

REAL ESTATE DONATION CONTRACT

The City of Appleton, a Wisconsin municipal corporation, hereinafter called "Donee", hereby offers to acquire from Wisconsin Central Ltd., a Delaware corporation, hereinafter called "Donor", the interest of Donor in the real estate and improvements described in Section 2 herein, hereinafter described and called the "Premises", on the following terms and conditions:

1. **Donation.**

a.) Donor will donate and convey its interest in the Premises, including all improvements located thereon, to Donee in accordance with the terms, conditions and reservations contained herein. No monetary consideration shall be paid by Donee to Donor for the Premises.

b.) Donee warrants and represents to Donor that Donee is a tax exempt entity which is qualified under the terms and provisions as set forth by the Internal Revenue Service (the "IRS") to receive tax deductible donations.

b.) Donee agrees to take all actions and execute all documents, including but not limited to, the Donee Acknowledgement section of IRS Form 8283, attached hereto as Exhibit "D", and Charitable Contribution Receipt, attached hereto as Exhibit "E".

2. **Property.** The Premises for which Donor is conveying its interest are located in the City of Appleton, County of Outagamie, State of Wisconsin, and consist of the following:

a.) Approximately 0.3 acres of vacant land as shown in yellow shading on the plat labeled Exhibit "A", dated March 15, 2010, attached hereto and made a part hereof.

b.) Donor's southernmost (unused) railroad trestle, and all appurtenances thereon, crossing the Fox River and extending from the east bank to the west bank of the Fox River, all as shown in red outline on said Exhibit "A".

c.) The unused railroad trestle over the Telulah Water Power Canal, as shown in yellow on the plat labeled Exhibit "B", attached hereto and made a part hereof.

d.) The unused railroad trestle over the Fox River as shown in yellow on the plat labeled Exhibit "C", attached hereto and made a part hereof. In addition, the land adjacent to said trestle, identified in Exhibit J.

3. **Conveyance.**

a.) Donor shall convey or cause the Premises described in Section 2a herein to be conveyed to Donee by Quit Claim Deed, hereinafter called the "Deed", subject to the exceptions and reservations contained in this Contract.

b.) Donor shall convey or cause the Premises described in Section 2b herein to Donee by Bill of Sale, in the form labeled Exhibit "F", attached hereto and

made a part hereof.

c.) Donor shall convey or cause to be conveyed the Premises described in Section 2c herein by Bill of Sale, in the form labeled Exhibit "G", attached hereto and made a part hereof. ~~Donor makes no representation to Donee that Donor has any ownership rights or interest in the Premises described in Section 2c herein, and Donor's agreement to issue a Bill of Sale is at the request of the Donee and is for the purpose of extinguishing Donor's interest, if any, in said Premises described in Section 2c herein.~~

d.) Donor shall convey or cause to be conveyed the Premises described in Section 2d herein. The trestle described in Section 2d shall be conveyed by Bill of Sale, in the form labeled Exhibit G, attached hereto and made a part hereof. The real property identified in Exhibit I and depicted in Exhibit J, shall be conveyed by Quit Claim Deed in the form labeled Exhibit _____ attached hereto and made a part hereof.

e.) Donor makes no representation to Donee that Donor has any ownership rights or interest in the ~~p~~Premises described in Sections 2a, 2b, 2c or 2d herein, and Donor's agreement to issue ~~a~~Bills of Sale and Quit Claim Deeds s is at the request of the Donee and is for the purpose of extinguishing Donor's interest, if any, in said Premises described in said Sections 2d herein.

ef.) Donee shall acquire the Premises and any improvements thereon in an "as-is" condition and subject to all faults of every kind and nature whatsoever, whether latent or patent and whether now or hereafter existing. Donee represents and warrants to Donor that Donee has not relied, and shall not rely, upon any representations or statements or the failure to make any representation or statement, by Donor or Donor's agents or employees or by any person acting, or purporting to act, on behalf of Donor. Donee specifically agrees that Donor shall not be obligated to do any restoration, repairs, remediation or other work in connection with the Premises, that Donor shall not be liable for any restoration, repairs, remediation or other work necessary to cause the Premises to meet any applicable laws, ordinances, requirements, limitations, restrictions, regulations or codes, or be suitable for any costs, expenses, liability and damages, including attorneys' fees, incurred or arising in connection with any such restoration, repairs, remediation or other work. Donee waives, releases, acquits and forever discharges Donor, its employees and agents and any other person acting on behalf of Donor, of and from any and all claims, actions, causes of action, liabilities, demands, rights, damages, cost, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Donee now has or may have or which may arise in the future on account of or in any way growing out of or in connection with any Hazardous Materials or Other Conditions presently on, under, from or affecting the Premises known or unknown or any law or regulation applicable thereto. The provisions in this Section 3d shall survive the closing of this transaction, with it being rebuttably presumed that any Hazardous Materials or Other Conditions identified on the Premises post-closing were present in their location and concentration prior to Closing, and with Donee assuming the burden ~~of~~ proof to rebut the presumption.

5. Exceptions. This Contract and the Deed shall be subject to and in accordance

with the following exceptions, reservations and conditions:

- (A) standard exceptions of the Title Company in its title policies issued in the state in which the Premises are located.
- (B) special taxes or assessments for improvements not yet completed, if any.
- (C) installments not due at the date hereof of any special tax or assessment for improvements completed, if any.
- (D) general taxes, if any, for the tax year prior to the year in which the Deed is delivered and subsequent years. If the Premises are locally assessed for the year in which the Deed is delivered, the taxes for such year shall be prorated as of the date on which the Deed is delivered on the basis of the most recent tax bill, unless the payment of taxes has been assumed by a tenant. If the Premises are assessed as railroad operating property by the State in which the Premises are located, then the Donor agrees to pay, when due, taxes for the year in which the deed is delivered and prior years, assessed in Donor's name.
- (E) 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 Premises by any governmental authority having jurisdiction thereof.
- (F) public roads and highways, if any.
- (G) judgment liens; however, any judgment against Donor which may appear of record as a lien against the Premises shall be settled and satisfied by Donor if and when it is judicially determined to be finally valid, and Donor shall indemnify the Donee for all loss arising out of Donor's failure to have such judgment lien so settled and satisfied. This provision shall survive the Closing of this transaction and the delivery of the Deed.
- (H) covenants, conditions, licenses, easements, and restrictions of record.
- (I) The sale of the Premises is subject to all of the rights of the owner of the mineral estate in said Premises, if any. If, however, it is found that Donor has mineral right in the Premises, such rights will not be retained by Donor but will pass to Donee by the Quitclaim Deed from Donor as set forth in Section 3a herein.
- (J) 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 communications systems, gas lines, electric power lines, wires, and other utilities and easements.

(K) acts by, through or under Donee.

6. **Closing.** The Closing shall occur within sixty (60) days following the execution of this Contract by Donor and Donee, at the time, date and location mutually agreeable to Donee and Donor. Donee agrees to purchase, affix and cancel all documentary stamps in the amount prescribed by statute, and pay all required transfer taxes and fees incidental to the recordation of said Deed. Donee shall apply for any lot splits or tax divisions with the appropriate local authorities at Donee's cost and expense.
7. **Real Estate Commission.** Donee agrees to indemnify, defend, and hold harmless Donor against any and all claims by any broker, attorney, or agent engaged by Donee for a fee or commission arising out of this Contract. Donor agrees to indemnify, defense, and hold harmless Donee against any and all claims by any broker, attorney, or agent engaged by Donor for a fee or commission arising out of this Contract. The provisions in this paragraph shall survive the Closing.
8. **Regulatory approval.** If Donor is required to obtain regulatory approval of this transaction by any agency, the Closing date shall be extended for the time required to obtain such approval. If such approval cannot be obtained within sixty (60) days, either party may terminate this Contract by written notice to the other.
9. **Liquidated damages.** Time is of the essence of this Contract. If Donee shall default or fail to perform the requirements of this Contract within the time limits herein specified, the Donor may declare this Contract terminated. In the event of default by Donor, Donee's sole remedy is to declare this Contract terminated.
10. **Notices.** All notices and demands herein required shall be in writing sent by telecopier, overnight courier or certified or registered mail to the other party at the address shown herein. Notices sent by (i) telecopier shall be deemed made upon confirmed transmission; (ii) overnight courier shall be deemed made one business day after being sent; and (iii) certified or registered mail shall be deemed made three days after mailing.
11. **Condemnation.** If, prior to the Closing of this sale, all or any portion of the Premises are condemned, this Contract shall be considered mutually terminated.
12. **Legal Description and Survey.** The legal description to be used in the Deed shall be furnished by Donor to Donee within ten (10) business days following Donor's acceptance of this Contract. In the event a survey is required in order to prepare the legal description, or a survey is required by state or local statute to consummate this transaction, then Donee shall, at Donee's expense, obtain and deliver to Donor a plat of survey and legal description of the Premises described in Section 2a herein no later than seven (7) days prior to Closing.
13. **Miscellaneous.**

- (A) Time is of the essence in the performance of each and every one of the terms of this Contract. Whenever any determination is to be made or action to be taken on a date specified in this Contract, if such date shall fall upon a Saturday, Sunday or legal holiday, the date for such determination or action shall be extended to the first business day immediately thereafter.
- (B) This Contract embodies the entire agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties concerning the Premises. No oral statements shall be of any force or effect. No variation modification or alteration of the terms hereof shall be binding upon either party unless set forth in an express and formal written amendment.
- (C) This Contract shall be construed in accordance with the laws of the State of Wisconsin.
- (D) For the purposes of this Agreement, (i) "Hazardous Materials" include, without limit, any flammable explosives, radioactive materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (49 U.S.C. 1801, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*) and in the regulations adopted and publications promulgated pursuant thereto, as such laws or regulations not exist or may exist in the future, and (ii) "Other Conditions" include, without limit, methane and other gases, petroleum and any fraction thereof, nonhazardous wastes or materials, and any physical conditions or other subsurface conditions which arise out of or are in any way related to current or previous uses or activities on the Premises.

14. **Other Conditions:**

As additional consideration to the transaction, Donor and Donee agree as follows:

- a. Donor shall grant to Donee two (2) private pedestrian trail crossings, one located in the general vicinity of the west end of the railroad trestle and one located in the general vicinity of the east end of the railroad trestle described in Section 2b of the Real Estate Donation Contract, in the form of agreement marked Exhibit "H", attached hereto and made a part hereof. The exact location of the aforesaid private pedestrian recreational trail crossings shall be on the west end a 15' wide crossing immediately adjacent to the yellow area identified on Exhibit A. On the east end, a crossing that connects with an existing trail and identified as the yellow area on Exhibit A1.

b. Donee and Donor mutually agree to undertake all measures necessary for the closing of the Locust Street crossing in the city of Appleton, Outagamie County, identified as crossing number 179 919 F / NWF 213 78, by the Office of Commissioner of Railroads for the State of Wisconsin. The parties agree to jointly petition for the closure of said crossing with the Office of the Commissioner of Railroads (OCR) for the State of Wisconsin no later than July 1, 2017. Donor shall pay to Donee \$7,500 as matching funds for the City to close said crossing. Donee has identified a temporary plan for the closing, Exhibit _____ and a long-term closing plan, Exhibit _____. City agrees to have the long-term plan included in the City's 5-year project plan as part of the 2018 Budget.

c. Donee covenants and agrees to construct and maintain, at Donee's sole cost and expense, a six (6) foot high chain link fence, or other fencing agreeable to Donor, along the entire north boundary line and top deck of the railroad trestle described in Section 2b herein, as well as along the trackside (north) boundary line of the 0.3 acre parcel described in Section 2a herein, except for the location of the private pedestrian recreational trail crossing referenced in Section 14a herein. The construction of the fence shall be completed by Donee prior to any use of the Premises by the public for a recreational trail or any other public purpose.

The provisions of this Section 14 shall survive the closing.

d. Donor agrees that notwithstanding any other provision contained in this Agreement or any attachment to this Agreement, Donee shall be permitted to convert the trestle identified in Paragraph 2b above, to a pedestrian trail, at the sole expense of the Donee.

15. **Acceptance.** This Contract, and all attachments, when accepted and signed by the Donor, shall constitute the entire agreement between the parties and shall thereafter be binding upon and inure to the benefit of the Donor and the Donee, their heirs, administrators, successors and assigns. The execution and delivery of this Contract by Donee constitutes an offer to acquire the Premises on the terms described herein, which offer shall remain irrevocable and available for acceptance by Donor for a period of thirty (30) days after the date of Donee's signature below. **This contract shall not become binding upon Donor until executed by Donor and a duplicate original of this Contract is delivered to Donee.**

16. Any review by the Railroad of proposed improvements for the trail or crossing shall be completed within forty-five (45) days. Failure to comment within forty-five (45) days shall be deemed an approval.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates set forth below.

Donee: City of Appleton, Wisconsin

By: _____

Print Name:

Print Title:

Date of Donee's Offer: _____, 2017.

Donee's Address for notices:

City of Appleton
Department of Parks, Recreation and Facilities Management
1819 East Witzke Boulevard
Appleton, Wisconsin 54911
Fax No.: 920-832-5950

Donor: Wisconsin Central Ltd.

By: _____

Name: Arthur L. Spiros

Title: Senior Manager Business Development and
Real Estate – Southern Region

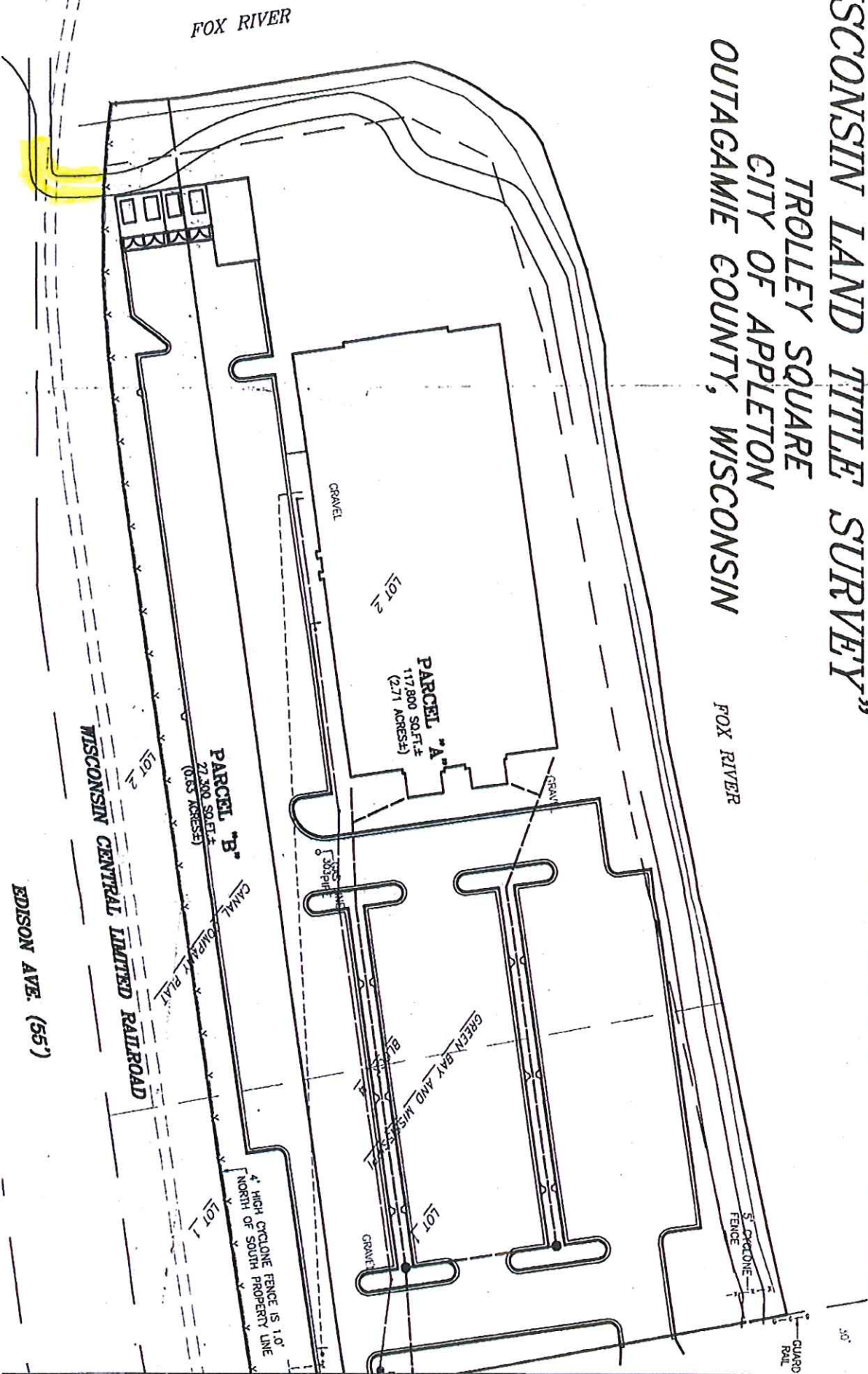
Accepted by Donor this _____ day of _____, 2017.

Donor's Address for notices:

Wisconsin Central Ltd.
Business Development and Real Estate Department
17641 S. Ashland Avenue
Homewood, Illinois 60430
Fax No.: 708-332-4348

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"WISCONSIN LAND TITLE SURVEY"
TROLLEY SQUARE
CITY OF APPLETON
OUTAGAMIE COUNTY, WISCONSIN



FOX RIVER

PARCEL "A"
117,800 SQ. FT.
(2.71 ACRES)

PARCEL "B"
27,300 SQ. FT.
(0.63 ACRES)

WISCONSIN CENTRAL LIMITED RAILROAD

EDISON AVE. (55')

FOX RIVER

4' HIGH CYCLONE FENCE IS 1.0' NORTH OF SOUTH PROPERTY LINE

GUARD RAIL

CYCLONE FENCE

GREEN BAY AND MILWAUKEE

CRANE

LOT 2

LOT 2

LOT 1

LOT 1

50'



EXHIBIT "B"





EXHIBIT "C"

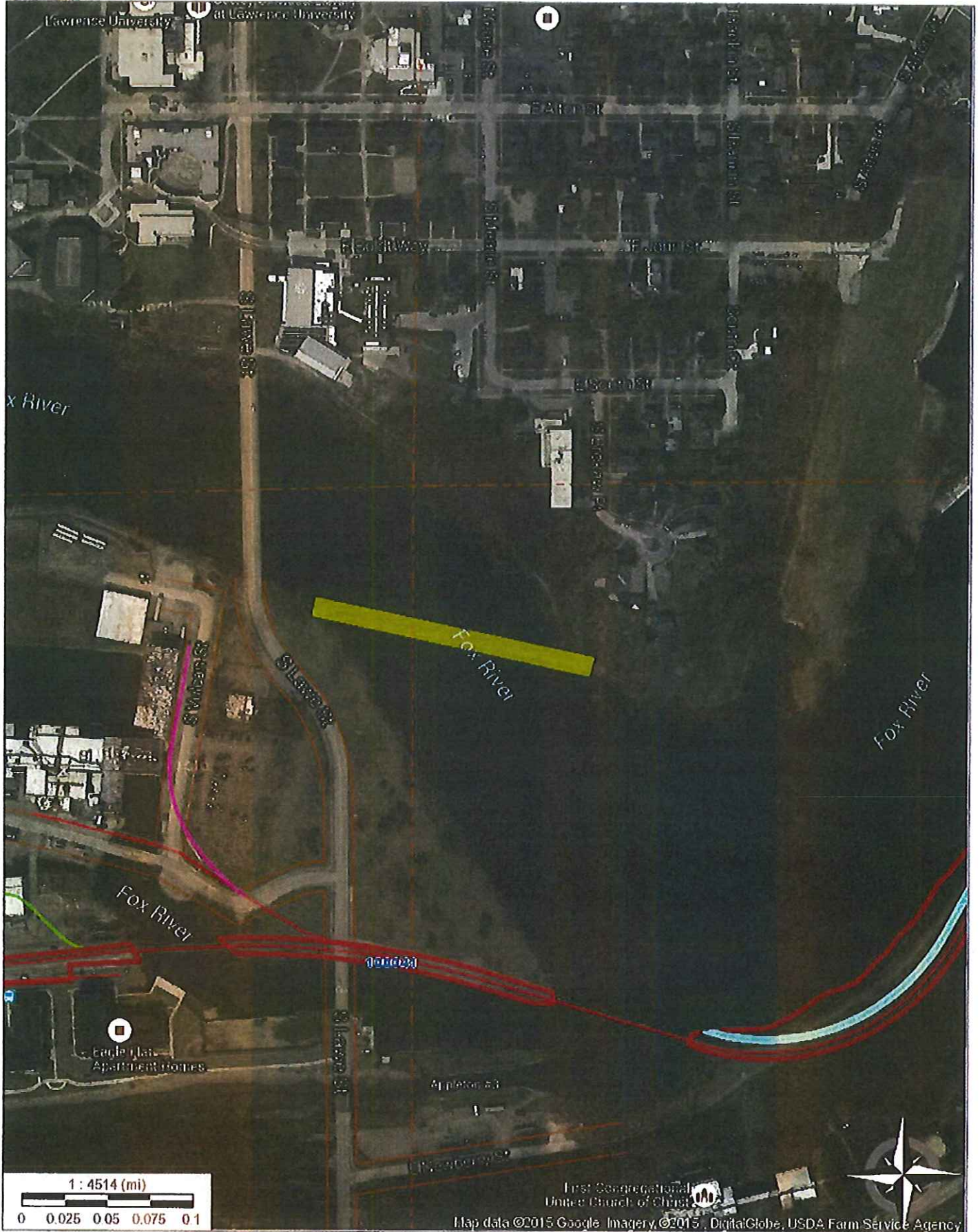


EXHIBIT "D" / CHARITABLE CONTRIBUTION FORM 8283

Noncash Charitable Contributions

▶ Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.

▶ See separate instructions.

OMB No. 1545-0008

Attachment
 Sequence No. **155**

Name(s) shown on your income tax return

Identifying number

Note. Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of \$5,000 or Less and Certain Publicly Traded Securities—List in this section only items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also, list certain publicly traded securities even if the deduction is more than \$5,000 (see instructions).

Part I Information on Donated Property—If you need more space, attach a statement.

| 1 | (a) Name and address of the donee organization | (b) Description of donated property (For a donated vehicle, enter the year, make, model, condition, and mileage, and attach Form 1098-C if required.) |
|---|--|--|
| A | | |
| B | | |
| C | | |
| D | | |
| E | | |

Note. If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (d), (e), and (f).

| | (c) Date of the contribution | (d) Date acquired by donor (mo., yr.) | (e) How acquired by donor | (f) Donor's cost or adjusted basis | (g) Fair market value (see instructions) | (h) Method used to determine the fair market value |
|---|------------------------------|---------------------------------------|---------------------------|------------------------------------|--|--|
| A | | | | | | |
| B | | | | | | |
| C | | | | | | |
| D | | | | | | |
| E | | | | | | |

Part II Partial Interests and Restricted Use Property—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ _____
 If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: **(1)** For this tax year ▶ _____
(2) For any prior tax years ▶ _____

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):

Name of charitable organization (donee) _____

Address (number, street, and room or suite no.) _____

City or town, state, and ZIP code _____

d For tangible property, enter the place where the property is located or kept ▶ _____

e Name of any person, other than the donee organization, having actual possession of the property ▶ _____

3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?

| Yes | No |
|-----|----|
| | |
| | |
| | |

b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire?

c Is there a restriction limiting the donated property for a particular use?

Name(s) shown on your income tax return

Identifying number

Section B. Donated Property Over \$5,000 (Except Certain Publicly Traded Securities)—List in this section only items (or groups of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions of certain publicly traded securities reported in Section A). An appraisal is generally required for property listed in Section B (see instructions).

Part I Information on Donated Property—To be completed by the taxpayer and/or the appraiser.

4 Check the box that describes the type of property donated:

- Art* (contribution of \$20,000 or more)
Art* (contribution of less than \$20,000)
Collectibles**
Qualified Conservation Contribution
Other Real Estate
Intellectual Property
Equipment
Securities
Other

*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

**Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note. In certain cases, you must attach a qualified appraisal of the property. See instructions.

Table with 5 main rows (A-D) and 6 columns: (a) Description of donated property, (b) Physical condition, (c) Appraised fair market value, (d) Date acquired, (e) How acquired, (f) Donor's cost, (g) Bargain sales amount, (h) Amount claimed as deduction, (i) Average trading price of securities.

Part II Taxpayer (Donor) Statement—List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions.

Signature of taxpayer (donor)

Date

Part III Declaration of Appraiser

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I hold myself out to the public as an appraiser or perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value.

Sign Here

Signature

Title

Date

Business address (including room or suite no.)

Identifying number

City or town, state, and ZIP code

Part IV Donee Acknowledgment—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? Yes No

Form with fields for Name of charitable organization, Employer Identification number, Address, City or town, state, and ZIP code, Authorized signature, Title, Date.

EXHIBIT "E"

CHARITABLE CONTRIBUTION RECEIPT

Substantiation for Charitable Donations of \$250 or More

Internal Revenue Code Section 170(f)(8) requires that the recipient (donee) of any single charitable gift of \$250 or more give the donor written confirmation of the receipt of such a gift, including a description and a good faith estimate of the value of any goods and services provided by the recipient (donee) in exchange for the donor making the gift.

In order to comply with this code section, _____ hereby certifies that we received the following contribution from

Cash or check in the amount of: \$ _____

Or

Property consisting of _____

Date contribution received: _____

Were any goods and/or services provided to _____ in return for this contribution?

Yes

No

If yes, a description of those goods and services is provided below with a statement of monetary value: _____

Value: \$ _____

Organization Name:

Address: _____

Telephone: _____ Fax: _____

Organization Tax ID#: _____

Signature: _____

Print Name and Title: _____

Date: _____

EXHIBIT "F"

BILL OF SALE

Wisconsin Central Ltd., a Delaware corporation, hereinafter referred to a "**Seller**", for and in consideration of the sum of Ten and NO/100 Dollars (\$10.00), to it in hand paid by **City of Appleton**, a Wisconsin Municipal corporation, hereinafter referred to as "**Buyer**", the receipt of which is herein acknowledged, grants, bargains, sells and delivers to the Buyer the following described property:

Seller's southernmost railroad trestle, and all appurtenances thereon, extending on, over and across the Fox River in Appleton, Wisconsin, as shown in red on the plat labeled Exhibit A, attached hereto and made a part hereof.

Seller hereby represents and warrants to Buyer that Seller is the absolute owner of said property that said property is free and clear of all liens, charges and encumbrances, and that Seller has full right, power and authority to sell said property and to make this Bill of Sale.

No representation or warranty is made by Seller to Buyer, either express or implied as to the condition of said property or its appurtenances or the fitness thereof for use or otherwise, all of which is sold "AS-IS, WHERE-IS".

Buyer represents that it has examined said property, is familiar with and accepts same in its present condition and assumes all risks incident thereto.

Seller shall not be liable for any incidental or consequential damages in connection with any representation or warranty.

As a consideration and as a condition, without which this Bill of Sale would not have been granted, Buyer agrees to indemnify Seller in accordance with the terms of "Exhibit B – Indemnity", attached hereto and made a part hereof.

TO HAVE AND TO HOLD the said property unto the Buyer, its successors and assigns, to and for its own proper use and behoof forever.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed effective this ____ day of _____, 2016.

Seller: Wisconsin Central Ltd.

Buyer: City of Appleton, Wisconsin

By: _____
Name: Arthur L. Spiros
Title: Senior Manager Business Development
and Real Estate – Southern Region

By : _____
Name:
Title:

EXHIBIT "F"

Exhibit B – Indemnity

Buyer agrees to indemnify and save harmless Seller, its officers, employees and agents and to assume liability for death or injury to any persons, including, but not limited to, officers, employees, agents, patrons and licensees of the parties hereto, and for loss, damage or injury to any property, including, but not limited to, that belonging to the parties hereto, whether in defense of any such claims, demands, actions and causes of action or in the enforcement of the indemnification rights hereby conferred, in any manner or degree caused by, attributable to or resulting from the exercise of the rights herein granted, or the failure of the Buyer to conform to conditions of this Bill of Sale, work performed by Seller for the Buyer under the terms of this Bill of Sale, or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of any structure incident thereto, or from any activity conducted on or occurrence originating on the area covered by this agreement, except when caused by the sole negligence or willful misconduct of Seller, its officers, employees and agents. Said Buyer also agrees to release, indemnify and save harmless Seller, its officers, employees and agents from all liability to Buyer, its officers, employees, agents or patrons, resulting from railroad operations at the area in which the removal of trackage and appurtenances is to be exercised, except where the death, injury or damage resulting therefrom are caused by the sole negligence or willful misconduct of Seller, its officers, employees or agents. At the election of Seller, the Buyer, upon notice to that effect shall assume or join in the defense of any claim based upon allegations purporting to bring said claim within the coverage of this section.

EXHIBIT "G"

BILL OF SALE

Wisconsin Central Ltd., a Delaware corporation, hereinafter referred to a "**Seller**", for and in consideration of the sum of Ten and NO/100 Dollars (\$10.00), to it in hand paid by **City of Appleton**, a Wisconsin Municipal corporation, hereinafter referred to as "**Buyer**", the receipt of which is herein acknowledged, grants, bargains, sells and delivers to the Buyer, insofar as it lawfully may, Seller's interest, if any, in and to the following described property:

Add description of trestle

No representation or warranty is made by Seller to Buyer, either express or implied, as to i.) Seller's interest, if any, in said property; or ii.) the condition of said property or its appurtenances or the fitness thereof for use or otherwise, all of which is sold "AS-IS, WHERE-IS".

Buyer represents that it has examined said property, is familiar with and accepts same in its present condition and assumes all risks incident thereto.

Seller shall not be liable for any incidental or consequential damages in connection with any representation or warranty.

As a consideration and as a condition, without which this Bill of Sale would not have been granted, Buyer agrees to indemnify Seller in accordance with the terms of "Exhibit B – Indemnity", attached hereto and made a part hereof.

TO HAVE AND TO HOLD Seller's interest, if any, in said property unto the Buyer, its successors and assigns, to and for its own proper use and behoof forever.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed effective this ____ day of _____, 2016.

Seller: Wisconsin Central Ltd.

Buyer: City of Appleton, Wisconsin

By: _____
Name: Arthur L. Spiros
Title: Senior Manager Business Development
and Real Estate – Southern Region

By : _____
Name:
Title:

EXHIBIT "G"

Exhibit B – Indemnity

Buyer agrees to indemnify and save harmless Seller, its officers, employees and agents and to assume liability for death or injury to any persons, including, but not limited to, officers, employees, agents, patrons and licensees of the parties hereto, and for loss, damage or injury to any property, including, but not limited to, that belonging to the parties hereto, whether in defense of any such claims, demands, actions and causes of action or in the enforcement of the indemnification rights hereby conferred, in any manner or degree caused by, attributable to or resulting from the exercise of the rights herein granted, or the failure of the Buyer to conform to conditions of this Bill of Sale, work performed by Seller for the Buyer under the terms of this Bill of Sale, or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of any structure incident thereto, or from any activity conducted on or occurrence originating on the area covered by this agreement, except when caused by the sole negligence or willful misconduct of Seller, its officers, employees and agents. Said Buyer also agrees to release, indemnify and save harmless Seller, its officers, employees and agents from all liability to Buyer, its officers, employees, agents or patrons, resulting from railroad operations at the area in which the removal of trackage and appurtenances is to be exercised, except where the death, injury or damage resulting therefrom are caused by the sole negligence or willful misconduct of Seller, its officers, employees or agents. At the election of Seller, the Buyer, upon notice to that effect shall assume or join in the defense of any claim based upon allegations purporting to bring said claim within the coverage of this section.

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LEASE FOR A PRIVATE TRAIL CROSSING

This Lease for a Private Pedestrian Recreational Trail ("Agreement"), made and entered into as of the ____ day of _____, 201~~1~~7, by and between the WISCONSIN CENTRAL LTD. (hereinafter referred to as "Railroad Company") whose mailing address is 17641 S. Ashland Avenue, Homewood, Illinois 60430-1345 and _____ (City of Appleton (hereinafter referred to as "Lessee") whose mailing address is 100 North Appleton Street, Appleton, WI 54911-4799.

WITNESSETH:

IN CONSIDERATION of the mutual covenants and agreements herein set forth, Railroad Company, insofar as it lawfully may, does hereby grant unto Lessee a lease to construct, maintain and use a private pedestrian recreational trail upon, over and across the property or right-of-way of Railroad Company (including the track located thereon) at _____ as shown on the print attached hereto as Exhibit A and made a part hereof,

Lessee shall pay to Railroad Company upon execution of this Agreement the sum of \$750.00 for preparation and handling of this Agreement. The aforesaid sum is not refundable in the event Lessee elects not to enter upon Railroad Company's property,

Lessee shall at all times conduct its work in accordance with any and all "Special Provisions" which may be appended hereto which, by reference hereto, are hereby made a part hereof.

UPON AND SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. DEFINITIONS.

- (a) Railroad Company's Property. "Railroad Company's Property" shall mean the property shown on the attached print, to the extent owned by Railroad Company, whether owned in full ownership or as a servitude, easement, or right-of-way, including Railroad Company's track, the land on which the track is situated, and any adjacent land of Railroad Company on either side of the track.
- (b) Lessee. "Lessee" shall mean the City of Appleton.
- (c) Lease Area. "Lease Area" shall mean that portion of Railroad Company's Property over and across which the lease is granted. The Lease Area extends from one edge of the Railroad Company's Property across the track to the opposite edge of the Railroad

EXHIBIT "H"

Company's Property and measures a distance of approximately fifteen (15) feet in width on either side of the center line of the roadway, all as more fully shown on the attached print.

- (d) Trail. "Trail" shall mean the trail approaches on either side of the Crossing Proper within the Lease Area including that portion between tracks where multiple tracks exist.
- (e) Crossing Proper. "Crossing Proper" shall mean that portion of the Lease Area encompassing an area from end-of-tie to end-of-tie and from end-of-surface to end-of-surface, with a total surface width of approximately _____ feet.
- (f) Lessee's Property. "Lessee's Property" shall mean the property or estate of Lessee to and from which this Agreement provides ingress and egress for Lessee's benefit and use.
- (g) Cost. "Cost" shall mean the actual cost of labor, outside services, equipment and materials plus Railroad Company's then current customary additives for overhead and other indirect costs.

2. USE.

- (a) This Agreement shall only affect and burden the Lease Area and no other portion of Railroad Company's Property, and the Trail and Crossing Proper shall be constructed, located, and maintained entirely within the Lease Area. Lessee shall have no right to use or cross any other portion of Railroad Company's Property or to use the Trail and Crossing Proper for any purposes other than as expressly permitted herein, and Lessee, as a further consideration, cause, and condition without which this Agreement would not have been granted, agrees to restrict its and its employees', agents' and invitees' use to those purposes and then only to said location and no other for crossing the Railroad Company's Property, including the track.
- (b) Lessee shall not do or permit to be done any act which will in any manner interfere with, limit, restrict, obstruct, damage, interrupt, or endanger Railroad Company's operations or facilities.
- (c) Lessee shall require and shall take all reasonable steps necessary to ensure that all persons using the Trail and Crossing Proper, come to a complete stop, look carefully for approaching trains before crossing Railroad Company's tracks, and yield to any approaching train.
- (d) The Crossing Proper shall be used only by Lessee and its employees, agents, contractors, patrons and invitees and then only as a public pedestrian recreational trail crossing Railroad Company's property.
- (e) The Trail and Crossing Proper shall not be used by vehicles of a size, configuration or weight that would damage the tracks, equipment, installations, or facilities of Railroad Company or any equipment,

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installations, or facilities located on Railroad Company's Property but belonging to third persons unless approved in advance in writing by Railroad Company and then only after suitable precautions have been taken to avoid any such damage.

3. TERM.

- (a) This Agreement shall become effective as of the date first written above and shall continue in effect thereafter for a period of forty (40) years in one of the manners set forth below:
- (i.) Either party may at any time give the other party written notice of termination specifying the date on which termination shall be effective, provided that such notice shall be delivered at least thirty (30) days in advance of the proposed date of termination.
 - (ii.) Railroad Company shall have the right to terminate this Agreement immediately upon written notice to Lessee if Lessee at any time breaches or fails to perform any of the terms and conditions hereof;
 - (iii.) This Agreement shall terminate through non- use or in any other manner provided by law.
- (b) This Agreement shall automatically renew for another term of forty (40) years unless terminated by one party upon written notice to the other given in writing at least one (1) year prior to expiration.
- (c) Unless the parties mutually agree in writing to leave the Trail and Crossing Proper in place after termination, the termination of this Agreement shall not be effective until all removal and restoration is complete. Termination of this Agreement shall not release Lessee from any liability or responsibility and duty which accrued prior to such termination, removal and restoration.

4. CONSTRUCTION.

The construction of the Trail, including the necessary grading, culverts and drainage on each side of the Railroad Company's track, shall be performed by Lessee at its own risk and expense, and to the satisfaction of the Railroad Company's authorized representative. Railroad Company will install the Trail over its track(s), from end-of-tie to end-of-tie, and make all adjustments required in Railroad Company facilities, if any, at Lessee_ sole expense. For performance of its work as described in this paragraph Railroad Company will be paid _____ by Lessee upon completion of said work. Railroad Company shall complete the work as described in this paragraph by _____.

5. NOTIFICATION TO RAILROAD COMPANY.

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At least ten (10) days prior to entering upon the Trail for the purpose of performing any construction or maintenance work hereunder, Lesseeshall notify Railroad Company in writing of the type of work to be performed and the date such work will commence. The notice shall be sent to the following address:

Regional Chief Engineer
Wisconsin Central Ltd.
17641 South Ashland Avenue
Homewood, IL 60430

6. SIGHTING AT CROSSING.

Lessee shall arrange to keep each quadrant of the intersection of the Roadway with Railroad Company's track free of bushes, trees, weeds, vegetation, and all other obstructions of any kind that could interfere with a motor vehicle operator sighting an approaching train. If Lesseerequires access to Railroad Company's property outside the Roadway to satisfy this requirement, Lesseeshall obtain written permission from Railroad Company's authorized representative.

7. RAISING WIRE LINES.

If it should be necessary to raise any wires on Railroad Company's property to provide safe clearance for vehicles, Lessee shall make all arrangements therefor at its own sole risk and expense.

8. MAINTENANCE.

Lessee shall, at its own risk and expense, maintain said Trail in good and safe condition commensurate with its intended use. Railroad Company shall, at the sole risk and expense of Lessee, maintain the Crossing Proper, however, Railroad Company shall have the right, but not the duty, to perform at Lessee's sole risk and expense, any repair or maintenance on the Trail that Railroad Company considers reasonably necessary and Lessee shall pay the cost thereof upon receipt of a bill whether made at Lessee's request or otherwise.

9. CROSSING TO BE KEPT FREE OF DEBRIS.

Lessee shall at all times during the term of this Agreement, keep the Railroad Company's track and flangeway free of dirt, rocks or other debris or obstructions (including obstructions to proper drainage) of any kind, and will not permit any condition which might interfere with the safe and efficient operation of trains over the Crossing Proper, or which might damage equipment or facilities belonging to Railroad Company or others, or which might constitute a safety hazard of any kind. If at any time Lessee shall fail to do so, Railroad Company

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may, at its option, remove any dirt, rocks, debris or obstructions, and Lessee will pay Railroad Company the cost thereof promptly upon receipt of bill therefor. If the continued or repeated presence of dirt, rocks, debris or obstructions should, in the opinion of Railroad Company, create an operating hazard, Railroad Company may provide protective services at Lessee's expense until such condition is corrected in a manner reasonably satisfactory to Railroad Company, or at its option may immediately terminate this Agreement.

10. UNAUTHORIZED USE.

Lessee shall take reasonable steps to prevent all unauthorized uses of the Lease Area and nothing herein shall be construed to relieve Lessee of this responsibility.

11. GATES AND FLAGGING.

Lessee shall, at its own risk and expense, install and maintain any gate or other barrier which Railroad Company indicates is reasonably necessary and shall keep the gates closed when the Lease Area is not in actual use. Lessee shall, at its own risk and expense, provide whatever protective services Railroad Company shall indicate is necessary. Railroad Company shall have the right, but not the duty, to provide any such protection at Lessee's sole risk and expense and Lessee shall prepay the cost thereof. It is further understood and acknowledged by Lessee that Railroad Company has no obligation or duty to determine the need for any gate or other barrier or the need for protective services.

12. SIGNS, SIGNALS AND WARNING DEVICES.

Railroad Company, at Lessee's sole cost and expense, shall provide, install and thereafter maintain required signs not less than one (1) "PRIVATE CROSSING" sign and post, not less than one ENS sign and two (2) flanger signs and posts (if necessary). It is the Lessee's responsibility to notify Railroad Company of missing or damaged signs and those needing refurbishing.

Lessee acknowledges that Railroad Company has no obligation or duty to give audible warning of the approach of a train, nor erect whistle posts, nor reduce the speed of its trains, nor alter its operations in any manner, owing to the presence or existence of the trail and crossing proper or other use or exercise of the right or lease granted herein. Lessee assumes, at its own risk and expense, sole responsibility for determining if any additional signs, signals or other warning devices are necessary or appropriate for the safety of persons using the Lease Area and specifically acknowledges that Railroad Company has no obligation or duty whatever to make any such determination. If the installation of any signs, signals or warning devices on the Lease Area is presently or hereafter required by Railroad Company, law or by competent public authority, or is otherwise

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requested by Lessee, same shall conform to any then currently applicable practices of the Railroad Company for such devices as to design, material and workmanship and all costs incurred by the Railroad Company related to the installation, operation, maintenance, renewal, alteration and upgrading thereof shall be solely borne by Lessee.

13. INDEMNITY.

AS A FURTHER CONSIDERATION FOR THE LEASE HEREIN GRANTED, AND AS A CONDITION WITHOUT WHICH THE LEASE WOULD NOT HAVE BEEN GRANTED, LESSEE AGREES TO THE FULLEST EXTENT ALLOWED BY LAW, UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT BY OR ON THE PART OF RAILROAD COMPANY OR ITS OFFICERS, EMPLOYEES OR AGENTS, FULLY TO DEFEND, INDEMNIFY AND SAVE HARMLESS RAILROAD COMPANY AND ITS OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION, AND TO ASSUME ALL RISK, RESPONSIBILITY AND LIABILITY (INCLUDING ALL LIABILITY FOR EXPENSES, ATTORNEY'S FEES AND COSTS INCURRED OR SUSTAINED BY RAILROAD COMPANY, WHETHER IN DEFENSE OF ANY SUCH CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION OR IN THE ENFORCEMENT OF THE INDEMNIFICATION RIGHTS HEREBY CONFERRED),

- (A) FOR DEATH OF OR INJURY TO ANY AND ALL PERSONS, INCLUDING BUT NOT LIMITED TO THE OFFICERS, EMPLOYEES, AGENTS, PATRONS, INVITEES AND LESSEES OF THE PARTIES HERETO, AND FOR ANY AND ALL LOSS, DAMAGE OR INJURY TO ANY PROPERTY WHATSOEVER, INCLUDING BUT NOT LIMITED TO THAT BELONGING TO OR IN THE CUSTODY AND CONTROL OF THE PARTIES HERETO, IN WHOLE OR IN PART ARISING FROM, GROWING OUT OF, OR IN ANY MANNER OR DEGREE DIRECTLY OR INDIRECTLY CAUSED BY, ATTRIBUTABLE TO OR RESULTING FROM THE GRANT OR EXERCISE OF THIS LEASE, THE FAILURE OF LESSEE TO CONFORM TO THE CONDITIONS OF THIS AGREEMENT, WORK PERFORMED BY RAILROAD COMPANY FOR LESSEE UNDER THE TERMS OF THIS AGREEMENT, WORK PERFORMED BY LESSEE UNDER THE TERMS OF THIS AGREEMENT, OR FROM THE CONSTRUCTION, INSTALLATION, MAINTENANCE, REPAIR, RENEWAL, ALTERATION, CHANGE, RELOCATION, EXISTENCE, PRESENCE, USE, OPERATION OR REMOVAL OF ANY STRUCTURE INCIDENT THERETO, AND
- (B) FOR DEATH OF OR INJURY TO THE OFFICERS, EMPLOYEES, AGENTS, PATRONS, INVITEES AND LESSEES OF LESSEE AND FOR ANY AND ALL LOSS, DAMAGE OR INJURY TO THEIR PROPERTY, AND TO ANY PROPERTY BELONGING TO OR IN THE

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CARE, CUSTODY OR CONTROL OF LESSEE, IN WHOLE OR IN PART ARISING FROM, GROWING OUT OF, OR IN ANY MANNER OR DEGREE DIRECTLY OR INDIRECTLY CAUSED BY, ATTRIBUTABLE TO OR RESULTING FROM THE CONDUCT OF ANY RAILROAD OPERATIONS AT OR NEAR THE AREA IN WHICH THE HEREIN CONFERRED LEASE IS GRANTED OR EXERCISED.

IT IS THE INTENTION OF THE PARTIES HERETO THAT LESSEE SHALL BY SOLELY RESPONSIBLE FOR ALL SUCH DESTRUCTION OR DAMAGE TO PROPERTY OR FOR PERSONAL INJURY TO OR DEATH OF ANY PERSONS WHICH WOULD NOT HAVE OCCURRED IF SUCH PRIVATE ROAD CROSSING HAD NEVER BEEN CONSTRUCTED OR USED.

LESSEE SHALL AT ITS SOLE EXPENSE JOIN IN OR ASSUME, AT THE ELECTION AND ON DEMAND OF RAILROAD COMPANY, THE DEFENSE OF ANY CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION HEREUNDER ARISING. THE WORD "RAILROAD COMPANY" AS USED IN THIS SECTION SHALL INCLUDE THE ASSIGNS OF RAILROAD COMPANY AND ANY OTHER RAILROAD COMPANY THAT MAY BE OPERATING UPON AND OVER THE TRACKS CROSSING THE LEASE AREA.

14. INSURANCE.

Lessee shall procure and maintain during the life of this Agreement COMMERCIAL GENERAL LIABILITY INSURANCE which will insure the indemnity undertaking hereinabove set forth. Such insurance shall have a minimum combined single limit of \$5,000,000 per occurrence with an aggregate limit of \$10,000,000 per annual policy period and said insurance shall be deemed primary as it relates to this Agreement. Lessee shall furnish the Railroad Company at the address shown below in this Section with a certificate evidencing that such insurance is in full force and effect and that the same will not be cancelled, terminated, or not renewed without at least thirty (30) days advance written notice by the insurance carrier to the Railroad Company. Such insurance shall include a complete waiver of subrogation by the insurer, a removal of any railroad exclusion through issuance of endorsement CG 24 17, and inclusion of the Railroad Company as an additional insured. In addition to other information, the certificate shall contain the following language:

Notwithstanding anything contained therein to the contrary, the Commercial Liability Insurance hereinabove referred to is extended to specifically insure the indemnity obligations assumed by _____ under Section 13 of an Agreement dated _____ with Wisconsin Central Ltd. covering use of Railroad Company's Property for a private road crossing. Insurer shall not cancel, terminate, or allow to lapse by reason of nonrenewal the policy without providing

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Wisconsin Central Ltd. at least thirty (30) days' advance written notice, said notice to be sent via certified mail to:

Regional Chief Engineer
Wisconsin Central Ltd.
17641 Ashland Avenue
Homewood, Illinois 60430-1345

15. REMOVAL OF TRAIL AND CROSSING PROPER.

Prior to termination of this Agreement, Lessee shall remove its Trail from Railroad Company's Property (except for the Crossing Proper located between the ends of ties) and restore the Railroad Company's Property, as near as may be, to its former condition insofar as such restoration may in the opinion of Railroad Company's duly authorized representative be practical, all at Lessee's sole risk and expense. If Lessee fails to so remove and restore, Railroad Company shall have the right, but not the obligation, to do so at Lessee's sole risk and expense. Upon termination, Railroad Company shall have the right, but not the duty, to remove the Trail and Crossing Proper and to restore the Railroad Company's Property, all at Lessee's sole risk and expense. Lessee shall pay the cost of any work performed by Railroad Company upon presentation of a bill. Railroad Company shall have the right to require Lessee to deposit the estimated cost of any or all removal or restoration work involving the Trail and/or Crossing Proper or to furnish an acceptable performance bond in such amount prior to work being performed.

16. ASSIGNMENT.

Lessee shall not have the right to assign this Agreement without first obtaining the consent in writing of the Railroad Company, which consent will not be unreasonably withheld.

17. TAXES.

The Lessee shall pay all taxes, general and special, lease fees or other charges which may become due or which may be assessed against the premises of the Railroad Company for this site because of the construction, existence, operation or use of said Trail and Crossing Proper, or the business conducted in connection with said facility, and shall reimburse the Railroad Company for any such taxes, lease fees or other charges which may be paid by the Railroad Company upon the presentation of bills therefor.

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18. NON-CONVERSION TO PUBLIC USE

So long as this Lease remains in effect, Licensee-Lessee agrees to take no action of any kind whatsoever or to allow any third person to take any action which would result in the conversion of this License-Lease Area from a private road crossing to a public road crossing over Railroad Company's Property. In the event of a breach of this condition by the LicenseeLessee, the Licensee Lessee shall be liable for all damages incurred by the Railroad Company as a result of such breach.

19. BILLS.

All bills submitted by the Railroad Company to Lessee pursuant to the terms of this Agreement shall be paid by Lessee within thirty (30) days of receipt thereof.

20. ENFORCEABILITY.

In the event that any parts, sections or other portions of this Agreement are found unenforceable under the applicable law of any courts having jurisdiction over this Agreement, the remaining parts, sections or other portions thereof and the enforcement of same shall not be affected and shall otherwise remain in full effect and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the date first above written.

WISCONSIN CENTRAL LTD.

By _____
Tom Bourgonje
Regional Chief Engineer Regional Chief

By _____

Title: _____

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SPECIAL PROVISIONS

RELATIVE TO FLAGGING AND OTHER PROTECTION OF RAILROAD COMPANY TRAFFIC AND FACILITIES DURING CONSTRUCTION ADJACENT AND ABOVE, ON OR ACROSS, THE PROPERTY OF, OR ON, ABOVE AND BENEATH THE TRACKS OF THE WISCONSIN CENTRAL LTD.

The Lessee shall, before entering upon the property of Railroad Company for performance of any work, secure a fully executed right of entry lease from Railroad Company's Engineering Manager or their authorized representative for the occupancy and use of Railroad Company's property. Lessee shall confer with Railroad Company relative to requirements for railroad clearances, operation and general safety regulations.

Prior to any entry onto Railroad Company's property, employees and/or contractor(s) of Lessee doing work shall determine by the guidelines hereinafter provided and by the work to be performed the level of safety training to be required.

All employees and/or contractor(s) of Lessee not hired by Railroad Company that will work on CN property are required to have minimum www.eRailsafe.com

- a. EXCEPTION: Railroad Company has exempted those it classifies as "Delivery Persons" from this training. This will include contractors such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.

All employees and/or contractor(s) of Lessee hired by Railroad Company which will work on Railroad Company property are required to have minimum CN Safety and Security Awareness training, in addition to undergoing a background check. This training and background check must be obtained through the eRailSafe.com website. If not done before, the contractor must contact CN Special Agent James Conroy at 708-332-5947 or James.Conroy@cn.ca to be issued a vendor number prior to accessing the noted website. Minimum information required of the Lessee and/or their contractor when contacting either Special Agent James Conroy or e-RailSafe is Name, Address, Telephone, Contact Person for State Projects, DOT Contract Number, and the AAR/DOT Number. This training is good for a period of two years.

- a. EXCEPTION: Railroad Company has exempted those employees of contractors providing paving services at a road crossing under construction or repair from this requirement.
- b. EXCEPTION: Railroad Company has exempted those it classifies as "Delivery Persons" from this training. This will include contractors such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.

All employees and/or contractor(s) of Lessee hired by Railroad Company, whose duties include and who are engaged in the inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, roadway facilities, or roadway machinery that will work foul of or have the potential to foul a live track are considered Roadway Workers under FRA regulations and CN Policy. They must complete the On-Track Safety

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Training course approved by Railroad Company and provided by R.R. Safety – AMR, P.O. Box 75, Lomira, WI 53048, telephone (920) 517-1677, email rrsafetytraining@yahoo.com. This training must be repeated at least once each calendar year.

- a. EXCEPTION: Railroad Company has exempted those employees of contractors providing paving services at a road crossing under construction or repair from this requirement.
- b. EXCEPTION: Railroad Company has exempted those it classifies as "Delivery Persons" from this training. This will include contractors such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.
- c. All the employees and/or contractor(s) of Lessee who will operate on-track machinery or those who will provide protection for other employees and/or contractor(s) of Lessee must also be trained on CN US Operating Rules pertaining to their duties. They must take and pass the required examination. This training is good for a period of two years.
- d. "Potential to foul a live track" is considered, at a minimum, to be working within twenty-five feet of the track; or as otherwise to be determined by CN Design & Construction Department.

The employees, contractor(s) , and/or agents of the Lessee and/or its contractor shall qualify for, and make available for inspection to Railroad Company's employees or other authorized personnel at all times while on Railroad Company property, a photo identification issued by www.e-railsafe.com, along with at least one other government-issued form of identification. Lessee and/or their contractor shall bear all costs of compliance with the requirements of this Section. Railroad Company reserves the right to bar any of employees or agents of Lessee and/or their contractor from Railroad Company's property at any time for any reason.

Lessee and/or any contractor engaged on their behalf, shall at all times conduct work in a manner satisfactory to the Engineering Manager of Railroad Company, or their authorized representative, and shall exercise care so as to not damage the property of Railroad Company, or that belonging to any other grantees, Lessees, permittees or tenants of Railroad Company, or to interfere with railroad operations.

Engineering Manager of Railroad Company, or their authorized representative, will at all times have jurisdiction over the safety of railroad operations., The decision of the Engineering Manager or their authorized representative as to procedures which may affect the safety of railroad operations shall be final, and Lessee and/or their contractor shall be governed by such decision.

All work shall be conducted in such a manner as will assure the safety of Railroad Company. Railroad Company's authorized representative shall have the right, but not the duty, to require certain procedures to be used or to supervise the work on Railroad Company's property.

Should any damage occur to Railroad Company property as a result of the authorized or unauthorized operations of Lessee and/or their contractor and Railroad Company deems it necessary to repair such damage or perform any work for the protection of its property or operations, the Lessee and/or their contractor, as the case may be, shall promptly reimburse Railroad Company for the actual cost of such repairs or work. For the purpose of these Special Provisions, actual cost shall be deemed to include the direct cost of any labor, materials,

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equipment, or contract expense plus Railroad Company's current standard additives in each instance.

All work shall be conducted in such a manner as will assure the safety of Railroad Company. Railroad Company's authorized representative shall have the right, but not the duty, to require certain procedures to be used or to supervise the work on Railroad Company's property. Any accidents / incidents occurring on Railroad Company property, that result in or had the potential of causing serious injury, lost work days, vehicle or property damage must be reported to the Railroad Company representative within 24 hours. All such incidents will be fully investigated by the Lessee and/or their contractor. The Lessee shall subsequently provide a written report to Engineering Manager of Railroad Company, or their authorized representative, within seven (7) days detailing the nature of the incident, the cause(s), regulatory authorities notified, and a specific action plan to prevent recurrence.

Lessee shall promptly notify Railroad Company of any releases of fuel or other equipment fluids from Lessee's activities hereunder that exceed five (5) gallons in volume. Releases of fuel or fluids amounting to five (5) gallons or less shall be documented by Lessee and reported to Railroad Company on a monthly basis. Lessee shall be solely responsible for reporting a) releases of hazardous substances, materials and wastes from Lessee's activities hereunder in excess of the reportable quantity, and b) releases of petroleum products from Lessee's activities hereunder causing a sheen on any water of the United States, to the appropriate governmental authorities and the Railroad Company.

If the work requires the construction of a temporary grade crossing across the track(s) of Railroad Company, Lessee and/or their contractor shall make the necessary arrangements and execute Railroad Company's temporary grade crossing agreement for the construction, protection, maintenance, and later removal of such temporary grade crossing. The cost of such temporary grade crossing construction and later removal shall be reimbursed to Railroad Company within thirty (30) days. Additional costs for repairs, maintenance or protection will be paid within thirty (30) days upon receipt of bill(s) therefor.

Lessee and/or their contractor shall at no time cross Railroad Company's property or tracks with vehicles or equipment of any kind or character, except at such temporary grade crossing as may be constructed as outlined herein, or at any existing and open public grade crossing. Operation over such crossing shall be at the direction and method of Railroad Company's Engineering Manager or their authorized representative.

Railroad Company may, at Lessee's and/or their contractor's sole cost, risk and expense, furnish whatever protective services it considers necessary, including, but not limited to, flagger(s), inspector(s), and stand-by personnel. Flagging protection, inspection services, or standby personnel required by Railroad Company for the safety of railroad operations because of work being conducted by Lessee and/or their contractor, or in connection therewith, will be provided by Railroad Company and the cost of Lessee and shall be reimbursed to Railroad Company by Lessee and/or their contractor within thirty (30) days. Flagging protection, inspection services, or standby personnel, necessary or provided in excess of prepayment amounts will be billed at the proper rates and will be promptly paid by overnight delivery.

In the event Railroad Company is unable to furnish protective services at the desired time or on the desired date(s), or if Lessee's prepayment for such services is exhausted and not replenished by Lessee and/or their contractor, Lessee and/or their contractor shall not perform any work on Railroad Company's property until such time and date(s) that appropriate Railroad Company services can be made available and/or appropriate prepayment is received. It is

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understood that Railroad Company shall not be liable for any delay or increased costs incurred by Lessee and/or their contractor owing to Railroad Company's inability or failure to have appropriate protective services available at the time or on the date requested.

Lessee and/or their contractor shall request and secure flagging protection by written notice to Railroad Company using CN's "Request for Flagging Services" form. This form must be submitted at least ten (10) working days in advance of proposed performance of any work or access to Railroad Company's property.

Flagging protection will be required during any operation involving direct and potential interference with Railroad Company's tracks or traffic. This may include but is not limited to fouling of railroad operating clearances, reasonable proximity of accidental hazard to railroad traffic, work within twenty-five (25) feet horizontally of the nearest centerline of any railroad track, any work over any railroad track, or in any other condition that Railroad Company deems protective services necessary, which may include work on or off Railroad Company's property more than twenty-five (25) feet from the nearest centerline of any railroad track, such as any equipment extension (including but not limited to a crane boom) that will reach or has the potential to reach within twenty-five (25) feet of any track.

Lessee and/or their contractor shall request, prepay, and secure Railroad Company signal facility locates by written notice to Railroad Company along with submission of CN's "Request for Flagging Services" form at least ten (10) working days in advance of proposed performance of any work or access to Railroad Company property. Notice to Railroad Company does not fulfill or satisfy any other notification requirements for utility locates for non-railroad facilities.

Railroad Company may require that prior to digging, trenching, or boring activities on or near Railroad Company property, or beneath any railroad track, an on-site meeting be conducted with Railroad Company's Signal Department representative. No digging, trenching or boring activities shall be conducted in the proximity of any known buried Railroad Company signal cables without Railroad Company's Signal Department representative being present.

The rate of pay for Railroad Company employees will be the prevailing hourly rate for not less than eight (8) hours for the class of labor at regular rates during regularly assigned work hours, and at overtime rates outside of regular hours and in accordance with Labor Agreements or Schedules plus Railroad Company's current standard additives in each instance.

Wage rates are subject to change, at any time, by law or agreement between Railroad Company and employees, and may be retroactive because of negotiations or a ruling by an authorized Governmental Agent. If the wage rates are changed, Lessee and/or their contractor shall pay on the basis of the new rates and/or additives.

No digging, trenching, or boring on Railroad Company property shall be conducted without Railroad Company's written approval of the plans that were furnished to Railroad Company's Engineering Manager at least thirty (30) in advance of the excavation.

The following temporary clearances are the minimum that must be maintained at all times during any operation on or adjacent to Railroad Company property:

- Vertical: 22'-0" (7.00 m) above top of highest rail within 12'-0" (3.81 m) of the centerline of any track
- Horizontal: 12'-0" (3.81 m) from centerline of the nearest track, measured at right angles thereto

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If lesser clearances than the above are required for any part of the work, Lessee and/or their contractor shall secure written authorization from Railroad Company's Engineering Manager for such lesser clearances in advance of the start of that portion of the work.

No materials, supplies, or equipment will be stored within twenty-five (25) feet from the centerline of any railroad track, measured at right angles thereto.

Lessee and/or their contractor will be required upon the completion of the work to remove from within the limits of Railroad Company's property all machinery, equipment, surplus materials, false work, rubbish or temporary buildings, and to leave said property in a condition satisfactory to the Engineering Manager of Railroad Company or their authorized representative.

Nothing in these Special Provisions shall be construed to place any responsibility on Railroad Company for the quality or conduct of the work performed by Lessee and/or their contractor hereunder. Any approval given or supervision exercised by Railroad Company hereunder, or failure of Railroad Company to object to any work done, material used, or method of operation shall not be construed to relieve Lessee and/or their contractor of any obligations pursuant hereto or under the Lease these Special Provisions are appended to.

Accepted: _____

Print Name: _____

Exhibit I

RAILROAD DESCRIPTION FROM EAST LINE OF LAWE STREET TO EAST TOP BANK OF 1ST WARD CANAL

THE FOLLOWING DESCRIPTION IS INTENDED TO DESCRIBE ALL THAT LAND, PROPERTY OR RIGHTS GRANTED TO THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY (SHOWN IN DETAIL ON RAILROAD MAP V-13/ S-10E, AS TRK. NO. 317-5609-ASH-DIV.) AND BEING DESCRIBED BY COMMENCING FROM THE EAST LINE OF LAWE STREET, AS LOCATED DECEMBER 6, 2016, NEAR THE SOUTHERLY SHORE OF THE FOX RIVER THENCE EASTERLY OVER THE FOX RIVER TO THE NORTHERLY SHORE OF THE FOX RIVER AND THENCE CONTINUE EASTERLY ALONG SAID NORTHERLY SHORELINE TO THE EASTERLY TOP OF BANK OF THE 1ST WARD CANAL, ALL LOCATED IN AND BEING A PART OF THE NORTHEAST QUARTER (NE ¼) OF THE NORTHEAST QUARTER (NE ¼) OF FRACTIONAL SECTION 35 AND THE NORTHWEST QUARTER (NW ¼) OF THE (NW ¼) OF FRACTIONAL SECTION 36, TOWNSHIP 21 NORTH, RANGE 17 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN AND BEING MORE FULLY DESCRIBED IN AND PARTIALLY CONTAINED WITHIN THE FOLLOWING DESCRIBED DOCUMENTS:

A PART OF LOT 3, BLOCK E, LAWSBURGH PLAT IN FIRST WARD OF THE CITY OF APPLETON, ACCORDING TO JOHN STEPHENS MAP OF 1872 AND BEING LOCATED IN THE NW ¼ OF THE NW ¼ OF FRACTIONAL SECTION 36, TOWNSHIP 21 NORTH, RANGE 17 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN, BEING ALL THOSE LANDS IN AND MORE FULLY DESCRIBED IN A WARRANTY DEED RECORDED IN VOLUME 39 OF DEEDS ON PAGE 436 AS DOCUMENT NO.56579 AND RECORDED ON APRIL 12TH, 1881 IN THE OUTAGAMIE COUNTY REGISTER OF DEEDS OFFICE

AND

A PART OF LOT 3, BLOCK E, LAWSBURGH PLAT IN FIRST WARD OF THE CITY OF APPLETON, ACCORDING TO JOHN STEPHENS MAP OF 1872 AND BEING LOCATED IN THE NW ¼ OF THE NW ¼ OF FRACTIONAL SECTION 36, TOWNSHIP 21 NORTH, RANGE 17 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN, BEING ALL THOSE LANDS IN AND MORE FULLY DESCRIBED IN A WARRANTY DEED RECORDED IN VOLUME 49 OF DEEDS ON PAGE 287-288 AS DOCUMENT NO.50716 AND RECORDED ON AUGUST 7TH, 1879 IN THE OUTAGAMIE COUNTY REGISTER OF DEEDS OFFICE

AND

A STRIP OF LAND AND/OR WATER 50 FEET IN WIDTH AND BEING A PART OF LOT 1, BLOCK E, LAWSBURGH PLAT IN FIRST WARD OF THE CITY OF APPLETON, ACCORDING TO JOHN STEPHENS MAP OF 1872 AND ALSO ALL LANDS UNDER WATER ADJACENT TO SAID LOT AND BEING LOCATED IN THE NW ¼ OF THE NW ¼ OF FRACTIONAL SECTION 36, TOWNSHIP 21 NORTH, RANGE 17 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN, BEING ALL OF THOSE LANDS IN AND MORE FULLY DESCRIBED IN A DEED RECORDED IN VOLUME 46 OF DEEDS ON PAGE 615 AS DOCUMENT NO.51521 AND RECORDED ON NOVEMBER 5TH, 1879 IN THE OUTAGAMIE COUNTY REGISTER OF DEEDS OFFICE

AND

A PORTION OF THOSE LANDS DESCRIBED IN A GRANT OF RIGHT OF WAY DOCUMENT RECORDED IN VOLUME 49 OF DEEDS ON PAGE 555-558 AS DOCUMENT NO.55201 AND RECORDED ON NOVEMBER 17TH, 1880 IN THE OUTAGAMIE COUNTY REGISTER OF DEEDS OFFICE AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND AND/OR WATER APPROXIMATELY 20 FEET IN WIDTH AND THE CENTERLINE OF WHICH IS DESCRIBED BY: COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF AN EXISTING RAILROAD TRACK OVER THE FOX RIVER WITH THE EAST LINE OF THE NE ¼ OF FRACTIONAL SECTION 35, TOWNSHIP 21 NORTH, RANGE 17 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN AND BEING THE POINT OF BEGINNING;

THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY 375 FEET M/L ALONG THE CENTERLINE OF SAID RAILROAD TRACKS AND THE EXTENSION THEREOF TO THE EASTERLY LINE OF LAWE STREET AND THE TERMINUS OF SAID 20 FOOT M/L WIDE STRIP. THE SIDELINES OF SAID 20 FOOT M/L WIDE STRIP SHALL BE LENGTHENED OR SHORTENED TO MEET THE EASTERLY LINE OF LAWE STREET AND THE EASTERLY LINE OF SAID FRACTIONAL SECTION 35.

SEE ALSO ATTACHED EXHIBIT "A".

