Property shall cease in accordance with Section 7.8 and 7.9.

Section 7.5 - Termination Approvals.

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

Section 7.6 - Bankruptcy of Operator.

If any proceeding shall be commenced by or against Operator for any relief which includes, or might result in, any modification of the obligations of Commission or its Operator hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), it may be declared cause for default and said contract may be terminated upon 30 days notice by WisDOT to Commission. If all the obligations of Operator hereunder shall not have been and shall not continue to be duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Operator, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within thirty (30) days after proceedings shall have been commenced, it may be declared cause for default. Arrangements may be made in such event by Commission with the trustee or bankruptcy court for continuation under such terms as agreed to by Commission and WisDOT.

Section 7.7 - Return of Property Upon Bankruptcy Default.

If this Agreement terminates pursuant to Section 7.6, Commission shall require Operator to forthwith deliver possession of the Land and Improved Property to Commission at such time as the STB discontinuance authority is effective. Land and Improved 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 owned by Operator and for which Commission or WisDOT has not made a specific request for it to remain with the property.

Section 7.8 - Vacating the Rail Property; Discontinuance of Service.

(a) Upon determination by WisDOT that Commission is in default of its obligations under this Agreement and that Commission's remedial actions, if any, have not removed or cured said default, WisDOT may provide written notice to the Commission terminating Commission's rights under this Agreement and directing Commission to vacate the Principal Line Segment(s). Commission shall be required to vacate the Principal Line Segment(s) within 20 days of receiving written Notice to Vacate from WisDOT. Default by the Commission shall not affect with Operator's permanent exclusive Operating Easement or common carrier obligation without requisite STB discontinuance authority.

(b) Upon determination by WisDOT or Commission that Operator is in default of its obligations under this Agreement and that Operator's remedial actions, if any, have not removed or cured said default, WisDOT and/or Commission may immediately notify Operator to seek authorization from the STB to discontinue service over the Principal Line Segment(s). If the Operator does not initiate discontinuance proceedings within 30 days of receiving said notice, WisDOT and/or Commission may initiate an STB proceeding seeking adverse discontinuance of Operator's authority to operate over the Rail Line. Operator shall vacate the Principal Line Segment(s) within 20 days of the effective date of a final, non-appealable STB decision authorizing discontinuance of service, or in the event of an appeal, a final non-appealable court decision.

Section 7.9 - Obligations of Commission in the Event of Termination.

Commission shall cause Operator to agree that in the event of termination Operator will mitigate the expenses of termination to the greatest extent possible. If there is any unused material in the hands of Commission or Operator at the time of termination belonging to WisDOT or in which WisDOT has an interest arising out of a rehabilitation program where funds of WisDOT have been expended to pay for materials or materials otherwise have been paid for by WisDOT or partially paid for by WisDOT, Commission and Operator shall set such material aside on property belonging to WisDOT. In addition to all other obligations in the event of termination, Operator shall remove all released cars from the Principal Line Segment(s) within 10 days following the effective date of a final non-appealable STB decision authorizing discontinuance of service, or in the event of an appeal, a final non-appealable court decision and shall vacate and deliver all cars to or from shippers on the Principal Line Segment(s), which are in transit to, or from any source.

Section 7.10 - Service Failure.

(a) Failure to provide freight rail service to any station on a Principal Line Segments 1 or 2 of the Rail Line is defined as:

- i. The unavailability of freight rail service for 10 consecutive days to any station on such Principal Line Segment, or
- ii. The availability of an average of less than one train per week for a consecutive 12 week period to any station on such Principal Line Segment, or
- iii. The failure to move any revenue freight car loads for 12 consecutive months over such Principal Line Segment.

(b) Failure to provide freight rail service on Principal Line Segment 3 for 24 consecutive months shall be defined as a service failure.

(c) In the event Operator fails to provide freight rail service, as defined above, (except to the extent contemplated by Section 5.2(a)), on any Principal Line Segment(s), Commission shall at WisDOT's option pay to WisDOT an amount computed according to the terms of Section 8.3 of this Agreement or return ownership of the project property to WisDOT. Parties acknowledge that Operator may not discontinue service on any portion of the Rail Line without STB authorization. Notwithstanding the foregoing, in the event that Operator, Commission, and WisDOT agree in writing that a Principal Line Segment or Principal Line Segments need not be operated over, or if service is temporarily suspended on a Principal Line Segment or Principal Line Segments pursuant to Sections 7.11 or 7.12 below, lack of service on such Principal Line Segment(s) shall not constitute a failure by Commission or Operator to provide freight rail service as defined in this section.

Section 7.11 - Immediate Suspension of Rail Operations.

Upon emergency notice from Commission, RHS, or WisDOT Division of State Patrol (by telephone and later confirmed in writing), Commission shall require Operator to cooperate in using its discretion to 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 canceled for any reason, or is less comprehensive than is required under Section 6.2 of this Agreement. Operation of trains and motive power by Operator shall at its discretion remain suspended until the president or general manager of Operator is contacted by Commission and WisDOT and until the safety hazard is ameliorated and 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 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 or Commission as a sufficient reason for suspending operations. When the FRA is called upon, operations shall be suspended until such determination is made by FRA. In the event of any service suspension having an

expected duration of at least 24 consecutive hours, Operator shall be required to file an embargo notice with the Association of American Railroads.

Section 7.12 - Force Majeure.

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation, except the unavailability of insurance coverage in full accordance with Section 6.2 of this Agreement or any amendment thereto: acts of God; strikes or other labor troubles; other causes beyond the reasonable control of the parties; interruption of service caused by explosion, fires, vandalism; or malicious mischief; or unavoidable interruption or cessation of service for a period of less than 120 days caused by a connecting railroad. Operator shall not be required to operate with liability insurance coverage levels less than those set forth in Section 6.2, but may be declared in default for non-compliance with Section 6.2.

ARTICLE 8.0 - DISPOSITION OF PROPERTY AND PROCEEDS.

Section 8.1 - Option to Purchase.

(a) Operator shall have the right to exercise an option to purchase the Land and Improved Property at any time after the start-up of operations under the provisions of Wis. Stat. § 85.09(4). This right shall exist throughout the term of the Operating 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 Rail Line (unless the parties hereto agree otherwise) and the purchase price for the Rail Line shall be the greater of fair market value or the total cost invested by both WisDOT and Commission. Fair market value shall be determined by appraisal.

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

- i. 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.
- ii. 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 8.3.

(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 the Land and Improved Property on certain Principal Line Segments shall be held by WisDOT, and WisDOT shall relinquish said title upon settlement herein. It is further understood that title to the track and other improved facilities on certain Principal Line Segments are with the Commission, and therefore, the Commission shall have the authority to relinquish its property rights upon settlement herein subject to Commission's compliance with its obligation to compensate WisDOT upon sale of the property.

Section 8.2 - 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 Rail Line 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.

(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 Commission, WisDOT, and Operator.

Section 8.3 - Apportionment of Proceeds.

(a) Conceptual Basis. WisDOT, Commission and Operator have invested in the acquisition of the Improved Property. Furthermore, Operator accepts the obligation to physically maintain the Land and Improved Property so as to maintain its value. Over time, three results are possible: (1) Operator invests in maintenance sufficiently to retain the value of the Land and Improved Property, or (2) Operator, in violation of the terms of this Agreement, under-invests in maintenance thereby reducing the value of the Land and Improved Property, or (3) Operator, on its own initiative, over-invests in maintenance, thereby either maintaining, reducing or enhancing the value of the Land and Improved Property. In the event of liquidation of the Land and Improved Property, WisDOT, Commission 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, as shown in Attachment 4.

(b) Computation. The Investment Basis of WisDOT, Commission and Operator shall be defined as the total financial contributions of each to the cost of acquisition, and rehabilitation of the Improved Property, and the cost of construction of new Improved Property for which grant funds are expended. For the purposes of computing the Investment Basis of the Improved Property, the initial investment of each party is as follows: (1) WisDOT -\$ 480,000 for the Cameron to Rice Lake and Cameron to Barron line segments for a total initial investment of \$ 480,000; (2) Commission -\$ 120,000 for the Cameron to Rice Lake and Cameron to Barron line segments for a total initial investment of \$ 120,000; and, (3) Operator -\$ 0. Therefore, as of the date of this Agreement, the Investment Basis for Improved Property for each party is as follows: (1) WisDOT is \$ 480,000; (2) the Commission is \$ 120,000; and, (3) the Operator is \$ 0. Upon termination of the Grant Agreement, the basis of WisDOT, Commission and Operator shall be calculated as follows:

- i. No more than 60 days following the closing of a sale of any Improved Property by Commission or the failure by Commission or Operator to remove a condition of default, the gross salvage value of the Improved Property on the Rail Line or any portion thereof subject to the default shall be determined in accordance with Section 8.1(f) of this Agreement.
- ii. The estimated costs of liquidation, which include both direct salvage operation costs and WisDOT administrative costs, shall be deducted from the appraised value.
- iii. WisDOT's, Commission's and Operator's percentage share of the Improved Property shall be determined by dividing each party's respective Investment Basis in the Improved Property by the total Investment Basis.
- iv. Each party's share of any proceeds from the sale of any Improved Property shall be determined by multiplying that party's percentage share of the Improved Property by the net liquidation value of the Improved Property. WisDOT shall receive 100% of the net

liquidation value of the Land. Neither Commission nor Operator shall receive funds from the liquidation of the Land inasmuch as neither has invested its own funds in the acquisition.

- v. In the event the property is liquidated, the net proceeds of the liquidation are used in place of appraised value in steps (i) through (iv) except that the estimated costs of liquidation, which include both direct salvage operation costs and WisDOT's administrative costs, shall not be deducted from the net proceeds of the liquidation under step (ii).

(c) Any property installed or funds expended for maintenance of any portion or aspect of Rail Line 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 Improved Property or transfer of operating rights on the property to another agency or operator.

Section 8.4 - New Improved Property.

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

ARTICLE 9.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.

Section 9.1 – WisDOT.

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

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

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

Section 9.2 - Commission.

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

(a) Commission was created pursuant to Wis. Stat. § 66.0301 (formerly 66.30), for the purpose of establishing, acquiring, maintaining, and operating a local transportation system. As a Section 66.0301, Wis. Stats. Commission, it has full power and authority to enter into an agreement such as this Agreement and to carry out the functions, which it has obligated itself to undertake in this Agreement. This Agreement has been authorized and approved by the Board of Directors of Commission.

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

ARTICLE 10.0 - REPORTS AND ACCOUNTS.

Section 10.1 - Reports.

(a) Commission shall cause Operator, to present for review the following information to Commission and WisDOT with 45 days after June 30th and December 31st of each year:

- i. An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance;
- ii. A summary of originating and terminating traffic by commodity, by Principal Line Segment, and by month;
- iii. A statement of major traffic gains or losses and a summary of operating and maintenance activity by Principal Line Segment; and
- iv. A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight,

including, but not limited to, building rent, excursion trains, car repair revenues and the like. The report shall describe the amounts received and the duration of the period for which the income is received and the payer.

(b) Commission shall cause Operator to submit the following reports to WisDOT:

- i. Independently audited financial statements for each year ending December 31, to be submitted on or before September 30 each year;
- ii. A certificate of insurance submitted on or before each insurance coverage renewal date appropriately showing that all the terms and conditions of Section 6.2 of this Agreement are fully met;
- iii. Appropriate documentation showing any changes in operating status or authority 30 days prior to its effective date; and
- iv. Immediate notice of damage or injury to persons or property as required under Section 6.2 of this Agreement.

Section 10.2 - Accounts.

(a) Commission shall cause Operator to establish and maintain a system of accounts on an accrual basis of accounting or as otherwise approved by WisDOT.

(b) Commission shall cause Operator to make available to WisDOT's auditors or agents, or auditors of any other governmental agency having jurisdiction over Operator, the records related to the accounts and reports identified under this Article.

Section 10.3 – Program Income.

(a) Revenue received by the Commission may be retained to meet Commission's operating expenses, repay WisDOT's investments in the Improved Property or purchase the Land from WISDOT. Appropriate accounting records shall be kept of all receipts and disbursements of Commission revenue and these accounts shall be open to inspection and audit by WisDOT.

(b) Revenue received by the Commission may be retained to meet the matching requirements for state or federal assistance, for repayment of loans it has secured to provide railroad service on the lines, and for capital improvements to the property. Commission revenue may not be used for any purpose not permitted under Chapter 49 Code of Federal Regulations Part 266.

(c) This section is subordinated to any requirements concerning Commission revenue set forth in a financial assistance agreement using federal funds.

(d) The Commission shall establish an annual financial report date of December 31, and on each anniversary thereafter shall prepare and review an independent,

written financial report of the revenue account. Accumulated revenue in the account, which is not obligated by agreement for purposes set out under Section 10.3(a), Section 10.3(b), and Section 10.3(c) herein shall be declared surplus as of the audit date. Such surplus may remain undistributed and be used for purposes set forth under Section 10.3(a), Section 10.3(b), and Section 10.3(c) herein. No Commission revenue may be used for any purpose other than those set out under Section 10.3(a), Section 10.3(b), and Section 10.3(c) herein unless prior written approval is granted by WisDOT.

ARTICLE 11.0 - TAXES.

As of the date of the Operating Agreement, unless waived or abated, Commission shall require Operator to be responsible for and pay when due, all taxes due as a result of its possession and use of the Rail Line or its assets including possession of real and personal property as well as for all taxes due on property owned by Operator. Operator shall be required to hold Commission and WisDOT harmless from, indemnify against and defend all claims and liabilities with regard thereto.

ARTICLE 12.0 - OTHER COMMITMENTS.

Section 12.1 - Handicapped.

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

Section 12.2 - Environmental Protection.

(a) Commission agrees and shall cause Operator to agree that facilities or equipment shall not be acquired, constructed or improved as a part of its operations unless such facilities or equipment are designed and equipped to comply with all applicable environmental requirements, and that all operations conducted under this Agreement will be done in compliance with all applicable environmental requirements.

(b) Commission hereby certifies and shall cause Operator to certify that no facilities, which will be utilized or improved as a part of its operations, are listed on any state or federal list of violating facilities.

(c) Commission stipulates and shall cause Operator to stipulate that it will notify WisDOT as soon as it or any subcontractor receives any communication from a state or federal agency indicating that any facility, which will be utilized or improved as a part of its operations, is under consideration to be included on any state or federal contaminated property list.

(d) It is understood and agreed by Commission that no publicly-owned land from a public park, recreation area, or wildlife or water fowl refuge, as determined by the Federal, state or local officials having jurisdiction thereof, or any land from a historic site of

national, state or local significance, as so determined by such officials, may be used for operations without the prior concurrence of the administrator of the EPA and the State Historical Preservation Officer.

Section 12.3 - Prohibited Interest in the Proceeds of Operations.

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

(b) The Commission shall insert in all agreements entered into by it in connection with approved projects, or in connection with any property included or planned to be included in any project for which federal assistance may be sought, and shall require its contractors to insert in each of their subcontracts the following provision: "No director, officer, or employee of the Commission and its member Counties during their tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

(c) The provisions of this subsection shall not be applicable to any agreement between the Commission and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

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

Section 12.4 - Nondiscrimination.

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

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

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

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

ARTICLE 13.0 - GENERAL PROVISIONS.

Section 13.1 - Choice of Law.

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

Section 13.2 - Statement of Parties Intent.

The Parties have intentionally structured this Agreement to comply with the principles enunciated in the United States Surface Transportation Board's State of Maine Decision, (State of Maine DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C. 2d 835 (1991)), wherein a public entity was authorized to acquire a railroad line comprising part of the National Rail System threatened with abandonment, without commensurately acquiring the common carrier obligation. Any ambiguities in the transaction agreements should be resolved and construed in favor of an outcome complying with the STB's State of Maine requirements.

Section 13.3 - Notice.

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

Chief, Railroads and Harbors Section
Wisconsin Department of Transportation
P.O. Box 7914
Madison, Wisconsin 53707

Chairman & Executive Secretary
Wisconsin West Rail Transit Authority
C/O Barron County
330 East La Salle Avenue, Room 2510
Barron, WI 54812-1433

Chief Executive Officer
Progressive Rail Inc., d/b/a Wisconsin Northern Railroad
21778 High view Avenue
Lakeview, MN 55044

Section 13.4 - Status of Operator.

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

Section 13.5 – 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 13.6 – Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Commission's and Operator'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 13.7 - 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 13.8 - Amendments, Consents, and Approvals.

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

Section 13.9 - Captions.

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

Section 13.10 - Additions, Remodeling or Replacement of Buildings.

In the event additions, remodeling, replacements or new construction for buildings or other structures except for trackage are desired by Operator, Operator may construct the same at its cost except that any improvement of existing buildings or structures requires the prior written approval of WisDOT and Commission. Permits for and disposition of such additions, remodeling, or replacements of buildings shall be in compliance with Section 8.4.

Section 13.11 - Rehabilitation.

All rehabilitation and improvements and substitute service facilities, installed or accomplished using state or federal financial assistance regardless of the ownership of the property on which they are located, when any such property is no longer used for its original approved project purpose, shall be subject to disposition as described by State and Federal regulations. In connection with any rehabilitation or improvement, the Operator shall file on behalf of the owner of such property, in the appropriate land records, a notice reciting that property was improved or installed with Federal assistance and that its use and disposition are subject to the terms of this Agreement. If the Operator's chief legal counsel advises that such notice cannot be filed, the Operator shall so advise the Commission and WisDOT, and shall recommend alternate procedures whereby compliance with the provisions of this Agreement can be achieved.

Section 13.12 – Arbitration.

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

(b) 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.

Section 13.13 - Specific Performance.

WisDOT and Commission shall have the right, as provided by law, to require specific performance by the other party of the other party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days from the time WisDOT or Commission has first notified the other party of the other party's obligation to perform.

Section 13.14 - Effective Date.

This Agreement shall become effective upon the execution and recording of all necessary documents transferring ownership and title to the Land and Improved Property to WisDOT. Transfer of the Land and Improved Property shall not occur unless and until a determination has been issued by the U. S. Surface Transportation Board (STB) that WisDOT will not assume the responsibilities of a common carrier railroad operator by acquiring the Land as described in Attachment A hereto, and the Improved Property, defined as the buildings and trackage located upon the Land.

Section 13.15 - Execution.

This instrument shall be fully executed in triplicate with a copy being delivered to each party and to Operator and in such further counterparts as may be desired by the parties.

Section 13.16 - Entire Agreement.

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

Signatures.

IN WITNESS WHEREOF, the Wisconsin West Rail Transit Authority by its Board of Directors has caused this Agreement to be signed by its duly authorized officers, this 9 day of December, 2010.

WITNESS:

WISCONSIN WEST RAIL TRANSIT AUTHORITY

Sandra K. Perry

Neil Lundgren
Neil Lundgren, Chairman

Sandra K. Perry

Charles Walker
Charles Walker, Executive Secretary

IN WITNESS WHEREOF, the Wisconsin Department of Transportation has caused this Agreement to be signed by its duly authorized officer, this 12th day of Dec, 2010.

WITNESS:

WISCONSIN DEPARTMENT OF TRANSPORTATION

Frank Huntington

Ronald E. Adams
Ronald E. Adams, Chief
Railroads and Harbors Section

ATTACHMENT 1
LAND USE AGREEMENT #0499-01-76(A-3)
BY AND BETWEEN THE WISCONSIN WEST RAIL TRANSIT AUTHORITY AND THE
WISCONSIN DEPARTMENT OF TRANSPORTATION
December 9, 2010

ATTACHMENT 2
OPERATING AGREEMENT FOR RAIL SERVICE CONTINUATION
#0499-01-76(C-3)
BY AND BETWEEN
THE WISCONSIN WEST RAIL TRANSIT AUTHORITY
AND
PROGRESSIVE RAIL INC., d/b/a WISCONSIN NORTHERN RAILROAD
December 9, 2010

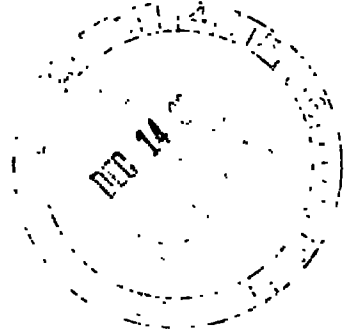
ATTACHMENT 3

**A LIST OF LINE SEGMENTS THAT SHALL BE MAINTAINED TO FRA CLASS II
STANDARDS, FRA CLASS I STANDARDS AND FRA EXEMPT**

ATTACHMENT 4

LIST OF PROJECTS INCLUDED IN INVESTMENT BASIS

	Location	Item	Total	WDOT	Commission	Operator
1	Rice Lake-Cameron-Barron	Acquisition of Improvements	\$600,000	\$480,000	\$120,000	\$0
2						
3						
4						



OPERATING AGREEMENT
FOR RAIL SERVICE CONTINUATION

BY AND BETWEEN

WISCONSIN WEST RAIL TRANSIT AUTHORITY

AND

PROGRESSIVE RAIL INC.,
D/B/A WISCONSIN NORTHERN RAILROAD

AGREEMENT NO. 0499-01-76(C-3)

December 2010

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OPERATING AGREEMENT

This Agreement made and entered into this 9th day of December, 2010, by and between Wisconsin West Rail Transit Authority, established in accordance with Wis. Stat. § 66.0301, having its principal office at 330 East LaSalle Avenue, Room 2510, Barron, WI 54812-1433, ("Commission") and Progressive Rail Inc., d/b/a Wisconsin Northern Railroad, a railroad company organized and existing under the laws of the State of Minnesota and fully empowered to act as a railroad company in Wisconsin, having its principal office at 21778 Highview Avenue, Lakeville, MN 55044 ("Operator").

WITNESSETH:

WHEREAS, the Canadian National Railway (CN) rail line between Almena, Cameron and Rice Lake has been threatened with potential abandonment of service and has been leased by Wisconsin Central LTD (WCL), a wholly-owned subsidiary of CN to Progressive Rail Inc., d/b/a Wisconsin Northern Railroad (PGR), since August 23, 2004; and

WHEREAS, the Wisconsin West Rail Transit Authority (WWRTA) was created by the counties of Barron and Chippewa for the purpose of taking steps necessary and desirable to ensure rail service along the Cameron to Almena and Cameron to Rice Lake rail lines owned by the CN, and the Cameron to Eau Claire rail line owned by the Union Pacific (UP) Railroad is preserved.

WHEREAS, the WWRTA, with assistance from PGR, has prepared and submitted an application to the Wisconsin Department of Transportation (hereinafter referred to as "WisDOT") for assistance in acquiring this rail line under the State's Freight Railroad Preservation Program; and

WHEREAS, as a result of the approval of this application, WisDOT has acquired ownership of the Rail Line as defined under Section 1.0(s) of this Agreement; and

WHEREAS, WisDOT owns the Rail Line in Wisconsin, and the Commission has been granted use of and the authority to contract with the Operator to provide freight rail service over the Improved Property and the Land of the Principal Line Segments in Wisconsin subject to all the conditions and limitations set forth in the Grant Agreement and Land Use Agreement identified in Section 1.0(i) and (m) respectively; and

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

WHEREAS, Operator has been furnished copies of and reviewed the Land Use Agreement by and between Commission and WisDOT, and the Grant Agreement for Rail Service Continuation By and Between the Commission and WisDOT; and

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

NOW, THEREFORE, the parties do hereby mutually agree that the Operating Agreement for Rail Service Continuation by and between the Commission and Operator numbered 0499-01-76(C-2), dated February 1, 2010 is superseded in its entirety by this Agreement and that the parties will be mutually benefited in that the Commission shall provide freight rail service and shall be financially assisted by WisDOT in accordance with the following terms and conditions, and in consideration of the promises and the mutual covenants contained herein, the parties hereto covenant and agree as follows.

ARTICLE 1.0 - DEFINITIONS.

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

(a) "AREMA" means American Railway Engineering and Maintenance-of-Way Association.

(b) "Building" means any structure built to stand more or less permanently with columns or walls and designed to support a roof, and constructed as either an addition which increases the outside dimensions of another structure, or as a detached entity which is not physically connected to another structure and which was primarily intended and designed for human use, occupancy or the storage of goods and materials.

(c) "Commencement Date" means the date this Agreement becomes effective which shall be the date this Agreement is approved in writing by WisDOT on the Signature Page of this Agreement or the date upon which ownership and title to the Land and Improved Property is transferred to WisDOT, whichever date occurs later.

(d) "Commission" means the Wisconsin West Rail Transit Authority.

(e) "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.

(f) "CN" means Canadian National Railway Company, and its subsidiaries, assigns and successors, if any.

(g) Reserved.

(h) "FRA" means the Federal Railroad Administration of the United States Department of Transportation.

(i) "Grant Agreement" means the Grant Agreement for Rail Service Continuation No. 0499-01-76(B-3) by and between the Wisconsin West Rail Transit Authority and Wisconsin Department of Transportation, dated the 9th day of December, 2010, and any amendments thereto.

(j) "Gross Operating Revenues" means all income produced from operations on the Rail Line which shall include freight bill revenues from complete on-line hauls, switching revenues, freight bill revenues retained by Operator under a division of revenues with other rail lines, shipper contract charges, surcharges, net equipment per diem, demurrage, and equipment storage. Specifically excluded is income received from contract car repair, building of or scrapping of rail equipment, and excursion trains. Gross Operating Revenues shall be computed on an accrual basis.

(k) "Improved Property" means Buildings and Trackage located upon the Land of the Rail Line.

(l) "Land" means the real estate, generally 100 feet in width, the use of which is provided to Operator by Commission, upon which the trackage which is leased to Operator under this Agreement is located and which is the subject of the Land Use Agreement.

(m) "Land Use Agreement" means the Land Use Agreement No. 0499-01-76(A-3) by and between the Wisconsin West Rail Transit Authority and the Wisconsin Department of Transportation, dated the 9st day of December 9, 2010, and any amendments thereto.

(n) "Operator" means the Progressive Railroad Inc., d/b/a Wisconsin Northern Railroad, and its successors, if any.

(o) "Revenue Car" means any car for which the Operator receives remuneration in the form of switching fees, line haul fees, or storage fees.

(p) "Person" means an individual, a partnership, an association, or bodies politic or corporate.

(q) "Principal Line Segment" means one of the following as defined by their beginning and end points:

- i. Cameron, Milepost 49.00 to Rice Lake, Milepost 56.10.
- ii. Cameron, Milepost 97.80 (West End of Rices Creek Bridge) to Barron, Milepost 89.04 (CTH T).

(r) "PGR" means Progressive Rail Inc., d/b/a Wisconsin Northern Railroad.

(s) "Rail Line" means the Principal Line Segments in aggregate.

(t) "RHS" means Railroads and Harbors Section of WisDOT.

(u) "STB" means the Surface Transportation Board of the United States Department of Transportation, or its successors, if any.

(v) "Trackage" means the rails, ties, ballast, track material, bridges, switches, culverts, signals, and all other non-Land property acquired by WisDOT and provided

under grant to Commission subject to certain express conditions and limitations. This term does not include Land.

(w) "UP" means the Union Pacific Railroad Company and its successors, if any.

(x) "WCL" means Wisconsin Central Ltd., an indirectly, wholly-owned subsidiary of CN, and its successors, if any.

(y) "WisDOT" means the Wisconsin Department of Transportation.

ARTICLE 2.0 - LEASE, LICENSE, TERM AND RESERVATION.

Section 2.1 - Lease, License and Term.

(a) Commission hereby leases to Operator the Land and the Improved Property for Operator to manage the Land and Improved Property, and operate rail service thereon, subject to Operator's permanent exclusive Operating Easement, which Operating Easement was or shall be reserved or acquired by Operator, for the benefit of itself, its successors and assigns, to use the Land for the purpose of providing freight rail service and for all other purposes incidental to the foregoing, subject, however, to the uses and reservations identified in Section 2.2 hereafter and further subject to the uses and reservations set forth in the governing Land Use and Grant Agreements.

(b) This Agreement is to be executed upon authorization of the Board of Directors of the Commission, and the Corporate Board of Operator. This Agreement shall be effective upon the "Commencement Date," and shall end at 11:59 P.M. December 9, 2030, provided, however, that either party may terminate this Agreement under Article 7.0.

(c) The parties have the right to renew this Agreement for successive twenty (20) year periods. Each option to renew shall be for a period of twenty (20) 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 by a party providing to the other party written notice of the intent to renew with a copy of the notice to WisDOT. All terms and conditions of this Agreement shall apply to the renewal periods unless amended by mutual agreement.

Section 2.2 - Reservation.

The Land and Improved Property involved in this Agreement are the Land and Improved Property obtained by Commission from WisDOT through the agreements defined in Section 1.0(i) and (m) herein. Future operations may show WisDOT that portions of the Land or Improved Property are not needed for railroad use or are of sufficient width to allow other uses as co-uses.

Land and Improved Property used predominantly in generating income not included within Gross Operating Revenues shall be deemed not used for railroad purposes. Partial use of the line by Operator for future Commuter Passenger Service is possible if first authorized under a separate operating agreement in the manner set forth

in Section 2.2(g). During the term of this Agreement some consolidation of yards, interchanges and terminal facilities of the various railroads serving the particular area may require relocation of Improved Property and other facilities which could affect portions of the Rail Line. WisDOT may, upon request from Commission, Operator or others, determine that the use of the Rail Line for railroad purposes is such that the width of the Land at particular points also permits recreational or scenic uses, such recreational or scenic uses would be developed at no cost to Operator unless specifically requested by Operator. Commission hereby makes this lease subject to the following conditions:

(a) Subject to Section 2.2(b) below, the right is retained for WisDOT to sell or lease Land, Improved Property or both that WisDOT determines is not needed for the continuation of freight rail service. Such determination shall be made only upon approval by Commission and Operator.

(b) In the event WisDOT determines, with the concurrence of Commission and Operator, that certain parcels of Land or Improved Property are not reasonably required for the preservation of railroad services, WisDOT may, upon its own initiative, sell, permit, or lease such Land or Improved Property located outside 33 feet of the center line of the main track to any party. Before a sale, WisDOT must first offer the Land or Improved Property to Commission and Operator and to other state and local government units under the provisions of Wis. Stat. § 85.09. Commission shall promptly notify Operator in writing whether it intends to exercise any right to purchase Land and Improved Property offered by WisDOT. If Commission does not elect to exercise such right, Operator may, within thirty (30) days following receipt of the foregoing notice, supply Commission with the purchase funds, and Commission shall purchase the Land and Improved Property to the extent that it may be accomplished under Wis. Stat. § 85.09 and convey same to Operator; provided that Commission shall not be required to purchase such Land and Improved Property on behalf of Operator if in its reasonable judgment Commission determines that the Land and Improved Property will not be used for a public purpose, in which case the funds furnished by Operator to Commission shall be promptly returned. Commission shall not consent to WisDOT sale or lease of any Land and Improved Property within 33 feet of the center line of the main track without Operator approval if the parcel to be sold is unoccupied by permanent structures, or is to be sold to an owner of property abutting the main track. Operator approval is not required for Commission's consent to a WisDOT sale or lease of Land and Improved Property within 33 feet of the center line of the main track when the Land and Improved Property are subject to a lease and are occupied by a permanent structure legally existing on the date of the Grant Agreement, or if the sale or lease is for utility or communication use provided that the lessee or purchaser agrees in writing to indemnify Operator against loss or disruption to Operator's business caused by such lessee's or purchaser's use of the Land or Improved Property so acquired.

(c) Commission retains the right to retake or retain possession of any of the Rail Line under lease to third parties for itself or for WisDOT. In the Land Use Agreement, WisDOT retains the right to approve all leasing of Improved Property and to conduct all the leasing of Land, subject to the permanent exclusive Operating Easement and common carrier obligation of Operator. If there are sidetracks on any of the Land leased to third parties, Commission shall provide Operator with the right of continued use of the sidetrack and Land 16.5 feet from the center line on each side of the side track.

(d) The right to lease Land, which is not under license and lease to Operator or not presently leased to third parties, is retained for WisDOT. If requested by Operator, Commission will attempt to exercise such rights as it may have to obtain a lease or sale of the property to a party or parties who will use the property or improve the property for a use that will involve freight rail transportation.

(e) Any building or other structure presently on the Land being used for railroad purposes or previously built for railroad purposes, except as may be specifically excluded elsewhere herein or in an existing lease or by law, will be available for use by Operator. If any such building or buildings are not needed by Operator for its operation, Commission reserves the right to lease any such building or buildings to third parties for periods not to exceed two (2) years. In some instances, this might involve leasing a portion of the building with Operator using the other portion. Commission agrees to seek approval of Operator in making such leases.

(f) The transfer of use of the Land to Operator is subject to existing utility easements, street and highway easements, and other existing easements, permits or licenses of grant or use. Commission retains the right of WisDOT or Commission to grant future utility easements. Commission retains to itself or WisDOT all easement and right-of-way rental, purchase price, or other easement, right-of-way or property transfer payments.

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

(h) As to the planning operations and the changes which might occur because of planning operations, Commission reserves to WisDOT, itself and the governmental entities along the Rail Line the right to do such planning and to provide for relocation of facilities, including Improved Property and the elimination of certain trackage, buildings and other facilities, in order to carry out the determinations arrived at from such planning. It is a condition of this Agreement that Commission reserves the right to negotiate the contract as to such matters to itself and WisDOT on the condition that Operator be given notice and the opportunity to act as a participant or an observer at any such negotiations and that the following factors are controlling insofar as they affect Operator: Operator agrees that it will cooperate in implementing any agreements made by Commission as to the matters set forth in this subsection providing that the alternate facilities made available to Operator are approximately equal to those released by Operator and that the cost of these changes shall not be imposed on Operator. No change shall interfere with Operator's duty to provide service unless Operator and Commission agree to such change.

(i) Commission reserves the right to permit recreational and scenic activities along the Rail Line subject to prior approval of WisDOT. Commission agrees that it shall hold Operator, its officers, directors, agents and employees, harmless from and against all liability, damage, loss, claims, costs (including reasonable attorneys' fees), demands and actions of any nature which arise out of any such permittee's use of the Land. Commission represents that it will provide insofar as it is able to do so to Operator the opportunity to participate in the negotiating and establishing of any such additional uses and particularly the opportunity to present to WisDOT and other government units involved, its position as to any hazards, expenses or other impediments or detracting items which might affect or allegedly affect Operator as a result of such proposed additional uses.

(j) It is understood that no lease money or sale receipts are to accrue to Operator in the event of any sales or leases of Land or Improved Property.

(k) The purpose of this section is to merely require Operator to receive a written permit from WisDOT before Operator itself provides passenger rail service. This section does not limit Operator's ability to provide freight services. 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 for the passenger operation on the Rail Line. WisDOT in consultation with Commission may grant or deny a permit based solely upon any of the following: adequacy of liability insurance coverage, terms and amount as set forth in Section 6.2 below, trackage condition, proposed speed of operation, preparations for crowd control, parking and clean-up, and sufficiency of consumer protection assurances associated with each use by Operator of any portion of the Rail Line subject to this Agreement to be operated over by Operator or by an affiliate, subcontractor or lessee of Operator. The permit may be denied if not requested in writing a minimum of ten days prior to the proposed use date, or if a fully executed copy of an acceptable certificate of binding insurance is not submitted for Commission and WisDOT review ten days prior to the proposed use date, if insurance coverage is inadequate or flawed in the reasonable judgment of Commission or WisDOT, or if a prior fee remains unpaid in whole or in part.

ARTICLE 3.0 - RENT.

(a) For purposes of this Article 3.0 (a), a Revenue Car shall include a car received, whether loaded or empty, in interchange at Norma, WI or Ladysmith, WI for purposes of compensated car storage. Operator shall pay rent to Commission for use of the Land and Improved Property, and all other rights and privileges under this Agreement, at the rate of 50 cents per Revenue Car north of the Chippewa River on rail lines owned or controlled by the Wisconsin West Rail Transit Authority. The rent due shall be computed and payable quarterly based upon the number of Revenue Cars north of the Chippewa River for each calendar quarter with data on the Revenue Cars being provided to the Commission from the Operator within 15 days following the end of each calendar quarter and rent payment to be received by Commission within 30 days following the end of each calendar quarter. Commission and Operator agree to renegotiate this rental fee in good faith at the end of the 5th year.

(b) In addition to any rental due under Section 3.0(a) of this Agreement, Operator shall pay Commission 10% of its gross receipts in excess of \$100,000 per year from excursion trains permitted by WisDOT.

ARTICLE 4.0 - REVENUE DIVISIONS, TRACKAGE RIGHTS, INTERCHANGES AND COORDINATION WITH OTHER LINES.

Section 4.1 - Division of Revenues and/or Switch Fees.

Operator has represented to Commission that it has made necessary and satisfactory arrangements for divisions of revenues and/or switch fees as are needed with all connecting railroads. Operator obligates itself to make arrangements for division of revenues and/or switch fees as are needed if there are other interchange points needed for proper operation of the Rail Line and to furnish Commission documented evidence of such divisions of revenues and/or switch fees after being obtained.

Section 4.2 - Trackage Rights.

(a) Operator and Commission have the responsibility for obtaining the necessary trackage rights required to permit the operation over the Rail Line that is required to perform the necessary freight rail service for shippers along the Rail Line. Operator and Commission shall use their best efforts to obtain such rights or to purchase such additional trackage and land or both as are necessary to provide access by Operator to the Improved Property. This section shall not be construed to require Commission to expend funds, or acquire property or rights. Operator shall file all trackage rights agreements with the STB as may be required by law.

(b) Operator shall furnish Commission and WisDOT copies of trackage rights or lease agreement(s) allowing Operator to operate over:

- i. UP property between Cameron and Norma.
- ii. Such other railroad property as is or as may become necessary to operate the Rail Line.

Section 4.3 - Interchange Agreements.

It is recognized that Operator may enter into interchange agreements and/or switching agreements with UP or other railroad companies in order to facilitate the service to the Rail Line. Operator agrees to supply Commission and WisDOT with documented evidence of the interchange agreements and/or switching agreements and any amendments thereto after obtaining the same.

Section 4.4 - Interline Divisions.

(a) Operator shall adhere to and comply with the Railway Accounting Rules of the Association of American Railroads in dividing revenues among participating carriers on freight moving under through rates where PGR is a participant in the route. Operator covenants and agrees to make such divisions at the time and in the manner provided herein.

(b) Operator shall remain current on its financial obligations to connecting railroad companies.

ARTICLE 5.0 - RAILROAD OPERATIONS.

Section 5.1 - Authority to Operate.

(a) Operator has or shall obtain, and shall maintain the requisite operating authority from the STB for the railroad operations described under this Agreement and shall keep such authority in full force and effect throughout the term of this Agreement. Operator shall make all required filings and reports to the STB and the Wisconsin Office of the Commissioner of Railroads.

(b) Operator has or shall acquire and maintain a permanent exclusive Operating Easement for freight railroad service and the associated STB common carrier obligation to fully exercise its Operating Easement over the Principal Line Segments and provide shippers with common carrier freight railroad service. Operator shall exclusively control, manage, staff and plan for the provision of freight rail service on the Principal Line Segments over which it operates as a freight rail carrier and to use the Principal Line Segments pursuant to its common carrier obligation and permanent exclusive Operating Easement to provide exclusive originating and terminating freight rail service on the Principal Line Segments, including line-haul and switching services to shippers. Operator shall have the power and authority to exclusively control, manage, staff and plan for the provision of freight rail service on the Principal Line Segments over which it is operating as a freight rail carrier. As a part of its operation, Operator shall have power to effect such additions, changes, betterments, and repairs to the Improved Property as Operator may, in its judgment, deem necessary, expedient or proper to assist or improve rail service over the Principal Line Segments. Operator shall coordinate with Commission regarding any such additions, changes, betterments, and repairs. Operator has the

authority to adopt and promulgate rules governing access to, use of, and operation of the Land and Improved Property.

Section 5.2 - Agreement of Operator to Operate and Agreements and Covenants as to Operator.

Operator hereby agrees to operate a railroad on the Rail Line licensed and leased to it as set forth above. As part of this Agreement, Operator hereby covenants and agrees to do the following things and to perform in the following manner:

(a) Service. Operator agrees to provide revenue freight rail service to current and future shippers and receivers connected to or on the Rail Line. This is freight rail service including provision of rail cars made available by connecting carriers or supplied by Operator, switching, line haul and other related services and includes bridge traffic. Operator is required and hereby agrees to provide the current and future shippers and receivers connected to or on the Rail Line freight rail services upon the same terms and conditions as such service is provided to other shippers and receivers served by Operator, or as otherwise agreed between Operator and any shipper or receiver. Failure to provide minimum service required or agreed to hereunder or required under Section 7.10 shall at Commission's option find Operator in default of this Agreement.

(b) Maintenance. Operator shall perform or cause to be performed all maintenance of the Rail Line including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the Land or Improved Property reasonably necessary for the safe operation of freight rail service or any other service provided by Operator. Tracks shall be maintained to FRA Class II standards, or if the line is determined to be at less than Class II, to the FRA class of the line as determined by WisDOT after consultation with Operator, as of an inspection date prior to sixty (60) days following the Commencement Date. Upon its completion, a list of line segments that shall be maintained to FRA Class II standards and a list of line segments that shall be maintained to FRA Class I standards shall be included as Attachment 3 to this Agreement. Any Principal Line Segment that has been rehabilitated as part of a WisDOT assisted project shall be maintained to the WisDOT maintenance specifications specified as part of the contract covering WisDOT assistance to that rehabilitation project. In the event of a dispute between Operator and WisDOT as to the condition of the trackage following the inspection referred to above, Operator and WisDOT shall jointly request FRA to determine the FRA track safety classification. Bridges shall be maintained in compliance with Chapter 7, Part 3 of the Manual for Railway Engineering, as amended, published by AREMA. Operator may be declared in default, as hereinafter provided, or in the case of buildings, may lose the right of possession and occupancy, if a deviation from the applicable maintenance standards or local and state building codes remains uncorrected for more than ninety (90) days after notification of the deviation as hereinafter provided or if Operator has not diligently commenced to correct such deviation within the 90 day period. Operator is prohibited from using trackage located in sidetracks, sidings or other location as maintenance material unless prior written permission to do so is requested from and first granted by WisDOT. Compensation to WisDOT from Operator for materials used with or without permission may be required by Commission and WisDOT. Any costs of trackage installed on or funds expended for maintenance of any portion or component of the Rail

Line under the jurisdiction of Commission by grant from WisDOT that is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by Commission or WisDOT upon sale of the Rail Line or transfer of operating rights over the trackage to another agency or operator.

(c) Safety and Other Inspections. Operator agrees to facilitate the inspection of the Rail Line facilities as required by governmental agencies. Operator agrees to 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 of WisDOT or Chief of the Railroads and Harbors Section of WisDOT and representatives of Commission authorized by Commission chairman to accompany the inspector. Operator is required and hereby agrees to provide access to all documents related to any inspection by any governmental or insurance agency. Operator agrees upon reasonable notice during normal business hours to permit inspection of the Rail Line, the rolling stock and maintenance equipment, and the operating and maintenance practices of Operator and Operator's affiliates performing work on the Rail Line, by Commission or WisDOT or their agents. Operator covenants and agrees to furnish Commission and WisDOT with copies of all inspection reports from federal agencies or insurance agencies and safety orders from federal agencies or insurance agencies and to furnish Commission any like reports and orders from WisDOT or the Wisconsin Office of the Commissioner of Railroads.

(d) Equipment. Operator agrees to provide and maintain at its own expense all suitable locomotives, cars and other rail equipment as are necessary in the operation of this freight rail service. Operator shall be solely responsible for and agrees to provide all tools and other equipment necessary to properly maintain the operating equipment, Improved Property and Land on the Rail Line.

(e) Operating Personnel. Operator agrees to obtain and maintain the necessary personnel for operation and management of its operations over the Rail Line. Said personnel shall be under the sole control and direction of Operator. It is understood and agreed that no personnel of Operator are agents, employees, servants or subcontractors of Commission or WisDOT. All such personnel shall be qualified and properly trained for such service, but this shall be the sole responsibility of Operator.

(f) Accounting Services. Operator agrees to establish and perform all necessary accounting services appropriate to conducting business as a railroad and to comply with this Agreement. Operator is required and hereby agrees to permit access by WisDOT and Commission and their agents to all documents related to the business operation of Operator including, but not limited to, agreements for leases, loans, revenue divisions and records of rail traffic, receipts and expenditures.

(g) Use of Property. Operator shall have use of all the Land and Improved Property under the ownership or control of Commission, including buildings, which are reasonably required for the operation of the Rail Line, and shall perform its common carrier obligations as required by law. This shall not, however, negate any reservations held or any actions taken by Commission or WisDOT under the reservations set forth in Section 2.2 of this Agreement. Operator shall provide maintenance and upkeep for any such buildings. In the event it becomes desirable to construct buildings or other

structures on the Land, the same may be constructed by Operator at its expense, subject to Commission's and WisDOT's approval. Improvements made and financed by Operator may be leased or otherwise made available to customers of Operator for appropriate compensation which shall be included in gross operating revenues. Except as provided herein, Operator has no authority to enter into easements, permits, licenses, leases or subleases affecting the Land or Improved Property whether under the use of Operator or outside the use of Operator. Commission is under contract with WisDOT as to leases of Land and Improved Property, and any such lease income shall be income to WisDOT or Commission. Commission agrees, however, to cooperate with Operator in providing leases to businesses or users who would benefit the rail business through operation of any such leases. Operator understands that any agreement for leasing Land is subject to the Grant Agreement or Land Use Agreement as to securing authority and approval from WisDOT and as to the division of rents.

(h) Promotion of Business. Operator covenants and agrees to use its best efforts to promote the use of freight rail services by customers located along the Rail Line and in the immediate vicinity and agrees to diligently seek new freight rail business and customers for such services.

(i) Use of Land or Trackage as Collateral. Neither the Land for which a lease and license to use is granted nor the Improved Property leased under this Agreement shall be used by Operator in any form or amount as equity, security, or collateral for any borrowing or other means of raising capital by Operator or as collateral for any other purpose.

(j) Public Order. Operator hereby assumes full responsibility for preserving public order upon the subject property and for resolving matters concerning trespass upon or from the Land and Improved Property adjacent to private lands. Operator may adopt and enforce any necessary rules in accordance with Section 5.1(b) in order to protect the Rail Line. Operator shall have the right to post signs and erect barricades necessary to delineate the Rail Line as railroad property and to prevent entrance upon the subject Rail Line by unauthorized vehicles or individuals.

(k) Fencing. Operator assumes such responsibility as may exist to third parties for providing fencing required under Wis. Stat. ch. 90, local ordinance or contract.

(l) Vegetation Control. Operator assumes such responsibility as may exist for the eradication, control and removal of vegetation as required by applicable state law or local ordinance.

(m) Crossing over Waters and Drainage Systems. Operator assumes full responsibility for the ordinary repair and maintenance of all culverts, trestles and bridge structures on the Rail Line.

(n) Highways and Streets. Operator assumes full responsibility on the Rail Line for the maintenance of trackage, warning devices, and railroad highway crossings whenever crossing maintenance is required by law from Operator.

(o) Private Crossings. Operator may, according to applicable statutory provisions, abrogate any private crossing established by agreement, which interferes substantially

with Operator's performance of freight rail services. Operator shall obtain authorization from WisDOT and, if necessary, the Office of the Commissioner of Railroads, prior to permitting any additional private crossings.

(p) Maintenance Plan.

- i. Operator agrees to prepare an annual maintenance plan for the Rail Line. This plan shall be combined with like plans for any and all other rail lines provided to Operator by any other rail transit commission existing in Wisconsin. The plan shall be prepared in consultation with WisDOT and shall be fully completed and delivered by Operator to WisDOT for WisDOT review and reasonable approval not later than February 1 of each year. 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.
- ii. A maintenance plan shall not be eligible for WisDOT approval unless the sum of expenses and the capitalized maintenance expenditures called for in the plan during each calendar year are a minimum of 10 percent of Gross Operating Revenues. Notwithstanding the above, in the event maintenance is required to meet the track classification levels required under Section 5.2(b), sufficient funds to achieve the classification level required shall be expended. The Plan or modification shall be revised and resubmitted within 30 days following a WisDOT request so as to overcome the deficiencies, if any, identified by WisDOT.
- iii. Operator shall respond to inquiries from WisDOT concerning Operator's implementation of the approved Maintenance Plan. Operator shall provide WisDOT with a revised Maintenance Plan within 10 days following WisDOT's request for revisions following a review in accordance with Section 5.2(b).

(q) Liens Against Rail Line. Operator shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Land or Improved Property or any interest therein. 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.

(r) Rail Banked Lines. The obligation of Operator under this and other sections of this Agreement shall not apply to Principal Line Segments classified as rail banked lines.

ARTICLE 6.0 - LIABILITY AND INSURANCE.

Section 6.1 - Hold Harmless.

Except to the extent that the same arises from or is related to co-uses permitted by Commission or WisDOT pursuant to Section 2.2(g) above, Operator shall save and hold Commission, Commission's member counties and WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of Operator, or its agents, servants, subcontractors, officers or employees, 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 Commission and Operator 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 applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to Commission, its officers, employees, agents, subcontractors or frequenters, or to any other person whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of Commission or WisDOT) under Federal or state statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the applicability of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. Operator shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

Section 6.2 - Insurance.

(a) Required Coverage. During the term of this Agreement, Operator shall maintain, at its own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$25,000,000.00 per any one accident, or other form approved by WisDOT. WisDOT and Commission, and Commission's member counties, and their officers, employees, and agents shall be named as additional insureds under such policies. Operator agrees to maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Operator further agrees to carry fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All

such insurance shall cover Commission, Commission's member counties and WisDOT to the extent of their ownership in any of said properties and to include under such coverage buildings, and trackage owned by Commission and leased to Operator hereunder, even though some of said buildings or structures might not be included in the property used by the Operator, except that coverage need not be maintained on improvements sold, leased, licensed or otherwise disposed of by WisDOT or Commission to any third party. Items of coverage for Commission may be waived by letter from Commission to the Operator.

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

(c) Self-Insured Retention. It is understood and agreed that the Comprehensive Railroad Liability Policy to be obtained and kept in force by Operator may contain a self-insured retention. The figure of \$25,000 per any one accident is hereby approved as the self-insured retention. Operator agrees to confer with Commission and WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer. It is a condition of this Agreement that Operator shall annually provide Commission and WisDOT with a written opinion, or footnote disclosure of an independent auditor indicating the financial capability of the Operator to be sufficient to satisfy the self-insured retention.

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

(e) Self-Insured Retention Set Aside. Operator shall, within 30 days after receiving a claim or notice of claim alleging an incident or after being notified of a claim or notice of claim being received by Commission, a member county of Commission, or a WisDOT employee alleging an incident, set aside a separate, segregated reserve for each claim, including claim defense. The reserve fund set aside for each claim and for its defense

shall be determined by Commission's counsel, Operator's counsel and WisDOT's counsel. If the counsels are unable to agree, they shall select a fourth party to make the determination. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to claims, Operator agrees to provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position. In the event that the ratio of Operator's current assets to current liabilities, including claim reserves, as determined from General Ledger Trial Balance sheets filed with Commission and WisDOT within 45 days after the end of each quarter, is less than 1.1 to 1, as determined by WisDOT, Commission shall have the right to find Operator in default in accordance with Section 7.1 below. Upon receipt of such notice of default, Operator shall have the right to remove or cure said default by (i) purchasing, at its own cost and expense, such insurance as WisDOT and Commission shall deem necessary in their reasonable judgment or by (ii) causing the equity owners of Operator to contribute such additional amounts to the capital of Operator as are required to increase such ratio to 1.1 to 1.

(f) Review and Modification of Liability Insurance. (i) The coverage limits of Operator's Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review by Commission and WisDOT no more than once every twelve months. Modifications to self-insured retention amounts shall be governed by Section 6.2(c) herein. Modifications increasing coverage limits shall be effective upon notice by Commission or WisDOT to Operator. Any modifications decreasing coverage limits may not in any event reduce the requisite insurance coverage below that required under Section 6.2(a) herein and shall be effective only upon WisDOT approval and upon amendment to this Agreement. Review of liability insurance shall be conducted by Commission, Operator, and WisDOT no less than 30 days prior to the expiration date of the policy then in force, except that a special review may be conducted in the event Operator experiences a cancellation of or a modification or a refusal to renew its liability insurance. Such special review shall be governed solely by Section 6.2(f)(i)(D) herein. The following conditions shall apply to the review and modification of Comprehensive Railroad Liability Insurance:

(A) Commission or WisDOT may require Operator to expend up to a fixed percentage of Operator's Gross Revenue, as determined under Sections 6.2(f)(i)(B) and 6.2(f)(i)(C) herein, to purchase comprehensive railroad liability insurance covering the liability as is required and naming the additional insureds as is required under Section 6.2(a) herein. Operator's decision to obtain insurance beyond that which is required under Section 6.2(a) herein for any aspect of coverage shall not result in Operator purchasing any less insurance coverage for any other aspect of coverage required under Section 6.2(a) herein.

(B) A base percentage of Gross Operating Revenue expended for the purchase of comprehensive railroad liability insurance is established for the duration of this Agreement at 4% of Operator's Gross Operating Revenue for the Operator's most recent fiscal year, as determined by independent audit. Commission or WisDOT

may require Operator to expend up to an amount equal to 150% of the base percentage, which amount is 6% of Gross Operating Revenues, for comprehensive railroad liability insurance. The amount of liability insurance coverage purchased by this sum shall be maintained in force by Operator until next modified under the terms of this section.

At no time, however, may this base percentage or the review and modification procedure established under this Section 6.2(f) herein be used to reduce the requisite insurance amounts and coverages below that required under Section 6.2(a) herein. Those insurance requirements stated in Section 6.2(a) herein are minimal requirements and shall be met regardless of the base percentage of Gross Operating Revenue calculation or of the review and modification procedures described in this section.

- (C) The amount of the increase, if any, in the Operator's expenditure for liability insurance required by Commission or WisDOT may be used to adjust coverage limits or self-insured retention limits or both and shall only be required upon the approval of the increase by two of the following three entities: Commission, Operator, and WisDOT. In the event one of these three entities takes a position on the approval of the required increase contrary to the other two, the entity holding the minority position may require the required increase to be subject to arbitration through the use of the American Arbitration Association and its procedures. The arbitrator shall determine what liability insurance coverage is sufficient for (1) the reasonable and full compensation of the public and persons who may be injured or damaged, (2) the protection of the interests of the Commission, WisDOT, and Operator, and their officers, employees, and agents, including their interests as indemnitees and for contribution, in the event of property damage, personal injury, or other loss that may occur, and (3) the availability of that coverage to the Operator in the insurance market place pursuant to the limitations established under Section 6.2(f)(i)(B). The arbitrator shall then determine the amount of expenditure increase that is reasonably necessary to acquire the liability insurance coverage the arbitrator has so determined to be sufficient. In determining the amount of expenditure increase, the arbitrator is limited to the expenditure level increase required by the majority of the three entities, or the one proposed by the minority entity, neither of which shall exceed the increase allowed under Section 6.2(f)(i)(B). The arbitrator's determination shall be final and binding on Commission, WisDOT, and Operator as to the amount of the expenditure increase required. The arbitrator shall render a decision within 30 days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than 50 days prior to the expiration of the insurance coverage then in effect. The cost of

arbitration shall be paid equally by Commission, Operator, and WisDOT.

- (D)(1) Operator shall at a minimum expend such amounts as may be required to maintain liability insurance coverage limits no less than that in force at the time of review.
 - (2) Commission, WisDOT, and Operator shall establish the coverage level to be obtained by Operator and shall amend this and companion agreements in accordance thereto in the event insurance coverage limits in effect at the time of the review cannot be maintained due to the refusal by insurance carriers to issue a policy of insurance at that coverage limit to Operator.
 - (3) In the event the three entities are unable to reach a common position on the amount of insurance coverage to be obtained, under Section 6.2(f)(i)(D)(2) herein, any one of them may require arbitration in accordance with Section 6.2(f)(i)(C) herein to determine the required amount of insurance coverage.
- (E) Notwithstanding any other provision regarding insurance contained herein, Operator shall at a minimum obtain and maintain liability insurance coverage and limits no less than that required now or in the future by the laws of the State of Wisconsin and no less than that required now or in the future by the laws or regulations of the federal government or its agencies, naming WisDOT and Commission and their officers, employees, and agents as additional insureds.

Modification to the comprehensive railroad liability insurance limits for excursion operations shall be established by Commission, Operator and WisDOT under the process set forth in Section 6.2(f)(i)(C) herein, but in no event shall the coverage limit be less than \$25,000,000 per any one accident, or other form approved by WisDOT, or the coverage limit then in effect for freight operations, whichever is greater.

ARTICLE 7.0 - TERMINATION OR SUSPENSION.

Section 7.1 - Declaration of Default.

(a) Default. A condition of default exists (1) when either party to this Agreement fails to abide by or perform in a material respect any one or more of its terms and conditions, (2) when Operator's insurance coverage lapses, is suspended, is canceled, or fails to satisfy all the terms and conditions of Section 6.2 of this Agreement or any amendment thereto, (3) when Operator files for protection under any bankruptcy statute,

or (4) at the option of Operator, when the Land Use Agreement or the Grant Agreement between Commission and WisDOT expires, or is terminated, amended, or revoked without Operator approval. Notwithstanding this provision, Operator may not terminate service until it obtains authority from the STB to discontinue service or WisDOT or Commission obtains authority from the STB for the adverse discontinuation of Operator's service.

(b) Notice of Default. A declaration of default shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 13.2 below. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice of default or the date required insurance coverage ceased or the date of filing for bankruptcy protection, whichever occurs first.

Section 7.2 - Termination for Default.

In the event of any default described in Section 7.1 above, the non-defaulting party shall have the right to and at its option may, after first giving the required notice to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof or concurrent breach, terminate this Agreement, unless the breach is cured within the period set forth in Section 7.3 below, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages whether arising under this Agreement or otherwise.

Section 7.3 - Ability to Cure Default.

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

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

Section 7.4 - Contractual Obligations Upon Termination.

Except as otherwise agreed to by the parties in writing, the obligations of Operator to Commission to provide freight rail service and to maintain the Land and Improved

Property under this Agreement shall cease as provided for in the following Section 7.9, but all other obligations of the parties shall remain in full force and effect until all operations of Operator hereunder have been terminated in accordance with this Agreement. Both parties agree to make reasonable efforts to satisfy their surviving obligations promptly after termination. Upon termination, however, Operator's rights as a lessee of the Improved Property and its lease and license to use the Land and Improved Property shall cease in accordance with Section 7.8 and 7.9.

Section 7.5 - Termination Approvals.

Both parties recognize that the termination of Operator's lease and license will require STB approval before termination can be effective. Operator and Commission both agree to cooperate in necessary efforts associated with obtaining such approval and, if action is required by WisDOT, to cooperate with WisDOT in all necessary efforts associated with obtaining such approvals.

Section 7.6 - Bankruptcy of Operator.

If any proceeding shall be commenced by or against Operator for any relief which includes, or might result in, any modification of the obligations of Commission or its Operator hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), it may be declared cause for default and said contract may be terminated upon 10 days notice by Commission to Operator. If all the obligations of Operator hereunder shall not have been and shall not continue to be duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Operator, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within ten (10) days after proceedings shall have been commenced, it may be declared cause for default. Arrangements may be made in such event by Commission with the trustee or bankruptcy court for continuation under such terms as agreed to by Commission.

Section 7.7 - Return of Property Upon Bankruptcy Default.

If this Agreement terminates pursuant to Section 7.6, Operator shall forthwith deliver possession of the Land and Improved Property to Commission at such time as the STB discontinuance authority is effective. Land and Improved 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 owned by Operator and for which Commission or WisDOT has not made a specific request for it to remain with the property.

Section 7.8 - Vacating the Rail Property: Discontinuance of Service.

Upon determination by Commission that the remedial action has not removed the default condition, it may provide written notice to Operator to vacate the Principal Line Segment(s). Upon receiving said notice, Operator shall immediately seek authorization from the STB to discontinue service over the Principal Line Segment(s). If Operator does not initiate discontinuance proceedings within 30 days of receiving said notice, WisDOT and/or Commission may seek to terminate such service by prosecuting an application with the STB for the adverse discontinuance of service by Operator. Operator shall vacate the Principal Line Segment(s) within 20 days of the effective date of a final, non-appealable STB decision authorizing discontinuance of service, or in the event of an appeal, a final non-appealable court decision. Commission shall arrange with Operator for an inventory of the Principal Line Segment(s) to be conducted within this 20 day period. If Operator does not remove any of its equipment within the 20 day period, Commission shall have the option to remove it at Operator's expense.

Section 7.9 - Obligations of Operator in the Event of Termination.

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

Section 7.10 - Service Failure.

(a) Failure to provide freight rail service to any station on Principal Line Segments 1 or 2 of the Rail Line is defined as:

- i. The unavailability of freight rail service for 10 consecutive days to any station on such Principal Line Segment, or
- ii. The availability of an average of less than one train per week for a consecutive 12 week period to any station on such Principal Line Segment, or
- iii. The failure to move any revenue freight car loads for 12 consecutive months over such Principal Line Segment.

(b) Failure to provide freight rail service on Principal Line Segment 3 for 24 consecutive months shall be defined as a service failure.

(c) In the event Operator fails to provide freight rail service, as defined above, (except to the extent contemplated by Section 5.2(a)), on any Principal Line Segment(s), Operator agrees to return possession of such Principal Line Segment or portion of a Principal Line Segment to Commission upon 10 days written notice of demand by Commission. Operator may not discontinue service on any Principal Line Segment(s) without prior STB authorization. Notwithstanding the foregoing, in the event that Operator, Commission, and WisDOT agree in writing that a Principal Line Segment or Principal Line Segments need not be operated over, or if service is temporarily suspended on a Principal Line Segment or Principal Line Segments pursuant to Sections 7.11 or 7.12 below, lack of service on such Principal Line Segment(s) shall not constitute a failure by Operator to provide freight rail service as defined in this section.

Section 7.11 - Immediate Suspension of Rail Operations.

Upon emergency notice from Commission, RHS, or WisDOT Division of State Patrol (by telephone and later confirmed in writing), Operator shall cooperate in using its discretion to 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 canceled for any reason, or is less comprehensive than is required under Section 6.2 of this Agreement. Operation of trains and motive power by Operator shall at its discretion remain suspended until the President or Chief Executive Officer of Operator is contacted by Commission and WisDOT and until the safety hazard is ameliorated and 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 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 or Commission as a sufficient reason for suspending operations. When the FRA is called upon, operations shall be suspended until such determination is made by FRA. In the event of any service suspension having an expected duration of at least 24 consecutive hours, Operator shall file an embargo notice with the Association of American Railroads.

Section 7.12 - Force Majeure.

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation, except the unavailability of insurance coverage in full accordance with Section 6.2 of this Agreement or any amendment thereto: acts of God; strikes or other labor troubles; other causes beyond the reasonable control of the parties; interruption of service caused by explosion, fires, vandalism, malicious mischief; or unavoidable interruption or cessation of service for a period of less than 120 days caused by a connecting railroad. Operator shall not be required to operate with liability insurance coverage levels less than those set forth in Section 6.2, but may be declared in default for non-compliance with Section 6.2.

ARTICLE 8.0 DISPOSITION OF PROPERTY AND PROCEEDS.

Section 8.1 - Option to Purchase.

(a) Operator shall have the right to exercise an option to purchase the Land and Improved Property at any time after the start-up of operations under the provisions of Wis. Stat. s. 85.09(4). 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 Rail Line (unless the parties hereto agree otherwise) and the purchase price for the Rail Line shall be the greater of fair market value or the total cost invested by both WisDOT and the Commission. Fair market value shall be determined by appraisal.

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

- i. 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.
- ii. 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 8.3.

(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 the Land and Improved Property on certain Principal Line Segments shall be held by WisDOT, and WisDOT shall relinquish said title upon settlement herein. It is further understood that title to the track and other improved facilities on certain Principal Line Segments are with the Commission, and

therefore, the Commission shall have the authority to relinquish its property rights upon settlement herein subject to Commission's compliance with its obligation to compensate WisDOT upon sale of the property.

Section 8.2 - 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 Rail Line 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.

(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.

Section 8.3 - Apportionment of Proceeds.

(a) Conceptual Basis. WisDOT, Commission and Operator have invested in the acquisition of the Improved Property. Furthermore, Operator accepts the obligation to physically maintain the Land and Improved Property so as to maintain its value. Over time, three results are possible: (1) Operator invests in maintenance sufficiently to retain the value of the Land and Improved Property, or (2) Operator, in violation of the terms of this Agreement, under-invests in maintenance thereby reducing the value of the Land and Improved Property, or (3) Operator, on their own initiative, over-invests in maintenance, thereby either maintaining, reducing or enhancing the value of the Land and Improved Property. In the event of liquidation of the Land and Improved Property, WisDOT, Commission 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, as shown in Attachment 4.

(b) Computation. The Investment Basis of WisDOT, Commission and Operator shall be defined as the total financial contributions of each to the cost of acquisition, and rehabilitation of the Improved Property, and the cost of construction of new

Improved Property for which grant funds are expended. For the purposes of computing the Investment Basis of the Improved Property, the initial investment of each party is as follows: (1) WisDOT -\$ 480,000 for the Cameron to Rice Lake and Cameron to Barron line segments for a total initial investment of \$ 480,000; (2) Commission -\$ 120,000 for the Cameron to Rice Lake and Cameron to Barron line segments for a total initial investment of \$ 120,000; and, (3) Operator -\$ 0. Therefore, as of the date of this Agreement, the Investment Basis for Improved Property for each party is as follows: (1) WisDOT is \$ 480,000; (2) the Commission is \$ 120,000; and, (3) the Operator is \$ 0. Upon termination of the Grant Agreement, the basis of WisDOT, Commission and Operator shall be calculated as follows:

- i. No more than 60 days following the closing of a sale of any Improved Property by Commission or the failure by Commission or Operator to remove a condition of default, the gross salvage value of the Improved Property on the Rail Line or any portion thereof subject to the default shall be determined in accordance with Section 8.1(f) of this Agreement.
- ii. The estimated costs of liquidation, which include both direct salvage operation costs and WisDOT administrative costs, shall be deducted from the appraised value.
- iii. WisDOT's, Commission's and Operator's percentage share of the Improved Property shall be determined by dividing each party's respective Investment Basis in the Improved Property by the total Investment Basis.
- iv. Each party's share of any proceeds from the sale of any Improved Property shall be determined by multiplying that party's percentage share of the Improved Property by the net liquidation value of the Improved Property. WisDOT shall receive 100% of the net liquidation value of the Land. Neither Commission nor Operator shall receive funds from the liquidation of the Land inasmuch as neither has invested its own funds in the acquisition.
- v. In the event the property is liquidated, the net proceeds of the liquidation are used in place of appraised value in steps (i) through (iv) except that the estimated costs of liquidation, which include both direct salvage operation costs and WisDOT's administrative costs, shall not be deducted from the net proceeds of the liquidation under step (ii).

(c) Any property installed or funds expended for maintenance of any portion or aspect of Rail Line 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 Improved Property or transfer of operating rights on the property to another agency or operator.

Section 8.4 - New Improved Property.

Commission or Operator, or their designees (collectively "Owner"), may acquire or install, at its own expense, additional facilities deemed necessary for railroad service. Installation shall be permitted only after prior receipt of written approval of the installation proposal and plan by Commission and by WisDOT, which approval shall not be unreasonably withheld. In the event of liquidation or transfer of ownership to anyone other than Operator, WisDOT shall first determine, within 180 days, if any of these additional facilities are needed for the provision of freight rail service on this or any other line in the State. If WisDOT determines that they are not needed for such purpose, the owner of the additional facilities may dispose of the facilities in any manner it sees fit at its own expense and shall restore any trackage and Land to the condition it was in prior to the installation of the additional facilities. If WisDOT determines that any of the additional facilities are needed, Commission shall arrange for WisDOT, or the subsequent user of the facilities, to pay, or assume the obligation to pay, if assignable, the fair market value of the needed additional facilities to the owner prior to taking possession of the facility. Should owner produce an executed agreement for such facility from a bona fide purchaser, it shall notify WisDOT, and WisDOT or its nominee shall have the right of first refusal to purchase under the same terms and conditions, but such right must be exercised within forty-five (45) days, and such purchase must be completed within six (6) months of notice by Owner. Property covered under this section does not include property used in maintenance or betterment or replacement of property granted to Commission to be installed by government order or regulation. Property covered under this Section shall include but not be limited to new buildings, new sidings, spurs, or passing tracks. The powers above given to WisDOT are made a part of this Agreement as conditions imposed by WisDOT in its agreement with Commission. Any obligation imposed by WisDOT on Commission relating to performance or to the handling of property or relating to additions to property by Commission or Operator are to be performed and adhered to by Operator, and evidence of such obligations is supplied by incorporation of said agreement herein by reference or by attachment. If the agreements between Commission and WisDOT require approval from WisDOT before improvements are made thereon or extended thereto, then such approval shall be obtained before Operator erects or constructs a building or buildings or other improvements, and Commission hereby agrees to use its best efforts to obtain such approval.

ARTICLE 9.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.

Section 9.1 - Operator.

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

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

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

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

(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 programs prohibited from use as match for other federal program funds.

Section 9.2 - Commission.

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

(a) Commission was created pursuant to Wis. Stat. § 66.0301 (formerly 66.30), for the purpose of establishing, acquiring, maintaining, and operating a local transportation system. As a Wis. Stat. § 66.0301 Commission, it has full power and authority to enter into an agreement such as this Agreement and to carry out the functions, which it has obligated itself to undertake in this Agreement. This Agreement has been authorized and approved by the Board of Directors of Commission.

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

(c) In possession of Operator, and hereby made a part of this Agreement by reference, are true and correct copies of the Land Use Agreement and the Grant Agreement, in effect on the date of this Agreement, and the same have not been further amended, terminated or revoked. It is the intention of Commission not to provide for or to agree to any act or procedure or extend any right not permitted to Commission in any of the agreements with WisDOT. To the best knowledge of Commission after due inquiry, nothing in this Agreement conflicts with or is prohibited by the Land Use Agreement or Grant Agreement between Commission and WisDOT as of the date of the execution of this Agreement.

(d) Commission represents and warrants to and covenants with Operator that WisDOT will, during the term of this Agreement, comply with all of the provisions of the Land Use Agreement and the Grant Agreement and will abide by the provisions of this Agreement which refer to or contemplate action by WisDOT, and Commission shall take actions to attempt to ensure WisDOT's performance as aforesaid.

ARTICLE 10.0 - REPORTS AND ACCOUNTS.

Section 10.1 - Reports.

(a) Operator shall present for review the following information to Commission and WisDOT within 45 days after June 30th and December 31st of each year:

- i. An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance;
- ii. A summary of originating and terminating traffic by commodity, by Principal Line Segment, and by month;
- iii. A statement of major traffic gains or losses and a summary of operating and maintenance activity by Principal Line Segment; and
- iv. A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight, including but not limited to building rent, excursion trains, contract car repair revenues, and the like. The report shall describe the amounts received, the duration of the period for which the income is received and the payer.

(b) Operator shall submit the following reports to WisDOT:

- i. Independently audited financial statements for each year ending December 31, to be submitted on or before September 30 each year; and
- ii. A certificate of insurance submitted on or before each insurance coverage renewal date appropriately showing that all the terms and conditions of Section 6.2 of this Agreement are fully met; and
- iii. Appropriate documentation showing any changes in operating status or authority 30 days prior to its effective date; and
- iv. Immediate notice of damage or injury to persons or property as required under Section 6.2 of this Agreement.

Section 10.2 - Accounts.

(a) Operator shall establish and maintain a system of accounts on an accrual basis of accounting or as otherwise approved by WisDOT.

(b) Operator shall make available to WisDOT's auditors or agents or auditors of any other governmental agency having jurisdiction over Operator, the records related to the accounts and reports identified under this Article and shall likewise make those accounts and reports available to Commission.

ARTICLE 11.0 – TAXES.

As of the date of this Agreement, unless waived or abated, Operator shall be responsible for and pay when due, all taxes due as a result of its possession and use of the Rail Line or its assets including possession of real and personal property as well as

for all taxes due on property owned by Operator. Operator agrees to hold Commission and WisDOT harmless from, indemnify against and defend all claims and liabilities with regard thereto.

ARTICLE 12.0 - OTHER COMMITMENTS.

Section 12.1 – Handicapped.

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

Section 12.2 - Environmental Protection.

(a) Operator agrees that facilities or equipment shall not be acquired, constructed or improved as a part of its operations unless such facilities or equipment are designed and equipped to comply with all applicable environmental requirements, and that all operations conducted under this Agreement will be done in compliance with all applicable environmental requirements.

(b) Operator hereby certifies that no facilities, which will be utilized or improved as a part of its operations, are listed on any state or federal list of violating facilities.

(c) Operator stipulates that it will notify WisDOT as soon as it or any subcontractor receives any communication from a state or federal agency indicating that any facility, which will be utilized or improved as a part of its operations, is under consideration to be included on any state or federal contaminated property list.

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

Section 12.3 - Prohibited Interest in the Proceeds of Operations.

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

(b) The Operator shall insert in all agreements entered into by it in connection with approved projects, or in connection with any property included or planned to be included in any project for which federal assistance may be sought, and shall require its contractors to insert in each of their subcontracts the following provision: "No director, officer, or employee of the Commission or its member counties during their tenure or for

one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

(c) The provisions of this subsection shall not be applicable to any agreement between the Commission and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

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

Section 12.4 - Nondiscrimination.

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

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

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

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

ARTICLE 13.0 - GENERAL PROVISIONS.

Section 13.1 - Choice of Law.

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

Section 13.2 - Statement of Parties Intent.

The Parties have intentionally structured this Agreement to comply with the principles enunciated in the United States Surface Transportation Board's State of Maine Decision, (State of Maine DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C. 2d 835 (1991)), wherein a public entity was authorized to acquire a railroad line comprising part of the National Rail System threatened with abandonment, without commensurately acquiring the common carrier obligation. Any ambiguities in the transaction agreements should be resolved and construed in favor of an outcome complying with the STB's State of Maine requirements.

Section 13.3 – Notice.

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

Chief, Railroads and Harbors Section
Wisconsin Department of Transportation
P.O. Box 7914
Madison, Wisconsin 53707

Chairman & Executive Secretary
Wisconsin West Rail Transit Authority
C/O Barron County
330 East LaSalle Avenue, RM 2510
Barron, WI 54812-1433

Chief Executive Officer
Progressive Rail Inc., d/b/a Wisconsin Northern Railroad
21778 Highview Avenue
Lakeville, MN 55044

Section 13.4 - Status of Operator.

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

Section 13.5 – 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, the license or otherwise, directly or indirectly, without Commission's prior written consent and without WisDOT's prior written consent. This Agreement shall not create rights of any sort in Operator to assign,

sublease or transfer, in any fashion whatsoever, its rights under this Agreement to any other person, firm or corporation, including any affiliated corporation, firm or person.

Section 13.6 – 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 13.7 - Amendments, Consents, and Approvals.

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

Section 13.8 – Captions.

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

Section 13.9 - Compliance by Operator with Agreement.

Operator acknowledges it has reviewed the Land Use Agreement and the Grant Agreement by and between Commission and WisDOT, and will meet any of the covenants and conditions required of Commission therein insofar as the same would be the responsibility of Operator. In the event of additional agreements arising in grant or other aid instruments hereinafter made between Commission and WisDOT, Operator shall review the same and shall comply with the same insofar as it pertains to Operator. Notwithstanding the foregoing, Commission shall not terminate, alter, amend, revoke or modify the Land Use Agreement or the Grant Agreement without the prior written consent of Operator. It is the intent of Commission not to enter into any other agreement without Operator consent, which would adversely affect the rights of Operator hereunder or impose additional expense or obligations on Operator.

Section 13.10 - Additions or Extension to Present Track.

Additions or extensions to the present Improved Property may be desired by either of the parties hereto or by a user. In that event, such extension or addition shall be constructed at the option and cost of Operator and/or the user benefited by the addition or extension. However, if Commission desires such an extension or addition and this is not concurred in by Operator, then Operator agrees to make such addition or extension but at the cost of Commission. Permits for and disposition of such extensions shall be in compliance with Section 8.4.

Section 13.11 - Additions, Remodeling or Replacement of Buildings.

In the event additions, remodeling, replacements or new construction for buildings or other structures except for trackage are desired by Operator, Operator may construct the same at its cost except that any improvement of existing buildings or structures requires the prior written approval of WisDOT and Commission. Permits for and disposition of such additions, remodeling, or replacements of buildings shall be in compliance with Section 8.4.

Section 13.12 - Failure of Commission to Obtain and Retain Right of Possession and Limitations on Commission and Operator.

(a) The title of the Land located in Wisconsin hereby leased and licensed to Operator is held by WisDOT for the State of Wisconsin. The Improved Property is conditionally owned by or granted to Commission but is subject to certain liens and controls by WisDOT, all as set forth in agreements between WisDOT and Commission referred to in Section 13.8 above. The right of Commission to the continued use of the Land and Improved Property is subject to termination in the event of default or certain happenings with a final termination at the end of the term of the Land Use Agreement and Grant Agreement between WisDOT and Commission. It is a condition of this Agreement, that in the event Commission loses its right to possession or use of any of the Land or Improved Property because of conditions imposed by WisDOT or because of future failures or inability of Commission to meet all the requirements for holding and retaining the Land and Improved Property, then this Agreement terminates and ceases, and no liability attaches to Commission for such termination, provided that Commission has fulfilled its obligation herein to offer Operator an opportunity to cure any such default.

(b) References are made in this Agreement to rights of WisDOT to sell and lease portions of the Land acquired by the State and permitted to Commission. It is the position of Commission that all the Land that has been acquired was used for transportation purposes and should be retained for present or future transportation purposes. However, WisDOT retains the right, subject to the provisions of Section 2.2 of this Agreement, to retake and sell portions determined by it not to be needed for transportation purposes on the assumption that future use and experience may indicate there are portions of the Land which might be declared excess for present or future transportation uses or are not needed for preservation of railroad service and therefore should be sold. As to leasing, it is the assumption of Commission that property presently provided to Commission does have or in the future would have a transportation use. Included in this assumption are the notions that portions of the Land immediately accessible to the Rail Line contribute to the transportation use when the lessee is a user or potential user of rail service and the Land should remain available for future rail transportation uses. It is a contention of WisDOT that there are certain portions of the Land, which can be leased for limited co-use purposes to adjacent owners without jeopardizing the use by Operator, or future required full use by Operator. WisDOT has retained the right to make co-use leases in such situations, but it has been the position of Commission as stated to WisDOT that this type of lease should be limited in use and in time. Except as restricted under Section 2.2, present buildings are part of the property conditionally owned or controlled by Commission. Commission is giving the use of buildings to Operator as a part of this lease

and license when needed by Operator, but otherwise Commission has retained the right to lease them in accordance with Section 2.2(e).

Section 13.13 – Rehabilitation.

(a) In the event Operator determines in the future that application should be made for rehabilitation, Commission agrees to cooperate with Operator in making such an application or applications. In the event rehabilitation grants are obtained, Operator agrees to comply with the Federal and state laws as imposed by any such Grant Agreement and will be subject to and comply with Federal and state laws as imposed by the Grant Agreement as to handicap restrictions, environmental protection, approved project procurement, prohibited interest in the proceeds, affirmative action requirements and other applicable laws.

(b) All rehabilitation and improvements and substitute service facilities, installed or accomplished using state or federal financial assistance regardless of the ownership of the property on which they are located, when any such property is no longer used for its original approved project purpose, shall be subject to disposition as described by State and Federal regulations. In connection with any rehabilitation or improvement, the Operator shall file on behalf of the owner of such property, in the appropriate land records, a notice reciting that property was improved or installed with Federal assistance and that its use and disposition are subject to the terms of this Agreement. If the Operator's chief legal counsel advises that such notice cannot be filed, the Operator shall so advise the Commission, and shall recommend alternate procedures whereby compliance with the provisions of this Agreement can be achieved.

Section 13.14 – Arbitration.

(a) 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.

(b) 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.

Section 13.15 - Specific Performance.

Operator and Commission shall have the right, as provided by law, to require specific performance by the other party of the other party's obligations under this Agreement. This right may be asserted at any time after twenty (20) days from the time Operator or Commission has first notified the other party of the other party's obligation to perform.

Section 13.16 - Approval by WisDOT.

This Agreement to be effective must be approved by WisDOT and is subject to the Transfer of Ownership as outlined in Section 13.17 of this Agreement. This is in compliance with the agreements between WisDOT and Commission and the charter contract of Commission.

Section 13.17 – Transfer of Ownership and Title to Land and Improved Property.

This Agreement shall not become effective until all necessary documents transferring ownership and title to the Land and Improved Property to WisDOT have been executed and recorded. Transfer of the Land and Improved Property shall not occur unless and until the STB has issued a determination that WisDOT will not assume the responsibilities of a common carrier railroad operator by acquiring the Land and the Improved Property.

Section 13.18 - Execution.

This instrument shall be fully executed in triplicate with a copy being delivered to each party and to WisDOT and in such further counterparts as may be desired by the parties.

Section 13.19 - Entire Agreement.

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

Signatures.

IN WITNESS WHEREOF, the Wisconsin West Rail Transit Authority, by its Board of Directors, has caused this Agreement to be signed by its duly authorized officers, this 9 day of December, 2010

WITNESS:

WISCONSIN WEST RAIL TRANSIT AUTHORITY

Sandra K. Perry

Neil Lundgren
Neil Lundgren, Chairman

Sandra K. Perry

Charles Walker
Charles Walker, Executive Secretary

IN WITNESS WHEREOF, Progressive Rail Inc., d/b/a Wisconsin Northern Railroad, by its Board of Directors, has caused this Agreement to be signed by its CEO, this 9 day of December, 2010.

WITNESS:

PROGRESSIVE RAIL INC.,
D/B/A WISCONSIN NORTHERN RAILROAD

Sandra K. Perry

Lon Van Gemert
Lon Van Gemert, CEO

RE: RE
| WisDOT APPROVAL in Accordance with Section 13.165 of this Agreement:

WISCONSIN DEPARTMENT OF TRANSPORTATION

10 Dec 2010
Approval Date

Ronald E. Adams
Ronald E. Adams, Chief
Railroads and Harbors Section

ATTACHMENT 1

**LAND USE AGREEMENT # 0499-01-76(A-3)
BY AND BETWEEN THE
WISCONSIN WEST RAIL TRANSIT AUTHORITY AND THE WISCONSIN
DEPARTMENT OF TRANSPORTATION**

**ATTACHMENT 2
GRANT**

**GRANT AGREEMENT FOR RAIL SERVICE CONTINUATION
0499-01-76(B-3)
BY AND BETWEEN
THE WISCONSIN WEST RAIL TRANSIT AUTHORITY
AND
THE WISCONSIN DEPARTMENT OF TRANSPORTATION**

ATTACHMENT 3

A LIST OF LINE SEGMENTS THAT SHALL BE MAINTAINED TO FRA CLASS II STANDARDS, CLASS I STANDARDS AND FRA EXEMPT

(This list will be developed following execution of this agreement)

ATTACHMENT 4

LIST OF PROJECTS INCLUDED IN INVESTMENT BASIS

	Location	Item	Total	WDOT	Commission	Operator
1	Rice Lake-Cameron-Barron	Acquisition of Improvements	\$600,000	\$480,000	\$120,000	\$0
2						
3						
4						