

SCHEDULE 13D

Under the Securities Exchange Act of 1934  
(Amendment No. 10)

Chicago and North Western Transportation Company  
(Name of Issuer)

Common Stock, Par Value \$.01 Per Share  
(Title of Class of Securities)

167155 10 0  
(CUSIP Number)

Richard J. Ressler, Esq.  
Union Pacific Corporation  
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(610) 861-3200  
(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

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New York, New York 10022  
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March 13, 1995  
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing the statement because of Rule 13d-1(b)(3) or (4), check the following box: [ ]

Check the following box if a fee is being paid with the statement: [ ]

This Amendment No. 10 filed by Union Pacific Corporation, a Utah corporation ("UP"), Union Pacific Holdings, Inc., a Utah corporation ("UP Holdings"), and UP Rail, Inc., a Utah corporation ("UP Rail"), amends the Statement on Schedule 13D, dated April 9, 1992, as previously amended (the "Schedule 13D"), with respect to the common stock, par value \$.01 per share (the "Shares"), of Chicago and North Western Transportation Company, a Delaware corporation (the "Issuer"). Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Schedule 13D.

Item 4. Purpose of Transaction.

Reference is made to the disclosure set forth in Item 6.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

Item 6 is hereby supplemented as follows:

On March 16, 1995, the Board of Directors of UP approved the previously announced acquisition of the Issuer and, following approval of the acquisition by the Issuer's Board of Directors later that day, the Issuer, UP Rail and UP executed an Agreement and Plan of Merger (the "Merger Agreement"), and the Issuer and UP Rail executed a Stock Option Agreement (the "Company Stock Option Agreement"), each dated as of March 16, 1995. A copy of the Merger Agreement and Company Stock Option Agreement are attached hereto as Exhibits 16 and 17, respectively, and incorporated herein by reference. The

Merger Agreement provides, among other things, for the acquisition of all of the issued and outstanding shares of common stock, par value \$.01 per share, of the Issuer (the "Shares") by UP Rail at a price of \$35 per Share pursuant to a tender offer for all Shares and a second step merger. The Company Stock Option Agreement provides for the grant by the Issuer to UP, subject to certain conditions (including that UP, together with its affiliates, shall own at least 85% and less than 90.01% of the number of Shares then outstanding (assuming conversion of UP's shares of non-voting stock, par value \$.01 per share, of the Issuer into Shares)) of an irrevocable option to purchase at UP's election at a price of \$35 per share such number of Shares as, when added to the number of Shares owned by UP and its affiliates immediately prior to such purchase, would result in UP and its affiliates owning immediately thereafter 90.01% of the then outstanding Shares. A copy of the press release issued by UP on March 16, 1995 announcing its Board's approval of the acquisition of the Issuer, and a copy of the joint press release issued by UP and the Issuer on March 17, 1995 announcing the execution of the Merger Agreement, are attached hereto as Exhibits 18 and 19, respectively, and are incorporated herein by reference.

Two class action complaints, copies of which are attached hereto as Exhibits 20 and 21 and incorporated herein by reference, were filed in the Court of Chancery in Delaware on March 13, 1995 naming as defendants the Issuer, the Issuer's directors, UP and certain other parties. Such complaints allege, among other things, that various of the defendants breached their fiduciary duties to the shareholders of the Issuer by failing to act to maximize shareholder value prior to approving the transfer of control of the Issuer. The complaints seek, among other things, damages and to enjoin the defendants from proceeding with a change of control of the Issuer.

Item 7. Material to be filed as Exhibits.

Item 7 is hereby supplemented as follows:

Exhibit 16. Merger Agreement, dated as of March 16, 1995, among UP, UP Rail, Inc. and the Issuer.

Exhibit 17. Company Stock Option Agreement, dated as of March 16, 1995, between UP Rail and the Issuer.

Exhibit 18. Text of Press Release issued by UP on March 16, 1995.

Exhibit 19. Text of Joint Press Release issued by UP and the Issuer on March 17, 1995.

Exhibit 20. Class Action Complaint entitled Michael Gerber v. James E. Martin, et al. (C.A. No. 14117), filed in the Court of Chancery in Delaware on March 13, 1995.

Exhibit 21. Class Action Complaint entitled Charles Kowal and Harry W. Kent v. Chicago and North Western Transportation Company, et al. (C.A. No. 14115), filed in the Court of Chancery in Delaware on March 13, 1995.

#### SIGNATURE

After reasonable inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: March 17, 1995

UP RAIL, INC.

By: /s/ Carl W. von Bernuth

Name: Carl W. von Bernuth  
Title: Vice President and  
Assistant Secretary

SIGNATURE

After reasonable inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: March 17, 1995

UNION PACIFIC HOLDINGS, INC.

By: /s/ Carl W. von Bernuth  
Name: Carl W. von Bernuth  
Title: Vice President and  
Chief Legal Officer

SIGNATURE

After reasonable inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: March 17, 1995

UNION PACIFIC CORPORATION

By: /s/ Carl W. von Bernuth  
Name: Carl W. von Bernuth  
Title: Senior Vice President  
and General Counsel

AGREEMENT AND PLAN OF MERGER

by and among

UNION PACIFIC CORPORATION,

UP RAIL, INC.

and

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

dated as of

March 16, 1995

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of March 16, 1995, by and among Union Pacific Corporation, a Utah corporation ("Parent"), UP Rail, Inc., a Utah corporation and an indirect, wholly owned subsidiary of Parent (the "Purchaser"), and Chicago and North Western Transportation Company, a Delaware corporation (the "Company").

WHEREAS, the Boards of Directors of Parent, the Purchaser and the Company have approved, and deem it advisable and in the best interests of their respective shareholders to consummate, the acquisition of the Company by Parent upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

THE OFFER AND MERGER

Section 1.1 The Offer. (a) As promptly as practicable (but in no event later than five business days after the public announcement of the execution hereof), the Purchaser shall commence (within the meaning of Rule 14d-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) an offer (the "Offer") to purchase for cash all of the issued and outstanding shares of Common Stock, par value \$.01 per share (referred to herein as either the "Shares" or "Company Common Stock"), of the Company at a price of \$35.00 per Share, net to the seller in cash (such price, or such higher price per Share as may be paid in the Offer, being referred to herein as the "Offer Price"), subject to there being validly tendered and not withdrawn prior to the expiration of the Offer, that number of Shares which, together with the shares of Non-Voting Common Stock, par value \$.01 per Share (the "Non-Voting Shares"), of the Company beneficially owned by Parent or the Purchaser (assuming conversion of such Non-Voting Shares into Shares), represent at least a majority of the Shares outstanding on a fully diluted basis (assuming conversion of the Non-Voting Shares into Shares) (the "Minimum Condition") and to the other conditions set forth in Annex A hereto. The Purchaser shall, on the terms and subject to the prior satisfaction or waiver (except that the Minimum Condition may not be waived) of the conditions of the Offer, accept for payment and pay for Shares tendered as soon as practicable after it is permitted to do so under the Exchange Act. The obligations of the Purchaser to commence the Offer and to accept for payment and to pay for any Shares validly tendered on or prior to the expiration of the Offer and not withdrawn shall be subject only to the Minimum Condition and the other conditions set forth in Annex A hereto. The Offer shall be made by means of an offer to

purchase (the "Offer to Purchase") containing the terms set forth in this Agreement, the Minimum Condition and the other conditions set forth in Annex A hereto. Without the written consent of the Company (such consent to be authorized by the Board of Directors of the Company or a duly authorized committee thereof), the Purchaser shall not amend or waive the Minimum Condition and shall not decrease the Offer Price or decrease the number of Shares sought, or amend any other condition of the Offer in any manner adverse to the holders of the Shares, provided, however, that if on the initial scheduled expiration date of the Offer (as it may be extended), all conditions to the Offer shall not have been satisfied or waived, the Offer may be extended from time to time until June 30, 1995 without the consent of the Company. In addition, the Offer Price may be increased and the Offer may be extended to the extent required by law in connection with such increase in each case without the consent of the Company.

(b) As soon as practicable on the date the Offer is commenced, Parent and the Purchaser shall file with the United States Securities and Exchange Commission (the "SEC") (i) a Tender Offer Statement on Schedule 14D-1 with respect to the Offer (together with all amendments and supplements thereto and including the exhibits thereto, the "Schedule 14D-1") which will include, as exhibits, the Offer to Purchase and a form of letter of transmittal and summary advertisement (collectively, together with any amendments and supplements thereto, the "Offer Documents"), and (ii) a Rule 13e-3 Transaction Statement on Schedule 13E-3 (together with any supplements or amendments thereto, the "Schedule 13E-3") with respect to the Offer. Parent and the Purchaser represent that the Offer Documents and the Schedule 13E-3 will comply in all material respects with the provisions of applicable federal securities laws and, on the date filed with the SEC and on the date first published, sent or given to the Company's stockholders, shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation is made by Parent or the Purchaser with respect to information supplied by the Company in writing for inclusion in the Offer Documents or the Schedule 13E-3. Each of Parent and the Purchaser further agrees to take all steps necessary to cause the Offer Documents and the Schedule 13E-3 to be filed with the SEC and to be disseminated to holders of Shares, in each case as and to the extent required by applicable federal securities laws. Each of Parent and the Purchaser, on the one hand, and the Company, on the other hand, agrees promptly to correct any information provided by it for use in the Offer Documents and/or the Schedule 13E-3 if and to the extent that it shall have become false and misleading in any material respect, and Parent and the Purchaser further agree to take all steps necessary to cause the Offer Documents and/or the Schedule 13E-3, as the case may be, as so corrected to be filed with the SEC and to be disseminated to holders of Shares, in each case as and to the extent required by applicable federal securities laws. The Company and its counsel shall be given the opportunity to review the Schedule 14D-1 and the Schedule 13E-3 before they are filed with the SEC. In addition, Parent and the Purchaser agree to provide the Company and its counsel in writing with any comments Parent, the Purchaser or their counsel may receive from time to time from the SEC or its staff with respect to the Offer Documents or the Schedule 13E-3 promptly after the receipt of such comments.

## Section 1.2 Company Actions.

(a) The Company hereby approves of and consents to the Offer and represents that the Board of Directors, at a meeting duly called and held, has unanimously (with Richard K. Davidson absent and not voting) (i) determined that each of the Offer and the Merger (as defined in Section 1.4) is fair to and in the

best interests of the Company's stockholders (other than Parent and the Purchaser), (ii) approved this Agreement and the transactions contemplated hereby, including the Offer and the Merger (collectively, the "Transactions"), (iii) resolved to recommend that the stockholders of the Company accept the Offer, tender their Shares thereunder to the Purchaser and approve and adopt this Agreement and the Merger; provided, however, that such recommendation may be withdrawn, modified or amended only to the extent that the Board of Directors of the Company determines, based on an opinion of outside legal counsel to the Company, that the failure to take such action would likely result in a breach of the Board of Directors' fiduciary duties under applicable laws; and (iv) to the extent required, approved this Agreement, the Offer, the Merger, the Company Stock Option Agreement (as defined in Section 1.9) and the transactions contemplated hereby and thereby for purposes of Section 203 of the Delaware General Corporation Law ("DGCL"). The Company further represents that The Blackstone Group L.P. ("Blackstone") has delivered to the Board of Directors of the Company its opinion that the cash consideration to be received by the holders of Shares pursuant to the Offer and the Merger is fair to such holders from a financial point of view.

(b) Concurrently with the commencement of the Offer, the Company shall file with the SEC a Solicitation/Recommendation Statement on Schedule 14D-9 (together with all amendments and supplements thereto and including the exhibits thereto, the "Schedule 14D-9") which shall contain the recommendation referred to in clauses (i), (ii) and (iii) of Section 1.2(a) hereof and will join in the filing of the Schedule 13E-3. The Company represents that the Schedule 14D-9 and the Schedule 13E-3 will comply in all material respects with the provisions of applicable federal securities laws and, on the date filed with the SEC and on the date first published, sent or given to the Company's stockholders, shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation is made by the Company with respect to information supplied by Parent or the Purchaser for inclusion in the Schedule 14D-9 or the Schedule 13E-3. The Company further agrees to take all steps necessary to cause the Schedule 14D-9 and the Schedule 13E-3 to be filed with the SEC and to be disseminated to holders of Shares, in each case as and to the extent required by applicable federal securities laws. Each of the Company, on the one hand, and Parent and the Purchaser, on the other hand, agrees promptly to correct any information provided by it for use in the Schedule 14D-9 and the Schedule 13E-3 if and to the extent that it shall have become false and misleading in any material respect and the Company further agrees to take all steps necessary to cause the Schedule 14D-9 and the Schedule 13E-3 as so corrected to be filed with the SEC and to be disseminated to holders of the Shares, in each case as and to the extent required by applicable federal securities laws. Parent and its counsel shall be given the opportunity to review the Schedule 14D-9 and the Schedule 13E-3 before it is filed with the SEC. In addition, the Company agrees to provide Parent, the Purchaser and their counsel in writing with any comments the Company or its counsel may receive from time to time from the SEC or its staff with respect to the Schedule 14D-9 and the Schedule 13E-3 promptly after the receipt of such comments.

(c) In connection with the Offer, the Company will promptly furnish or cause to be furnished to the Purchaser mailing labels, security position listings and any available listing or computer file containing the names and addresses of the record holders of the Shares as of a recent date, and shall furnish the Purchaser with such information and assistance as the Purchaser or its agents may reasonably request in communicating the Offer to the stockholders of the Company.

### Section 1.3 Directors.

(a) Promptly upon the purchase of and payment for any Shares by the Purchaser or any other subsidiary of Parent pursuant to the Offer which, together with the Non-Voting Shares, represents at least a majority of the outstanding shares of Company Common Stock (on a fully diluted basis and assuming conversion of the Non-Voting Shares into Shares), Parent shall be entitled to designate such number of directors, rounded up to the next whole number, on the Board of Directors of the Company as is equal to the product of the total number of directors on such Board (giving effect to the existing representatives of Parent serving on the Board of Directors, including representatives which Parent has the right to designate under the 1993 Agreement (as defined in Section 3.2), and the directors designated by Parent pursuant to this sentence) multiplied by the ratio of the aggregate number of Shares and Non-Voting Shares (if any) beneficially owned by the Purchaser, Parent and any of their affiliates to the total number of Shares and Non-Voting Shares (if any) then outstanding. Promptly after consummation of the Offer, the Company shall, upon request of the Purchaser, use its best efforts promptly either to increase the size of its Board of Directors or, at the Company's election, secure the resignations of such number of its incumbent directors as is necessary to enable Parent's designees to be so elected or appointed to the Company's Board, and shall cause Parent's designees to be so elected or appointed. At such time, the Company shall also cause persons designated by Parent to constitute the same percentage (rounded up to the next whole number) as is on the Company's Board of Directors of (i) each committee of the Company's Board of Directors, (ii) each board of directors (or similar body) of each Subsidiary (as defined in Section 3.1) of the Company and (iii) each committee (or similar body) of each such board, in each case only to the extent permitted by applicable law or the rules of any stock exchange on which the Company Common Stock is listed. Notwithstanding the foregoing, until the Effective Time (as defined in Section 1.5 hereof), the Company and Parent shall use all reasonable efforts to retain as members of its Board of Directors at least three (3) directors who are directors of the Company on the date hereof and are not representatives of Parent (the "Company Directors"); provided, that subsequent to the purchase of and payment for Shares pursuant to the Offer, Parent shall always have its designees represent at least a majority of the entire Board of Directors. As used in this Agreement, the term "Company Directors" shall initially mean each of Messrs. James R. Thompson, Samuel K. Skinner and Harold A. Poling; provided that in the event that any of such initial directors resigns or otherwise ceases to be a director for any reason, then the other Company Directors shall have the right, by majority vote, to designate a replacement for such directors (and such replacement shall be a "Company Director"). If for any reason at any time prior to the Effective Time no Company Directors then remain, the other directors shall use reasonable best efforts to designate three persons to be the Company Directors, none of whom shall be directors, officers, employees or affiliates of Parent or the Purchaser.

(b) The Company's obligations under Section 1.3(a) shall be subject to Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder. The Company shall promptly take all actions required pursuant to such Section 14(f) and Rule 14f-1 in order to fulfill its obligations under this Section 1.3(a), including mailing to stockholders as part of the Schedule 14D-9 the information required by such Section 14(f) and Rule 14f-1, as is necessary to enable Parent's designees to be elected to the Company's Board of Directors. Parent or the Purchaser will supply the Company any information with respect to either of them and their nominees, officers, directors and affiliates required by such Section 14(f) and Rule 14f-1. The provisions of this Section 1.3(a) are in addition to and shall not limit any rights which the Purchaser, Parent or any of their

affiliates may have as a holder or beneficial owner of Shares or Non-Voting Shares as a matter of law with respect to the election of directors or otherwise (except that, as provided above, the number of directors that Parent shall have the right to designate pursuant to this Section 1.3 shall include the representatives which Parent has the right to designate under the 1993 Agreement).

(c) The concurrence of a majority of the Company Directors shall be required for any amendment or termination of this Agreement by the Company, any waiver of any of the Company's rights hereunder or otherwise pursuant to Section 8.3 hereof, any extension of the time for performance of Parent's or the Purchaser's obligations or other acts hereunder, or any other action taken by the Company's Board of Directors in connection with this Agreement (including actions to enforce this Agreement); provided, that if there shall be no such directors notwithstanding the reasonable best efforts of the other directors to appoint Company Directors, such actions may be effected by majority vote of the entire Board of Directors of the Company.

Section 1.4 The Merger. Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.5 hereof), the Company and the Purchaser shall consummate a merger (the "Merger") pursuant to which (a) the Purchaser shall be merged with and into the Company and the separate corporate existence of the Purchaser shall thereupon cease, (b) the Company shall be the successor or surviving corporation in the Merger and shall continue to be governed by the laws of the State of Delaware, and (c) the separate corporate existence of the Company with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger. Pursuant to the Merger, (x) the Restated Certificate of Incorporation of the Company, as in effect immediately prior to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation (as defined below) until thereafter amended as provided by law and such Restated Certificate of Incorporation, and (y) the By-laws of the Purchaser, as in effect immediately prior to the Effective Time, shall be the By-laws of the Surviving Corporation until thereafter amended as provided by law, the Restated Certificate of Incorporation and such By-laws. The corporation surviving the Merger is sometimes hereinafter referred to as the "Surviving Corporation." The Merger shall have the effects set forth in the DGCL and the Utah Business Corporation Act ("UBCA").

Section 1.5 Effective Time. Parent, the Purchaser and the Company will cause appropriate Certificates of Merger or, if applicable, Certificates of Ownership and Merger (the "Certificates of Merger") to be executed and filed on the date of the Closing (as defined in Section 1.6) (or on such other date as Parent and the Company may agree) with the Secretary of State of the State of Delaware (the "Secretary of State") as provided in the DGCL and with the Division of Corporations and Commercial Code of the State of Utah (the "Division") as provided in the UBCA. The Merger shall become effective on the date on which the Certificates of Merger have been duly filed with the Secretary of State and the Division or such time as is agreed upon by the parties and specified in the Certificates of Merger, and such time is hereinafter referred to as the "Effective Time."

Section 1.6 Closing. The closing of the Merger (the "Closing") will take place at 10:00 a.m., New York time, on a date to be specified by the parties, which shall be no later than the first business day after satisfaction or waiver of all of the conditions set forth in Article VI hereof (the "Closing Date"), at the offices of Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022, unless another date or place is agreed to in writing by the parties hereto.

Section 1.7 Directors and Officers of the Surviving Corporation. The directors and officers of the



Purchaser at the Effective Time shall, from and after the Effective Time, be the directors and officers, respectively, of the Surviving Corporation until their successors shall have been duly elected or appointed or qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's Certificate of Incorporation and By-laws.

#### Section 1.8 Stockholders' Meeting.

(a) If required by applicable law in order to consummate the Merger, the Company, acting through its Board of Directors, shall, in accordance with applicable law:

(i) duly call, give notice of, convene and hold a special meeting of its stockholders (the "Special Meeting") as soon as practicable following the acceptance for payment and purchase of Shares by the Purchaser pursuant to the Offer for the purpose of considering and taking action upon this Agreement;

(ii) prepare and file with the SEC a preliminary proxy or information statement relating to the Merger and this Agreement and use its best efforts (x) to obtain and furnish the information required to be included by the SEC in the Proxy Statement (as hereinafter defined) and, after consultation with Parent, to respond promptly to any comments made by the SEC with respect to the preliminary proxy or information statement and cause a definitive proxy or information statement (the "Proxy Statement") to be mailed to its stockholders and (y) to obtain the necessary approvals of the Merger and this Agreement by its stockholders; and

(iii) subject to the fiduciary obligations of the Board under applicable law as advised by independent counsel, include in the Proxy Statement the recommendation of the Board that stockholders of the Company vote in favor of the approval of the Merger and the adoption of this Agreement.

(b) Not later than promptly following the consummation of the Offer and receipt of the ICC Final Approval (as defined in Section 3.4 hereof), Parent will convert or cause to be converted all of its Non-Voting Shares into Shares. Parent agrees that it will vote, or cause to be voted, all of the Shares then owned by it, the Purchaser or any of its other subsidiaries and affiliates in favor of the approval of the Merger and the adoption of this Agreement.

Section 1.9 Merger Without Meeting of Stockholders. Notwithstanding Section 1.8 hereof, in the event that Parent, the Purchaser or any permitted assignee of Purchaser shall acquire at least 90% of the outstanding shares of the capital stock of the Company, pursuant to the Offer, the Company Stock Option Agreement (as defined below), the conversion of Non-Voting Shares into Shares or, subsequent to consummation of the Offer, by any other means, the parties hereto agree, at the request of Parent and subject to Article VI hereof, to take all necessary and appropriate action to cause the Merger to become effective as soon as practicable after such acquisition, without a meeting of stockholders of the Company, in accordance with Section 253 of the DGCL and Sections 1104 and 1107 of the UBCA. In connection therewith, Parent and the Company are entering into a Company Stock Option Agreement, dated as of the date hereof (the "Company Stock Option Agreement"), pursuant to which, subject to Parent having previously acquired at least 85% of the outstanding Shares (assuming conversion of the Non-Voting Shares into Shares) and other conditions set forth therein, Parent shall have the right to purchase from the Company a sufficient number of Shares such that such Shares purchased pursuant to the Company Stock Option Agreement, together with all Shares owned by Parent or the Purchaser, would represent 90% of

the outstanding Shares and permit the Merger to be effected in accordance with Section 253 of the DGCL and Sections 1104 and 1107 of the UBCA (a "Short-form Merger"). Parent agrees to effect a Short-form Merger promptly following the exercise of the option under the Company Stock Option Agreement.

## ARTICLE II

### CONVERSION OF SHARES

Section 2.1 Conversion of Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of the holders of any shares of Company Common Stock or common stock, par value \$.01 per share, of the Purchaser (the "Purchaser Common Stock"):

(a) Purchaser Common Stock. The issued and outstanding shares of the Purchaser Common Stock shall be converted into and become such number of fully paid and nonassessable shares of common stock of the Surviving Corporation as the Company had outstanding immediately prior to the Effective Time.

(b) Cancellation of Treasury Stock and Parent-Owned Stock. All shares of Company Common Stock that are owned by the Company as treasury stock and any shares of Company Common Stock and Non-Voting Shares owned by Parent, the Purchaser or any other wholly owned Subsidiary (as defined in Section 3.1 hereof) of Parent shall be cancelled and retired and shall cease to exist and no stock of Parent or other consideration shall be delivered in exchange therefor.

(c) Conversion of Shares. Each issued and outstanding share of Company Common Stock (other than shares to be cancelled in accordance with Section 2.1(b)) shall be converted into the right to receive the Offer Price, payable to the holder thereof, without interest (the "Merger Consideration"), upon surrender of the certificate formerly representing such share of Company Common Stock in the manner provided in Section 2.2. All such shares of Company Common Stock, when so converted, shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration therefor upon the surrender of such certificate in accordance with Section 2.2, without interest.

### Section 2.2 Exchange of Certificates.

(a) Paying Agent. Parent shall designate a bank or trust company to act as agent for the holders of shares of Company Common Stock in connection with the Merger, which Paying Agent shall be reasonably satisfactory to the Company (the "Paying Agent"), to receive the funds to which holders of shares of Company Common Stock shall become entitled pursuant to Section 2.1(c). Such funds shall be invested by the Paying Agent as directed by Parent or the Surviving Corporation.

(b) Exchange Procedures. As soon as reasonably practicable after the Effective Time, the Paying Agent shall mail to each holder of record of a certificate or certificates, which immediately prior to the Effective Time represented outstanding shares of Company Common Stock (the "Certificates"), whose shares were converted pursuant to Section 2.1 into the right to receive the Merger Consideration (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Paying Agent and shall be in such form and have such other provisions as Parent and the Company may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for payment of the Merger Consideration. Upon surrender of a Certificate for cancellation to the Paying Agent or to

such other agent or agents as may be appointed by Parent, which agents shall be reasonably satisfactory to the Company, together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration for each share of Company Common Stock formerly represented by such Certificate and the Certificate so surrendered shall forthwith be cancelled. If payment of the Merger Consideration is to be made to a person other than the person in whose name the surrendered Certificate is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or shall be otherwise in proper form for transfer and that the person requesting such payment shall have paid any transfer and other taxes required by reason of the payment of the Merger Consideration to a person other than the registered holder of the Certificate surrendered or shall have established to the satisfaction of the Surviving Corporation that such tax either has been paid or is not applicable. Until surrendered as contemplated by this Section 2.2, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive the Merger Consideration in cash as contemplated by this Section 2.2.

(c) After the Effective Time there shall be no transfers on the stock transfer books of the Surviving Corporation of the Shares which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Merger Consideration as provided in this Article II.

#### Section 2.3 Company Option Plans and Agreements.

(a) The Company shall (i) terminate its 1989 Equity Incentive Plan for Key Employees, 1992 Equity Incentive Plan and 1994 Equity Incentive Plan (collectively, the "Plans"), immediately prior to the Effective Time without prejudice to the rights of the holders of options awarded pursuant thereto and (ii) grant no additional options or similar rights under the Plans or otherwise on or after the date hereof. As used hereafter in this Section 2.3, "Options" shall include each employee stock option granted by the Company, whether pursuant to the Plans, pursuant to certain Rollover Option Agreements dated as of July 14, 1989 or otherwise.

(b) The Company shall use its best efforts to obtain the consent of each holder of any Options (whether or not then exercisable) that it does not have the right to cancel to the cancellation of, and shall cancel, his Options (irrespective of their exercise price), or, in the case of Options that the Company has the right to cancel, shall cancel such Options, such cancellation (whether or not consent is required therefor) to take effect as of the Effective Time. The preceding sentence shall not apply to (i) Options with respect to which the holder thereof holds, and agrees, prior to consummation of the Offer, to exercise limited stock appreciation rights ("LSARs") prior to the Effective Time and does exercise such LSARs prior to the Effective Time, and (ii) Options (whether or not then exercisable) held by employees of the Company that Parent or its affiliates have agreed to employ and who agree prior to consummation of the Offer to cancel such Options effective as of the Effective Time in consideration for issuance at such time of Options on common stock of Parent ("Parent Options"), Parent being obligated with respect thereto to issue Parent Options to each such employee which Options cover common stock having an aggregate Fair Market Value on the date of issuance of such Options equal to the aggregate value at the Offer Price of stock of the Company subject to such Options held by such employee and having an aggregate spread between Fair Market Value (as defined below) and exercise price equal to the aggregate spread on such employee's Options between the Offer Price and the

weighted average exercise price of such Options. As soon as practicable after the date hereof, the Company shall notify each holder of Options as to the alternatives made available pursuant to this Section 2.3. Parent Options shall have the same expiration dates as corresponding Options and terms and conditions (other than any reload feature or "Change in Control" feature) not materially less favorable than those of corresponding Options. In consideration of each cancellation of Options (except those cancelled in consideration of Parent Options and those cancelled on exercise of LSARs), the Company shall pay to such holders, promptly upon such cancellation, in respect of each Option (whether or not then exercisable and whether or not the Company had the right to cancel the Option, provided, however, that in the case of Options requiring a consent to the cancellation thereof, such consent shall have been obtained), an amount equal to the excess, if any, of the Offer Price over the exercise price per Share subject thereto, multiplied by the number of Shares subject thereto. "Fair Market Value" means the average closing price on the New York Stock Exchange Composite Tape for common stock of Parent on each of the ten trading days preceding the day on which the Effective Time occurs.

Section 2.4 No Dissenter's Rights. In accordance with *Schwabacher v. United States*, 334 U.S. 192 (1948), stockholders of the Company will not have any dissenter's rights; provided, however, that if (a) the parties, at Parent's sole discretion, elect to seek, for mergers within a corporate family, and obtain, a declaratory order that the class exemption is available for the Merger or (b) the Interstate Commerce Commission (or any successor agency) (the "ICC") or a court of competent jurisdiction determines that dissenter's rights are available to holders of Shares, then holders of Shares shall be provided with dissenter's rights in accordance with the DGCL.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and the Purchaser that, except as disclosed (including, in the case of financial statements, provided for) in the Company's Form 10-K for the fiscal year ended December 31, 1994 ("Form 10-K") or the Annual Report to Stockholders for the fiscal year ended December 31, 1994 (the "Annual Report"), each as heretofore filed with the SEC or delivered to Parent in draft form prior to the date hereof (including, without limitation, any financial statements and related notes or schedules included in such documents and all exhibits and schedules included or expressly incorporated by reference therein on or prior to the date hereof):

Section 3.1 Organization. Each of the Company and its Subsidiaries is a corporation, partnership or other entity duly organized, validly existing, duly qualified or licensed to do business and in good standing under the laws of the jurisdiction of its incorporation or organization and in each jurisdiction in which the nature of the business conducted by it makes such qualification or licensing necessary, and has all requisite corporate or other power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power, authority, and governmental approvals would not have a Material Adverse Effect on the Company. As used in this Agreement, the word "Subsidiary" means, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other Subsidiary of such party is a general partner (excluding such partnerships where such party or any Subsidiary of such party do not have a majority of the voting interest in such partnership) or (ii) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of

Directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries. As used in this Agreement, any reference to any event, change or effect having a "Material Adverse Effect" on or with respect to any entity means such event, change or effect, individually or in the aggregate with such other events, changes, or effects, is materially adverse to the financial condition or businesses of such entity and its Subsidiaries, taken as a whole. Exhibit 21 to the Form 10-K sets forth a complete list of the Company's active Subsidiaries. The Company's inactive subsidiaries have no material operations and no liabilities which would have or be likely to have a Material Adverse Effect on the Company.

Section 3.2 Capitalization. (a) The authorized capital stock of the Company consists only of 125,000,000 shares of Company Common Stock, 125,000,000 shares of Company Non-Voting Common Stock, \$0.01 par value (the "Non-Voting Common Stock") and 15,000,000 preferred shares, \$0.01 par value (the "Preferred Stock"). As of the date hereof, (i) 31,330,631 shares of Company Common Stock are issued and outstanding, (ii) 12,835,304 shares of Non-Voting Common Stock are issued and outstanding, (iii) 25,479 shares of Company Common Stock and no shares of Company Non-Voting Common Stock are issued and held in the treasury of the Company, and (iv) 2,592,067 shares of Company Common Stock are reserved for issuance upon exercise of then outstanding Options granted under the Option Plans and 12,835,304 shares of Company Common Stock are reserved for issuance upon conversion of the Non-Voting Common Stock. As of the date hereof, there are no shares of Preferred Stock issued and outstanding. All the outstanding shares of the Company's capital stock are, and all shares which may be issued pursuant to the exercise of outstanding Options or upon exercise of the option under the Company Stock Option Agreement will be, when issued in accordance with the respective terms thereof, duly authorized, validly issued, fully paid and non-assessable. As of the date hereof, the Company has no outstanding stock appreciation rights except for limited stock appreciation rights granted in tandem with Options. There are no bonds, debentures, notes or other indebtedness having voting rights (or convertible into securities having such rights) ("Voting Debt") of the Company or any of its Subsidiaries issued and outstanding. Except as set forth above and except for the transactions contemplated by this Agreement and the Company Stock Option Agreement and except as set forth in Section 3.2 of the disclosure schedule delivered by the Company to Parent on or prior to the date hereof (the "Disclosure Schedule"), as of the date hereof, there are no existing options, warrants, calls, pre-emptive rights, subscriptions or other rights, convertible securities, agreements, arrangements or commitments of any character, relating to the issued or unissued capital stock of the Company or any of its Subsidiaries, obligating the Company or any of its Subsidiaries to issue, transfer or sell or cause to be issued, transferred or sold any shares of capital stock or Voting Debt of, or other equity interest in, the Company or any of its Subsidiaries or securities convertible into or exchangeable for such shares or equity interests or obligations of the Company or any of its Subsidiaries to grant, extend or enter into any such option, warrant, call, subscription or other right, convertible security, agreement, arrangement or commitment. Except as set forth in Section 3.2 of the Disclosure Schedule, there are no outstanding contractual obligations of the Company or any of its Subsidiaries to (i) repurchase, redeem or otherwise acquire any Shares or the capital stock of the Company or any subsidiary or affiliate of the Company or (ii) to provide funds to make any investment (in the form of a loan, capital contribution or otherwise) in (x) any Subsidiary which is not wholly-owned or (y) any other entity. Except as permitted by this Agreement and except for Options which by their terms can not be cancelled as set forth in Section 3.2 of the Disclosure Schedule, following the Merger, neither the Company (or the

Surviving Corporation) nor any of its Subsidiaries will have any obligation to issue, transfer or sell any shares of its capital stock pursuant to any employee benefit plan or otherwise.

(b) Except as set forth in Section 3.2 of the Disclosure Schedule, all of the outstanding shares of capital stock of each of the Subsidiaries are beneficially owned by the Company, directly or indirectly, and all such shares have been validly issued and are fully paid and nonassessable and, except for security interests arising under the Credit Agreement, dated as of March 27, 1992, as amended to date, among the Company, Chemical Bank, as agent, and the banks named therein (the "Credit Agreement"), the Senior Secured Note Purchase Agreement, dated as of March 27, 1992, as amended to date, among Chicago and North Western Transportation Company, the Company (as Guarantor), and the Purchasers listed therein (the "Note Agreement"), and the Pledge Agreement, dated as of December 20, 1990 between Chicago and North Western Railway Company and Citibank, N.A., as trustee, and the Mortgage Trust Deed and Security Agreement, dated as of December 20, 1990, among Citibank, N.A., as trustee, and Chemical Bank, as administrative agent et. al, are owned by either the Company or one of its Subsidiaries free and clear of all liens, charges, claims or encumbrances.

(c) Except for the Second Amended and Restated Stockholders Agreement, dated as of March 30, 1992, as amended, among the Company, Parent and certain other parties (the "Stockholders Agreement"), and an agreement, dated as of June 21, 1993 (the "1993 Agreement") among the parties to the Stockholders Agreement, there are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of the capital stock of the Company or any of the Subsidiaries. None of the Company or its Subsidiaries is required to redeem, repurchase or otherwise acquire shares of capital stock of the Company, or any of its Subsidiaries, respectively, as a result of the transactions contemplated by this Agreement. Parent and the Company agree to terminate, and agree to use their reasonable best efforts to cause the other parties thereto to terminate, as of the Effective Time, the Stockholders Agreement, the 1993 Agreement and the Registration Rights Agreement, dated July 14, 1989, as amended, among Parent, Blackstone Capital Partners L.P. and certain other parties thereto.

Section 3.3 Corporate Authorization; Validity of Agreement; Company Action. (a) The Company has full corporate power and authority to execute and deliver this Agreement and, subject to obtaining any necessary approval of its stockholders as contemplated by Section 1.8 hereof with respect to the Merger, to consummate the transactions contemplated hereby. The execution, delivery and performance by the Company of this Agreement, and the consummation by it of the transactions contemplated hereby, have been duly and validly authorized by its Board of Directors and, except for those actions contemplated by Section 1.2(a) hereof and obtaining any approval of its stockholders as contemplated by Section 1.8 hereof with respect to the Merger, no other corporate action on the part of the Company is necessary to authorize the execution and delivery by the Company of this Agreement and the consummation by it of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery of this Agreement by Parent and the Purchaser, is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(b) The Board of Directors of the Company

has duly and validly approved and taken all corporate action required to be taken by the Board of Directors for the consummation of the transactions contemplated by this Agreement, including the Offer, the acquisition of Shares pursuant to the Offer and the Merger or the Company Stock Option Agreement, including, but not limited to, all actions, to the extent required, necessary to render the provisions of Section 203 of the DGCL inapplicable to such transactions. The affirmative vote of the holders of a majority of the Shares is the only vote of the holders of any class or series of Company capital stock necessary to approve the Merger. Except as previously disclosed to Parent in writing, neither the Offer nor the Merger, individually or taken together, is a transaction that constitutes a change in control under any of the Company's stock option or restricted stock plans, any other benefit plan in which any employee of the Company or any of its Subsidiaries participates or any Company Agreement (as defined in Section 3.4).

Section 3.4 Consents and Approvals; No Violations. Except (A) as disclosed in Section 3.4 of the Disclosure Schedule, (B) for filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the Exchange Act, (C) for the filing and recordation of the Certificate of Merger as required by the DGCL and the UBCA, (D) for any applicable state takeover laws, (E) for the applicable requirements relating to a determination by the ICC that the terms of the Merger are just and reasonable, and (F) for the ICC's approval of Parent's application for an order authorizing the common control (within the meaning of the Interstate Commerce Act) of the rail subsidiaries of the Company and Parent having become final and effective (the "ICC Final Approval"), neither the execution, delivery or performance of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby nor compliance by the Company with any of the provisions hereof will (i) conflict with or result in any breach of any provision of the certificate of incorporation or by-laws or similar organizational documents of the Company or of any of its Subsidiaries, (ii) require any filing with, or permit, authorization, consent or approval of, any court, arbitral tribunal, administrative agency or commission or other governmental or other regulatory authority or agency (a "Governmental Entity"), except where the failure to obtain such permits, authorizations, consents or approvals or to make such filings would not have a Material Adverse Effect on the Company, (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, guarantee, other evidence of indebtedness, lease, license, contract, agreement or other instrument or obligation to which the Company or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound (a "Company Agreement") or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of its Subsidiaries or any of their properties or assets, except in the case of (iii) or (iv) for such violations, breaches or defaults which would not, individually or in the aggregate, have a Material Adverse Effect on the Company, and which will not materially impair the ability of the Company to consummate the transactions contemplated hereby.

Section 3.5 SEC Reports and Financial Statements. The Company has filed with the SEC, and has heretofore made available to Parent true and complete copies of, all forms, reports, schedules, statements and other documents required to be filed by it and its Subsidiaries since January 1, 1992 under the Exchange Act or the Securities Act of 1933, as amended (the "Securities Act") (as such documents have been filed prior to the date hereof, and amended since the time of their filing prior to the date hereof, collectively, the "Company SEC Documents"). As of their respective dates or, if amended, as of the date of the last such amendment, the Company SEC

Documents, including, without limitation, any financial statements or schedules included therein (a) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (b) complied in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as the case may be, and the applicable rules and regulations of the SEC thereunder. Each of the consolidated financial statements included in the Company SEC Documents have been prepared from, and are in accordance with, the books and records of the Company and its consolidated subsidiaries, comply in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto including the effect of such notes on earlier financial statements and except that the quarterly financial statements contain all footnote disclosures required by Regulation S-X but not all footnotes required by GAAP) and fairly present the consolidated financial position and the consolidated results of operations and cash flows (and changes in financial position, if any) of the Company and its consolidated subsidiaries as at the dates thereof or for the periods presented therein.

Section 3.6 Absence of Certain Changes. Except as disclosed in the Company SEC Documents filed prior to the date of this Agreement, from December 31, 1994 until the date of this Agreement, the Company and its Subsidiaries have conducted their respective businesses and operations consistent with past practice only in the ordinary and usual course and there have not occurred (i) any events, changes, or effects (including the incurrence of any liabilities or obligations of any nature, whether or not accrued, contingent or otherwise) having or, which would be reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on the Company; (ii) except as set forth in Section 3.6 of the Disclosure Schedule, any declaration, setting aside or payment of any dividend or other distribution (whether in cash, stock or property) with respect to the equity interests of the Company or of any of its Subsidiaries; or (iii) any change by the Company or any of its Subsidiaries in accounting principles or methods, except insofar as may be required by a change in GAAP. Since December 31, 1994, except as set forth in Section 3.6 of the Disclosure Schedule, neither the Company nor any of its Subsidiaries has taken any of the actions prohibited by Section 5.1(b),(c)(i), (ii) and (v), (d), (g), (h), (j) or (k) hereof. Section 3.6 of the Disclosure Schedule sets forth the amount of principal and unpaid interest outstanding under each instrument evidencing indebtedness of the Company and its Subsidiaries (other than immaterial indebtedness) which will accelerate or become due or result in a right of redemption or repurchase on the part of the holder of such indebtedness (with or without due notice or lapse of time) as a result of this Agreement, the Offer or the Merger or the other transactions contemplated hereby.

Section 3.7 Information in Proxy Statement. The Proxy Statement (or any amendment thereof or supplement thereto) will, at the date mailed to Company stockholders and at the time of the meeting of Company stockholders to be held in connection with the Merger, not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation is made by the Company with respect to statements made therein based on information supplied by Parent or the Purchaser in writing for inclusion in the Proxy Statement. The Proxy Statement will comply in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder.



Section 3.8 Employee Benefit Plans; ERISA. To the best knowledge of the Company:

(a) There are no material employee benefit plans, arrangements, contracts or agreements (including, without limitation, employment agreements, change of control employment agreements and severance agreements) of any type (including but not limited to plans described in section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), maintained, or contributed to, by the Company, any of its Subsidiaries or any trade or business, whether or not incorporated (an "ERISA Affiliate"), that together with the Company would be deemed a "single employer" within the meaning of section 4001(b)(15) of ERISA, with respect to which the Company or any of its Subsidiaries has or may have a liability, other than those listed on Section 3.8(a) of the Disclosure Schedule (the "Benefit Plans"). Neither the Company nor any ERISA Affiliate has any formal plan or commitment, whether legally binding or not, to create any additional Benefit Plan or modify or change any existing Benefit Plan that would affect any employee or terminated employee of the Company or any Subsidiary.

(b) With respect to each Benefit Plan: (i) if intended to qualify under section 401(a), 401(k) or 403(a) of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder (the "Code"), such plan so qualifies, and its trust is exempt from taxation under section 501(a) of the Code; (ii) such plan has been administered in all material respects in accordance with its terms and applicable law; (iii) no breaches of fiduciary duty have occurred which might reasonably be expected to give rise to material liability on the part of the Company or the Subsidiaries; (iv) no disputes are pending, or, to the knowledge of the Company, threatened that might reasonably be expected to give rise to material liability on the part of the Company or the Subsidiaries; (v) no prohibited transaction (within the meaning of Section 406 of ERISA) has occurred that might reasonably be expected to give rise to material liability on the part of the Company or the Subsidiaries; and (vi) all contributions and premiums due as of the date hereof (including any extensions for such contributions and premiums) have been made in full.

(c) Full payment has been made, or will be made in accordance with section 404(a)(6) of the Code, of all amounts which the Company or its Subsidiaries are required to pay under the terms of each of the Benefit Plans as of the last day of the most recent plan year thereof ended prior to the date of this Agreement, and all such amounts which become payable through the Effective Time will be paid by the Company or its Subsidiaries at or prior to the Effective Time, except for annual contributions by the Company for calendar 1994, which are due and payable in the ordinary course on or before the Company's tax return due date, including any extensions.

(d) Neither the Company nor any ERISA Affiliate has incurred any liability under Title IV of ERISA since the effective date of ERISA that has not been satisfied in full. Except as identified in Section 3.8(d) of the Disclosure Schedule, neither the Company nor any ERISA Affiliate maintains (or contributes to), or has maintained (or has contributed to) within the last six years, any employee benefit plan that is subject to Title IV of ERISA.

(e) With respect to each Benefit Plan that is a "welfare plan" (as defined in section 3(1) of ERISA): except as specifically disclosed in Section 3.8 of the Disclosure Schedule, no such plan provides medical or death benefits with respect to current or former employees of the Company or any of its Subsidiaries beyond their termination of employment, other than on an employee-pay-all basis.

(f) Except as specifically set forth on Schedule 3.8, the consummation of the transactions contemplated by this Agreement will not (i) entitle any

individual to severance pay or accelerate the time of payment or vesting, or increase the amount, of compensation or benefits due to any individual, (ii) constitute or result in a prohibited transaction under section 4975 of the Code or section 406 or 407 of ERISA or (iii) subject the Company, any of its Subsidiaries, any ERISA Affiliate, any of the Benefit Plans, any related trust, any trustee or administrator thereof, or any party dealing with the Benefit Plans or any such trust to either a civil penalty assessed pursuant to section 409 or 502(i) of ERISA or a tax imposed pursuant to section 4976 or 4980B of the Code.

(g) Except as set forth in Section 3.8(g) of the Disclosure Schedule, there is no Benefit Plan that is a "multiemployer plan," as such term is defined in section 3(37) of ERISA.

(h) With respect to each Benefit Plan, the Company has delivered to Parent accurate and complete copies of all plan texts, summary plan descriptions, summaries of material modifications, trust agreements and other related agreements including all amendments to the foregoing; the two most recent annual reports; the most recent annual and periodic accounting of plan assets; the most recent determination letter received from the United States Internal Revenue Service (the "Service"); and the two most recent actuarial reports, to the extent any of the foregoing may be applicable to a particular Benefit Plan.

#### Section 3.9 Litigation; Compliance with Law.

(a) Except as disclosed in the Company SEC Documents filed prior to the date of this Agreement or as disclosed in Section 3.9 of the Disclosure Schedule, there is no suit, claim, action, proceeding or investigation pending (other than suits, claims, actions or proceedings which have not been served and as to which none of the Chief Executive Officer, the Chief Financial Officer or the most senior legal officer of the Company has knowledge) or, to the best knowledge of the Chief Executive Officer, Chief Financial Officer or the most senior legal officer of the Company, threatened against, the Company or any of its Subsidiaries which, individually or in the aggregate, is likely, individually or in the aggregate, to have a Material Adverse Effect on the Company, or materially impair the ability of the Company to consummate the Offer, the Merger or the other transactions contemplated hereby.

(b) To the best knowledge of the Company, the Company and its Subsidiaries have complied in a timely manner with all laws, statutes, regulations, rules, ordinances, and judgments, decrees, orders, writs and injunctions, of any court or governmental entity relating to any of the property owned, leased or used by them, or applicable to their business, including, but not limited to, equal employment opportunity, discrimination, occupational safety and health, environmental, interstate commerce and antitrust laws, except where the failure to so comply would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

Section 3.10 Taxes. (a) The Company and its Subsidiaries have (i) duly filed (or there has been filed on their behalf) with the appropriate governmental authorities all material Tax Returns (as hereinafter defined) required to be filed by them on or prior to the date hereof, and (ii) duly paid in full or made provision in accordance with GAAP (or there has been paid or provision has been made on their behalf) for the payment of all material Taxes (as hereinafter defined) for all periods ending through the date hereof.

(b) Other than payroll tax issues being reviewed by the Internal Revenue Service Appeals Division, no federal, state, local or foreign audits or other administrative proceedings or court proceedings are presently pending with regard to any Taxes or Tax Returns of the Company or its Subsidiaries wherein an adverse

determination or ruling in any one such proceeding or in all such proceedings in the aggregate could have a Material Adverse Effect on the Company.

(c) The federal income Tax Returns of the Company and its Subsidiaries have been examined by the Internal Revenue Service (or the applicable statutes of limitation for the assessment of federal income Taxes for such periods have expired) for all periods through and including December 31, 1990 (except for the 1985, 1987 and 1989B tax years), and no material deficiencies were asserted as a result of such examinations which have not been resolved and fully paid.

(d) "Taxes" shall mean all federal, state, local and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto. "Tax Returns" shall mean all federal, state, local and foreign tax returns, declarations, statements, reports, schedules, forms and information returns and any amended Tax Returns relating to Taxes.

Section 3.11. Environmental Matters. (a) Except as set forth in the Company SEC Documents or otherwise previously disclosed in writing by the Company to Parent, to the best knowledge of the Chief Executive Officer, Chief Financial Officer, the most senior legal officer, and the most senior legal officer directly in charge of environmental matters of the Company, there are no Environmental Liabilities (as defined below) of the Company that have had or are likely to have a Material Adverse Effect on the Company.

(b) As used in this Agreement, "Environmental Laws" means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, Hazardous Substances or wastes into the environment, including without limitation ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, Hazardous Substances or wastes or the clean-up or other remediation thereof. "Environmental Liabilities" with respect to any person means any and all liabilities of or relating to such Person or any of its Subsidiaries (including any entity which is, in whole or in part, a predecessor of such Person or any of its Subsidiaries), whether vested or unvested, contingent or fixed, actual or potential, known or unknown, which (i) arise under or relate to matters covered by Environmental Laws and (ii) relate to actions occurring or conditions existing on or prior to the date of this Agreement. "Hazardous Substances" means any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics, including, without limitation, any substance regulated under Environmental Laws.

Section 3.12 Opinion of Financial Advisors. The Company has received an opinion from Blackstone to the effect that the cash consideration to be received by the holders of Shares pursuant to the Offer and the Merger is fair to such holders from a financial point of view, a copy of which opinion will be delivered to Parent.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES OF PARENT AND THE PURCHASER

Parent and the Purchaser represent and warrant to the Company as follows:

Section 4.1 Organization. Each of Parent and the Purchaser is a corporation duly organized, validly existing and in good standing under the laws of Utah and has all requisite corporate or other power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power, authority, and governmental approvals would not have a Material Adverse Effect on Parent. Parent and each of its Subsidiaries is duly qualified or licensed to do business and in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, in the aggregate, have a Material Adverse Effect on Parent.

Section 4.2 Authorization; Validity of Agreement; Necessary Action. Each of Parent and the Purchaser has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the Merger and of the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent and the Purchaser and no other corporate proceedings on the part of Parent and the Purchaser are necessary to authorize this Agreement or to consummate the transactions so contemplated. This Agreement has been duly executed and delivered by Parent and the Purchaser, as the case may be, and, assuming due authorization, execution and delivery of this Agreement by the Company, is a valid and binding obligation of each of Parent and the Purchaser, as the case may be, enforceable against them in accordance with its respective terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

Section 4.3 Consents and Approvals; No Violations. Except (A) for filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the Exchange Act, (B) the filing and recordation of the Certificate of Merger as required by the DGCL and the UBCA, (C) any applicable state takeover laws, (D) the applicable requirements relating to a determination by the ICC that the terms of the Merger are just and reasonable, and (E) the ICC Final Approval, neither the execution, delivery or performance of this Agreement by Parent and the Purchaser nor the consummation by Parent and the Purchaser of the transactions contemplated hereby nor compliance by Parent and the Purchaser with any of the provisions hereof will (i) conflict with or result in any breach of any provision of the respective articles of incorporation or by-laws of Parent and the Purchaser, (ii) require any filing with, or permit, authorization, consent or approval of, any Governmental Entity (except where the failure to obtain such permits, authorizations, consents or approvals or to make such filings would not have a material adverse effect on Parent and its Subsidiaries taken as a whole), (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, license, lease, contract, agreement or other instrument or obligation to which Parent or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Parent, any of its Subsidiaries or any of their properties or assets, except in the case

of (iii) and (iv) for violations, breaches or defaults which would not, individually or in the aggregate, materially impair the ability of Parent or Purchaser to consummate the Offer, the Merger or the other transactions contemplated hereby.

Section 4.4 Information in Proxy Statement; Schedule 14D-9. None of the information supplied by Parent or the Purchaser for inclusion or incorporation by reference in the Proxy Statement or the Schedule 14D-9 will, at the date mailed to stockholders and at the time of the meeting of stockholders to be held in connection with the Merger, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

Section 4.5 Financing. Either Parent or the Purchaser has, or will have prior to the satisfaction of the conditions to the Offer, sufficient funds available (through existing credit arrangements or otherwise) to purchase all of the Shares outstanding on a fully diluted basis and to refinance the indebtedness referred to in Section 3.6 of the Disclosure Schedule.

## ARTICLE V

### COVENANTS

Section 5.1 Interim Operations of the Company. The Company covenants and agrees that, except (i) as expressly provided in this Agreement, or (ii) with the prior written consent of Parent after the date hereof, and prior to the time the directors of the Purchaser have been elected to, and shall constitute a majority of, the Board of Directors of the Company pursuant to Section 1.3 (the "Appointment Date"):

(a) the business of the Company and its Subsidiaries shall be conducted only in the ordinary and usual course consistent with past practice and, to the extent consistent therewith, each of the Company and its Subsidiaries shall use its reasonable best efforts to preserve its business organization intact and maintain its existing relations with customers, suppliers, employees, creditors and business partners;

(b) the Company will not, directly or indirectly, split, combine or reclassify the outstanding Company Common Stock, Non-Voting Common Stock or any outstanding capital stock of any of the Subsidiaries of the Company;

(c) neither the Company nor any of its Subsidiaries shall: (i) amend its articles of incorporation or by-laws or similar organizational documents; (ii) except as set forth in Section 5.1(c) of the Disclosure Schedule, declare, set aside or pay any dividend or other distribution payable in cash, stock or property with respect to its capital stock (other than dividends paid by a wholly-owned Subsidiary in the ordinary course of business consistent with past practice); (iii) issue, sell, transfer, pledge, dispose of or encumber any additional shares of, or securities convertible into or exchangeable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of capital stock of any class of the Company or its Subsidiaries, other than issuances pursuant to the exercise of Options outstanding on the date hereof or pursuant to the conversion of the Non-Voting Shares into Shares; (iv) transfer, lease, license, sell, mortgage, pledge, dispose of, or encumber any material assets other than in the ordinary and usual course of business and consistent with past practice, or incur or modify any material indebtedness; or (v) except as set forth in Section 5.1(c) of the Disclosure Schedule, redeem, purchase or otherwise acquire directly or indirectly any of its capital stock;

(d) neither the Company nor any of its

Subsidiaries shall: (i) except as set forth in Section 5.1(d) of the Disclosure Schedule, promote any employee or grant any increase in the compensation payable or to become payable by the Company or any of its Subsidiaries to any employee, provided, however, the Company may increase compensation (x) as required pursuant to collective bargaining agreements and (y) for employees other than executive officers, on the anniversary date of the employee whose compensation is being increased provided that such employee's compensation has not been increased since his prior anniversary date and provided further that the percentage increase on his 1995 anniversary date does not exceed 4% or (A) adopt any new, or (B) amend or otherwise increase, or accelerate the payment or vesting of the amounts payable or to become payable under any existing, bonus, incentive compensation, deferred compensation, severance, profit sharing, stock option, stock purchase, insurance, pension, retirement or other employee benefit plan agreement or arrangement; or (ii) enter into any, or amend any existing, employment or severance agreement with or, except in accordance with the existing written policies of the Company, grant any severance or termination pay to any officer, director or employee of the Company or any of its Subsidiaries;

(e) neither the Company nor any of its Subsidiaries shall modify, amend or terminate any of its material Company Agreements or waive, release or assign any material rights or claims, except in the ordinary course of business and consistent with past practice;

(f) neither the Company nor any of its Subsidiaries shall permit any material insurance policy naming it as a beneficiary or a loss payable payee to be cancelled or terminated without notice to Parent, except in the ordinary course of business and consistent with past practice;

(g) neither the Company nor any of its Subsidiaries shall: (i) incur or assume any long-term debt in excess of \$1,000,000 in the aggregate, or except in the ordinary course of business, incur or assume any short-term indebtedness in amounts not consistent with past practice; (ii) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other person, except in the ordinary course of business and consistent with past practice; (iii) make any loans, advances or capital contributions to, or investments in, any other person (other than to wholly owned Subsidiaries of the Company or customary loans or advances to employees in accordance with past practice); or (iv) except as disclosed in Section 5.1(g) of the Disclosure Schedule enter into any material commitment or transaction (including, but not limited to, any borrowing, capital expenditure or purchase, sale or lease of assets) other than capital expenditures pursuant to the Company's capital expenditures budget that aggregate since December 31, 1994 not more than \$75,000,000;

(h) neither the Company nor any of its Subsidiaries shall change any of the accounting principles used by it unless required by GAAP;

(i) neither the Company nor any of its Subsidiaries shall pay, discharge or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction of any such claims, liabilities or obligations, (x) in the ordinary course of business and consistent with past practice, of claims, liabilities or obligations reflected or reserved against in, or contemplated by, the consolidated financial statements (or the notes thereto) of the Company and its consolidated Subsidiaries, (y) incurred in the ordinary course of business and consistent with past practice or (z) which are legally required to be paid, discharged or satisfied (provided that if such claims, liabilities or obligations referred to in this clause (z) are legally required to be paid and are also not otherwise payable in

accordance with clauses (x) or (y) above, the Company will notify Parent in writing if such claims, liabilities or obligations exceed, individually or in the aggregate, \$10 million in value, reasonably in advance of their payment);

(j) neither the Company nor any of its Subsidiaries will adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries or any agreement relating to a Takeover Proposal (as hereafter defined) (other than the Merger); and

(k) neither the Company nor any of its Subsidiaries will enter into an agreement, contract, commitment or arrangement to do any of the foregoing, or to authorize, recommend, propose or announce an intention to do any of the foregoing.

Section 5.2 Access to Information. The Company shall (and shall cause each of its Subsidiaries to) afford to the officers, employees, accountants, counsel, financing sources and other representatives of Parent, access, during normal business hours, during the period prior to the Effective Time, to all of its and its Subsidiaries' properties, books, contracts, commitments and records and, during such period, the Company shall (and shall cause each of its Subsidiaries to) furnish promptly to the Parent (a) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of federal securities laws and (b) all other information concerning its business, properties and personnel as Parent may reasonably request. Until the Effective Time, Parent will hold any such information which is nonpublic in confidence in accordance with the provisions of the confidentiality agreement between the Company and the Parent (the "Confidentiality Agreement"), subject to the requirements of applicable law. Notwithstanding anything in the Confidentiality Agreement to the contrary, materials furnished to Parent pursuant to this Section 5.2 may be used by Parent for strategic and integration planning purposes.

Section 5.3 Consents and Approvals. Each of the Company, Parent and the Purchaser will take all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on it with respect to this Agreement and the transactions contemplated hereby (which actions shall include, without limitation, furnishing all information in connection with approvals of or filings with any Governmental Entity) and will promptly cooperate with and furnish information to each other in connection with any such requirements imposed upon any of them or any of their Subsidiaries in connection with this Agreement and the transactions contemplated hereby. Each of the Company, Parent and the Purchaser will, and will cause its Subsidiaries to, take all reasonable actions necessary to obtain (and will cooperate with each other in obtaining) any consent, authorization, order or approval of, or any exemption by, any Governmental Entity or other public or private third party required to be obtained or made by Parent, the Purchaser, the Company or any of their Subsidiaries in connection with the Offer or the Merger or the taking of any action contemplated thereby or by this Agreement.

#### Section 5.4 Employee Benefits.

With respect to employee benefits matters, Parent, Purchaser and Company agree as follows:

(a) Parent agrees to cause the Surviving Corporation and its Subsidiaries to honor and assume the Change of Control Employment Agreements listed on Schedule 5.4(a) hereto. If Parent shall notify Company prior to the Effective Time that Parent wishes to substitute alternate contractual arrangements (to become effective as of the Effective Time) with one or more of the employees who currently have Change of Control

Employment Agreements, the Company agrees to use its best efforts to facilitate Parent's negotiations with any such employee and to cooperate in making any such contractual changes which are agreed-upon by Parent and such employee. Each individual employee who (i) receives a lump sum payment in cash of all benefits under Section 5(a) of a Change of Control Employment Agreement, (ii) agrees to amend the Second Amended and Restated Stockholders Agreement, dated as of March 30, 1992, as amended, an agreement, dated as of June 21, 1993 among the parties to such Stockholders Agreement, and the Registration Rights Agreement, dated July 14, 1989, as amended (collectively, the "Three Agreements"), to provide that they shall terminate upon the Effective Time of the Merger and to waive (effective as of the Effective Time) any and all rights under each of the Three Agreements to which such employee is a party, and (iii) waives any claims such employee may have against the Company except for routine benefit claims under the Company's benefit plans pursuant to their terms and any rights to indemnification by the Company under Section 5.9 of this Agreement, will also receive a separate payment ("Extra Payment") from the Company representing his or her individual share of \$15 million on a pro rata basis in the proportion that his or her individual 1995 annualized compensation (current salary and maximum bonus) bears to the total 1995 annualized compensation (current salary and maximum bonus) of all of the 27 executives who have Change of Control Employment Agreements, provided that if the amount an employee would receive from the sum of amounts paid ("Relevant Compensation") under the Change of Control Employment Agreement, the Extra Payment and all other compensation and benefits paid to the employee which would not be deductible (in whole or in part) as a result of Section 280G of the Code, net of all applicable federal, state and local income and excise taxes ("Applicable Taxes") thereon, would be smaller than the amount such employee would receive from Relevant Compensation net of Applicable Taxes if the amount of the Extra Payment were reduced, then the Extra Payment shall be reduced (but not below zero) to the amount which results in the employee receiving the largest possible amount from Relevant Compensation net of Applicable Taxes.

(b) No employee of the Company who is not an executive officer of the Company and whose compensation or benefits are not the subject of a collective bargaining agreement, and who has not entered into a Change of Control Employment Agreement with the Company shall be terminated during the 18-month period following the Effective Date for the sole purpose of a reduction in force without being permitted to participate in a two-part cash severance program (voluntary and involuntary) consistent with, and no less generous than, that offered by Parent to certain of its employees in December 1994, under the Union Pacific Railroad Company Marketing and Sales Department 1994 Voluntary Force Reduction Program.

(c) With respect to the Chicago and North Western Railway Company Supplemental Pension Plan (the "Pension Plan"), the Chicago and North Western Railway Company Profit Sharing and Retirement Savings Program (the "Savings Program"), the Chicago and North Western Transportation Company Executive Retirement Plan (the "Executive Retirement Plan"), and the Chicago and North Western Transportation Company Excess Benefit Retirement Plan (the "Excess Benefit Plan"), hereinafter referred to collectively as the "Retirement Plans," Parent, the Purchaser, and the Company agree as follows:

(i) Each employee of the Company who, as of the date hereof, is eligible to participate in one or more of the Retirement Plans shall, until December 31, 1995, continue to be eligible to participate in each Retirement Plan in which he was eligible to participate as of the date hereof, subject to the terms and conditions of the applicable Retirement Plan as in effect from time to time (which, until December 31, 1995, shall remain, to the extent lawful (and, where applicable,



consistent with the tax qualification of the Retirement Plan), consistent in all material respects with the terms and conditions of the Retirement Plan in effect at the Effective Time). Under the Savings Program the Company contribution for 1995 shall be equal to the 1995 Company contribution which would occur if the Company Contribution Base (as defined under the Savings Program) for 1995 equalled the Company Contribution Base for the calendar quarter ending March 31, 1995 (excluding any expenses of the transaction contemplated by the Agreement) multiplied by four (4).

(ii) Each of the Retirement Plans shall be amended to provide that no benefits shall accrue thereunder after December 31, 1995.

(iii) Effective January 1, 1996, each employee of the Company on that date who was an active participant in the Pension Plan as of December 31, 1995 shall become a participant in the Pension Plan for Salaried Employees of Union Pacific Corporation and Affiliates (the "UPPP") and shall be credited thereunder (A) with compensation paid by the Company before January 1, 1996, as determined in accordance with the terms of the Pension Plan as in effect on the date of this Agreement, (B) for eligibility, vesting, retirement eligibility, and benefit accrual purposes, with the service with which he was credited for such purposes under the Pension Plan as of December 31, 1995, and (C) with compensation and service from and after January 1, 1996, in accordance with the applicable provisions of the UPPP; provided that the benefits to which each such employee shall be entitled under the UPPP shall be reduced by the actuarial equivalent of the benefits to which the employee is entitled, as of December 31, 1995, under the Pension Plan and the actuarial equivalent of the amount described in Article 2.1(c) and (d) of the Pension Plan as in effect on the date of this Agreement, and determined as of December 31, 1995. For purposes of this paragraph (iii), actuarial equivalence shall be determined in accordance with the applicable provisions of Appendix I to the Pension Plan as in effect on the date of this Agreement.

(iv) Effective January 1, 1996, each employee of the Company on that date who was an active participant in the Savings Program as of December 31, 1995 shall be eligible to participate in the Union Pacific Corporation Thrift Plan (the "Thrift Plan") in accordance with the terms of the Thrift Plan as in effect from time to time and shall be credited thereunder, for eligibility and vesting purposes, with the service he was credited with for such purposes under the Savings Program as of December 31, 1995, and for service from and after January 1, 1996, in accordance with the terms of the Thrift Plan as in effect from time to time.

(v) From and after January 1, 1996, each employee of the Company on that date who was an active participant in the Executive Retirement Plan, the Excess Benefit Plan, or both as of December 31, 1995 shall be entitled to participate in any excess benefit or other unfunded deferred compensation plan that supplements the UPPP or the Thrift Plan and in which similarly situated employees of Parent are then entitled to participate.

(d) Each of the Company's employee benefit plans shall be amended to provide that if an employee of the Company as of the date hereof, whose compensation or benefits at such date are not the subject of a collective bargaining agreement (a "Nonagreement Employee"), is transferred to employment with the Parent or the Purchaser after such date and before January 1, 1996, the Nonagreement Employee shall be permitted to participate in the plan pursuant to the terms of the plan and shall

not be prohibited from such participation solely by reason of such transfer, provided that the Nonagreement Employee is otherwise eligible to participate in the plan in accordance with the terms and conditions thereof.

(e) Except to the extent otherwise provided in this Agreement, from and after January 1, 1996, each Nonagreement Employee of the Company at the Effective Time who is a Nonagreement Employee of the Parent, Company, or Purchaser on January 1, 1996 shall be entitled to participate in, and to receive benefits under, the employee benefit plans of the Company, Parent, and the Purchaser, in accordance with terms and conditions that are comparable to the terms and conditions that apply to similarly situated employees of the Purchaser or Parent. Except with respect to the Retirement Plans, each such employee of the Company whose compensation or benefits are not subject to a collective bargaining agreement shall at all times on and after January 1, 1996 be given full credit for all past service under all employee benefit plans of Parent, Purchaser and all affiliates to the extent to which credit is given for such service under the Company's similar benefit plans, subject to reduction for any benefits to which such employee is entitled from the Company under its similar benefit plans.

(f) The Company will pay, as soon as reasonably practical after the date of Closing, bonuses under its Bonus Plan in an amount determined by projecting to December 31, 1995 the Company's performance (measured using the performance measures established by the Compensation Committee for 1995, calculating such bonuses without giving effect to the expenses of the transaction contemplated by the Agreement) through the date of Closing and prorating the resulting bonus amounts to the date of Closing.

Section 5.5 No Solicitation. (a) The Company (and its Subsidiaries and affiliates) will not, and the Company (and its Subsidiaries and affiliates) will use their best efforts to ensure that their respective officers, directors, employees, investment bankers, attorneys, accountants and other agents do not, directly or indirectly: (i) initiate, solicit or encourage, or take any action to facilitate the making of, any offer or proposal which constitutes or is reasonably likely to lead to any Takeover Proposal (as defined below) of the Company or any Subsidiary or affiliate or an inquiry with respect thereto, or, (ii) in the event of an unsolicited Takeover Proposal for the Company or any Subsidiary or affiliate, engage in negotiations or discussions with, or provide any information or data to any Person relating to any Takeover Proposal, except to the extent that the Company's Board of Directors determines, based on the opinion of outside legal counsel to the Company, that the failure to engage in such negotiation or discussions or provide such information would likely result in a breach of the Board of Directors' fiduciary duties under applicable law. The Company shall notify Parent and the Purchaser orally and in writing of any such offers, proposals or Takeover Proposals (including, without limitation, the terms and conditions thereof and the identity of the Person making it), within 24 hours of the receipt thereof, unless the Company's Board of Directors determines, based on the opinion of outside legal counsel to the Company, that giving such notice would result in a breach of the Board of Directors' fiduciary duties under applicable law. The Company shall, and shall cause its Subsidiaries and affiliates, and their respective officers, directors, employees, investment bankers, attorneys, accountants and other agents to, immediately cease and cause to be terminated all existing discussions and negotiations, if any, with any parties conducted heretofore with respect to any Takeover Proposal relating to the Company. Notwithstanding anything to the contrary, nothing contained in this Section 5.5 shall prohibit the Company or its Board of Directors from (i) issuing a press release or otherwise publicly disclosing the terms of any Takeover Proposal; (ii) communicating to the Company's stockholders a position as required by Rule

14e-2 promulgated under the Exchange Act; or (iii) making any disclosure to the Company's stockholders which the Board of Directors of the Company determines, based on the opinion of outside legal counsel to the Company, that the Company would likely be required to make under applicable law (including, without limitation, laws relating to the fiduciary duties of directors).

(b) As used in this Agreement, "Takeover Proposal" when used in connection with any Person shall mean any tender or exchange offer involving such Person, any proposal for a merger, consolidation or other business combination involving such Person or any Subsidiary of such Person, any proposal or offer to acquire in any manner a substantial equity interest in, or a substantial portion of the business or assets of, such Person or any Subsidiary of such Person, any proposal or offer with respect to any recapitalization or restructuring with respect to such Person or any Subsidiary of such Person or any proposal or offer with respect to any other transaction similar to any of the foregoing with respect to such Person or any Subsidiary of such Person; provided, however, that, as used in this Agreement, the term "Takeover Proposal" shall not apply to any transaction of the type described in this subsection (b) involving Parent, the Purchaser or their affiliates. As used in this Agreement, "Person" shall mean any corporation, partnership, person or other entity or group (including the Company and its affiliates and representatives, but excluding Parent or any of its affiliates or representatives).

Section 5.6 Additional Agreements. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable, whether under applicable laws and regulations or otherwise, and to remove any injunctions or other impediments or delays, legal or otherwise, to consummate and make effective the Merger and the other transactions contemplated by this Agreement. In case at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of the Company and Parent shall use all reasonable efforts to take, or cause to be taken, all such necessary actions. Parent and the Company further agree to use their reasonable best efforts to make final and effective the ICC Final Approval.

Section 5.7 Publicity. So long as this Agreement is in effect and subject to Section 5.5 hereof, neither the Company, Parent nor any of their respective affiliates shall issue or cause the publication of any press release or other announcement with respect to the Merger, this Agreement or the other transactions contemplated hereby without the prior consultation of the other party, except as may be required by law or by any listing agreement with a national securities exchange. Nothing contained in this Section 5.7 shall prohibit Parent or its affiliates from issuing a press release or otherwise publicly commenting on, without prior consultation, any matter disclosed by the Company or its Board of Directors without prior consultation pursuant to clause (iii) of the last sentence of Section 5.5(a) hereof.

Section 5.8 Notification of Certain Matters. The Company shall give prompt notice to Parent and Parent shall give prompt notice to the Company, of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would cause any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect at or prior to the Effective Time and (ii) any material failure of the Company or Parent, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 5.8 shall not limit or otherwise affect the

remedies available hereunder to the party receiving such notice.

Section 5.9 Directors' and Officers' Insurance and Indemnification. Parent agrees that at all times after consummation of the Offer, it shall indemnify, or shall cause the Company (or the Surviving Corporation if after the Effective Time) and its Subsidiaries to indemnify, each person who is now, or has been at any time prior to the date hereof, an employee, agent, director or officer of the Company or of any of the Company's Subsidiaries, successors and assigns (individually an "Indemnified Party" and collectively the "Indemnified Parties"), to the same extent and in the same manner as is now provided in the respective charters or by-laws of the Company and such Subsidiaries or otherwise in effect on the date hereof, with respect to any claim, liability loss, damage, cost or expense (whenever asserted or claimed) ("Indemnified Liability") based in whole or in part on, or arising in whole or in part out of, any matter existing or occurring at or prior to the Effective Time. Parent shall, and shall cause the Company (or the Surviving Corporation if after the Effective Time) to, maintain in effect for not less than 6 years after consummation of the Offer the current policies of directors' and officers' liability insurance maintained by the Company and its Subsidiaries on the date hereof (provided that Parent may substitute therefor policies having at least the same coverage and containing terms and conditions which are no less advantageous to the persons currently covered by such policies as insured) with respect to matters existing or occurring at or prior to the Effective Time; provided, however, that if the aggregate annual premiums for such insurance at any time during such period shall exceed 300% of the per annum rate of premium currently paid by the Company and its Subsidiaries for such insurance on the date of this Agreement, then Parent shall cause the Company (or the Surviving Corporation if after the Effective Time) to, and the Company (or the Surviving Corporation if after the Effective Time) shall, provide the maximum coverage that shall then be available at an annual premium equal to 300% of such rate, and Parent, in addition to the indemnification provided above in this Section 5.9, shall indemnify the Indemnified Parties for the balance of such insurance coverage on the same terms and conditions as though Parent were the insurer under those policies. Without limiting the foregoing, in the event any Indemnified Party becomes involved in any capacity in any action, proceeding or investigation based in whole or in part on, or arising in whole or in part out of, any matter, including the transactions contemplated hereby, existing or occurring at or prior to the Effective Time, then to the extent permitted by law Parent shall, or shall cause the Company (or the Surviving Corporation if after the Effective Time) to, periodically advance to such Indemnified Party its legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the provision by such Indemnified Party of an undertaking to reimburse the amounts so advanced in the event of a final determination by a court of competent jurisdiction that such Indemnified Party is not entitled thereto. Promptly after receipt by an Indemnified Party of notice of the assertion (an "Assertion") of any claim or the commencement of any action against him in respect to which indemnity or reimbursement may be sought against Parent, the Company, the Surviving Corporation or a Subsidiary of the Company or the Surviving Corporation ("Indemnitors") hereunder, such Indemnified Party shall notify any Indemnitor in writing of the Assertion, but the failure to so notify any Indemnitor shall not relieve any Indemnitor of any liability it may have to such Indemnified Party hereunder except to the extent that such failure shall have materially and irreversibly prejudiced Indemnitor in defending against such Assertion. Indemnitors shall be entitled to participate in and, to the extent Indemnitors elect by written notice to such Indemnified Party within 30 days after receipt by any Indemnitor of notice of such Assertion, to assume the defense of such Assertion, at their own expense, with

counsel chosen by Indemnitors and reasonably satisfactory to such Indemnified Party. Notwithstanding that Indemnitors shall have elected by such written notice to assume the defense of any Assertion, such Indemnified Party shall have the right to participate in the investigation and defense thereof, with separate counsel chosen by such Indemnified Party, but in such event the fees and expenses of such counsel shall be paid by such Indemnified Party unless such separate counsel is required due to a conflict of interest, in which case the Indemnitors shall be responsible for the fees and expenses of one separate counsel for all such Indemnified Parties. No Indemnified Party shall settle any Assertion without the prior written consent of Parent, nor shall Parent settle any Assertion without either (i) the written consent of all Indemnified Parties against whom such Assertion was made, or (ii) obtaining a general release from the party making the Assertion for all Indemnified Parties as a condition of such settlement. The provisions of this Section 5.9 are intended for the benefit of, and shall be enforceable by, the respective Indemnified Parties.

Section 5.10 Conversion of Non-Voting Common Stock. The Company agrees to acquiesce in the two conditions contained in the ICC's decision in Finance Docket No. 32133 served on March 7, 1995, subject to the consummation of the Offer. The Company agrees to cooperate with Parent, and join in any filings or submissions to the ICC, in connection with obtaining the ICC Final Approval; provided, however, that notwithstanding the foregoing, prior to consummation of the Offer, neither party shall be deemed to waive any rights under Section 9 of the Stockholders Agreement with respect to any conditions in the ICC Final Approval. On or after April 6, 1995 (provided no stays have been entered by any court or by the ICC prior to such time in connection with Parent's application with the ICC for an order authorizing the common control of the rail subsidiaries of Parent and the Company) or on such later date that the parties shall receive the ICC Final Approval, and provided that Purchaser shall have consummated the Offer or, if the Offer shall not have been consummated, the provisions of Section 9 of the Stockholders Agreement relating to the conditions of the ICC Final Approval shall have been satisfied, the Company shall, not later than the next business day immediately following the receipt of the request of Parent or the Purchaser, accompanied by delivery to the Company's transfer agent of certificates representing Purchaser's shares of Non-Voting Common Stock, convert Purchaser's shares of Non-Voting Common Stock into shares of Company Common Stock and appoint two Parent designees to the Board of Directors of the Company.

Section 5.11 ICC Determination. The Company agrees to support, and if requested by Parent, to join in, the application of Parent to the ICC requesting a determination that the terms of the Merger are just and reasonable or, alternatively, a declaratory order of the ICC that no such determination is required, and the Company agrees to take such further action as is necessary or desirable to obtain such determination or order.

## ARTICLE VI

### CONDITIONS

Section 6.1 Conditions to Each Party's Obligation To Effect the Merger. The respective obligation of each party to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions:

(a) Stockholder Approval. This Agreement shall have been approved and adopted by the requisite vote of the holders of Company Common Stock, if required by applicable law and the Restated Certificate of Incorporation, in order to consummate the Merger;

(b) Statutes; Consents. No statute, rule, order, decree or regulation shall have been enacted or promulgated by any foreign or domestic government or any governmental agency or authority of competent jurisdiction which prohibits the consummation of the Merger and all foreign or domestic governmental consents, orders and approvals required for the consummation of the Merger and the transactions contemplated hereby shall have been obtained and shall be in effect at the Effective Time;

(c) Injunctions. There shall be no order or injunction of a foreign or United States federal or state court or other governmental authority of competent jurisdiction in effect precluding, restraining, enjoining or prohibiting consummation of the Merger and there shall be no suit, action, proceeding or investigation by a Governmental Entity seeking to restrain, enjoin or prohibit the Merger; and

(d) Purchase of Shares in Offer. Parent, the Purchaser or their affiliates shall have purchased shares of Company Common Stock pursuant to the Offer.

Section 6.2 Conditions to Parent's Obligation to Effect the Merger. The obligation of Parent to effect the Merger shall be subject to the ICC having made a determination that the terms of the Merger are just and reasonable or having issued a declaratory order that no such determination is required.

## ARTICLE VII

### TERMINATION

Section 7.1 Termination. Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated and the Merger contemplated herein may be abandoned at any time prior to the Effective Time, whether before or after stockholder approval thereof:

(a) By the mutual consent of the Board of Directors of Parent and the Board of Directors of the Company.

(b) By either of the Board of Directors of the Company or the Board of Directors of Parent:

(i) if shares of Company Common Stock shall not have been purchased pursuant to the Offer on or prior to June 30, 1995; provided, however, that the right to terminate this Agreement under this Section 7.1(b)(i) shall not be available to any party whose failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of Parent or the Purchaser, as the case may be, to purchase shares of Company Common Stock pursuant to the Offer on or prior to such date; or

(ii) if any Governmental Entity shall have issued an order, decree or ruling or taken any other action (which order, decree, ruling or other action the parties hereto shall use their reasonable efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and non-appealable.

(c) By the Board of Directors of the Company:

(i) if, prior to the purchase of shares of Company Common Stock pursuant to the Offer, the Board of Directors of the Company shall have (A) withdrawn, or modified or changed in a manner adverse to Parent or the Purchaser its approval or recommendation of the Offer, this Agreement or the Merger in order to approve and permit the Company to execute a definitive agreement

relating to a Takeover Proposal, and (B) determined, based on an opinion of outside legal counsel to the Company, that the failure to take such action as set forth in the preceding clause (A) would likely result in a breach of the Board of Directors' fiduciary duties under applicable law; or

(ii) if, prior to the purchase of Company Common Stock pursuant to the Offer, Parent or the Purchaser breaches or fails in any material respect to perform or comply with any of its material covenants and agreements contained herein or breaches its representations and warranties in any material respect; or

(iii) if Parent or the Purchaser shall have terminated the Offer, or the Offer shall have expired, without Parent or the Purchaser, as the case may be, purchasing any shares of Company Common Stock pursuant thereto; provided that the Company may not terminate this Agreement pursuant to this Section 7.1(c)(iii) if the Company is in material breach of this Agreement; or

(iv) if, due to an occurrence that if occurring after the commencement of the Offer would result in a failure to satisfy any of the conditions set forth in Annex A hereto, Parent, the Purchaser or any of their affiliates shall have failed to commence the Offer on or prior to five business days following the date of the initial public announcement of the Offer; provided, that the Company may not terminate this Agreement pursuant to this Section 7.1(c)(iv) if the Company is in material breach of this Agreement.

(d) By the Board of Directors of Parent:

(i) if, due to an occurrence that if occurring after the commencement of the Offer would result in a failure to satisfy any of the conditions set forth in Annex A hereto, Parent, the Purchaser, or any of their affiliates shall have failed to commence the Offer on or prior to five business days following the date of the initial public announcement of the Offer; provided that Parent may not terminate this Agreement pursuant to this Section 7.1(d)(i) if Parent is in material breach of this Agreement; or

(ii) if (A) prior to the purchase of shares of Company Common Stock pursuant to the Offer, the Board of Directors of the Company shall have withdrawn, or modified or changed (including by amendment of the Schedule 14D-9) in a manner adverse to Parent or the Purchaser its approval or recommendation of the Offer, this Agreement or the Merger or shall have recommended a Takeover Proposal, or shall have executed an agreement in principle (or similar agreement) or definitive agreement providing for a Takeover Proposal or other business combination with a person or entity other than Parent, the Purchaser or their affiliates (or the Board of Directors of the Company resolves to do any of the foregoing), or (B) it shall have been publicly disclosed or Parent or the Purchaser shall have learned that any person, entity or "group" (as that term is defined in Section 13(d)(3) of the Exchange Act) (an "Acquiring Person"), other than Parent or its affiliates or any group of which any of them is a member, shall have acquired beneficial ownership (determined pursuant to Rule 13d-3 promulgated under the Exchange Act) of more than 30% of any class or series of capital stock of the Company (including the Shares), through the acquisition of stock, the formation of a group or otherwise, or shall have been granted an option, right, or warrant, conditional or otherwise, to acquire beneficial ownership of more than 30% of any class or series of capital stock of the Company (including the Shares); or

(iii) if Parent or the Purchaser, as the case may be, shall have terminated the Offer, or the Offer shall have expired without Parent or the Purchaser, as the case may be, purchasing any shares of Company Common Stock thereunder, provided that Parent may not terminate this Agreement pursuant to this Section 7.1(d)(iii) if it or the Purchaser has failed to purchase shares of Company Common Stock in the Offer in violation of the material terms thereof.

Section 7.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 7.1, written notice thereof shall forthwith be given to the other party or parties specifying the provision hereof pursuant to which such termination is made, and this Agreement shall forthwith become null and void, and there shall be no liability on the part of the Parent, the Purchaser or the Company except (A) for fraud or for material breach of this Agreement and (B) as set forth in Sections 8.1 and 8.2 hereof.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.1 Fees and Expenses. (a) Except as contemplated by this Agreement, including Section 8.1(b) hereof, all costs and expenses incurred in connection with this Agreement and the consummation of the transactions contemplated hereby shall be paid by the party incurring such expenses.

(b) If (w) the Board of Directors of the Company shall terminate this Agreement pursuant to Section 7.1(c)(i) hereof, (x) the Board of Directors of Parent shall terminate this Agreement pursuant to Section 7.1(d)(ii) hereof, (y) the Board of Directors of the Company shall terminate this Agreement pursuant to Section 7.1(c) (iii) or 7.1(c)(iv) or the Board of Directors or Parent shall terminate this Agreement pursuant to Section 7.1(d)(iii) and within one (1) year of any such termination under this clause (y), a Person shall acquire or beneficially own a majority of the then outstanding shares of Company Common Stock or shall have obtained representation on the Company's Board of Directors or shall enter into a definitive agreement with the Company with respect to a Takeover Proposal or similar business combination or (z) the Board of Directors of Parent shall terminate this Agreement pursuant to Section 7.1(d)(i) due to (I) a material breach of the representations and warranties of the Company set forth in this Agreement or (II) a material breach of, or failure to perform or comply with, any material obligation, agreement or covenant contained in this Agreement, including but not limited to the covenants contained in Section 5.1 hereof, by the Company, then in any such case as described in clause (w), (x), (y) or (z) (each such case of termination being referred to as a "Trigger Event"), the Company agrees that it shall promptly assume and pay, or reimburse Parent for, all reasonable fees and expenses incurred, or to be incurred by Parent, the Purchaser and their affiliates (including the fees and expenses of legal counsel, accountants, financial advisors, other consultants, financial printers and financing sources) in connection with the Offer, the Merger and the consummation of the transactions contemplated by this Agreement, in an amount not to exceed \$3 million in the aggregate.

Section 8.2 Finders' Fees. (a) Except for Blackstone, a copy of whose engagement agreement has been or will be provided to Parent and whose fees will be paid by the Company, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries who might be entitled to any fee or commission from the Company or any of its Subsidiaries upon consummation of the transactions contemplated by this Agreement.



(b) Except for CS First Boston Corporation, a copy of whose engagement agreement has been or will be provided to the Company and whose fees will be paid by Parent, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Parent or any of its Subsidiaries who might be entitled to any fee or commission from Parent or any of its Subsidiaries upon consummation of the transactions contemplated by this Agreement.

Section 8.3 Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified and supplemented in any and all respects, whether before or after any vote of the stockholders of the Company contemplated hereby, by written agreement of the parties hereto, by action taken by their respective Boards of Directors (which in the case of the Company shall include approvals as contemplated in Section 1.3(c)), at any time prior to the Closing Date with respect to any of the terms contained herein; provided, however, that after the approval of this Agreement by the stockholders of the Company, no such amendment, modification or supplement shall reduce or change the Merger Consideration.

Section 8.4 Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any schedule, instrument or other document delivered pursuant to this Agreement shall survive the Effective Time.

Section 8.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (which is confirmed) or sent by an overnight courier service, such as Federal Express, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent or the Purchaser, to:

Union Pacific Corporation  
Martin Tower, Eighth and  
Eaton Avenues  
Bethlehem, Pennsylvania 18018  
Attention: Chairman and Chief  
Executive Officer  
Telephone No.: (610) 861-3200  
Telecopy No.: (610) 861-3111

with a copy to:

Paul T. Schnell, Esq.  
Skadden, Arps, Slate, Meagher & Flom  
919 Third Avenue  
New York, New York 10022  
Telephone No.: (212) 735-3000  
Telecopy No.: (212) 735-2001

and

(b) if to the Company, to:

Chicago and North Western  
Transportation Company  
165 North Canal Street  
Chicago, Illinois 60606  
Attention: Chairman and Chief  
Executive Officer  
Telephone No.: (312) 559-6172  
Telecopy No.: (312) 559-7169

with a copy to:

Paul J. Miller, Esq.  
Sonnenschein, Nath & Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606-6404  
Telephone No.: (312) 876-8000

Section 8.6 Interpretation. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation". The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. The phrases "the date of this Agreement", "the date hereof", and terms of similar import, unless the context otherwise requires, shall be deemed to refer to March 16, 1995. As used in this Agreement, the term "affiliate(s)" shall have the meaning set forth in Rule 12b-2 of the Exchange Act.

Section 8.7 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when two or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

Section 8.8 Entire Agreement; No Third Party Beneficiaries; Rights of Ownership. This Agreement and the Confidentiality Agreement (including the documents and the instruments referred to herein and therein except to the extent superseded hereby): (a) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) except as provided in Section 5.9 are not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

Section 8.9 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 8.10 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law thereof.

Section 8.11 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties, except that the Purchaser may assign, in its sole discretion, any or all of its rights, interests and obligations hereunder to Parent or to any direct or indirect wholly owned Subsidiary of Parent. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

IN WITNESS WHEREOF, Parent, the Purchaser and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

UNION PACIFIC CORPORATION

By: /s/ Drew Lewis  
Name:  
Title:

UP RAIL, INC.

By: /s/ Carl W. von Bernuth  
Name:

Title:

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY

By: /s/ Robert Schmiede  
Name: Robert Schmiede  
Title: Chairman, President &  
Chief Executive Officer

ANNEX A

CONDITIONS TO THE TENDER OFFER

Notwithstanding any other provisions of the Offer, and in addition to (and not in limitation of) the Purchaser's rights to extend and amend the Offer at any time in its sole discretion (subject to the provisions of the Merger Agreement), the Purchaser shall not be required to accept for payment or, subject to any applicable rules and regulations of the SEC, including Rule 14e-1(c) under the Exchange Act (relating to the Purchaser's obligation to pay for or return tendered Shares promptly after termination or withdrawal of the Offer), pay for, and may delay the acceptance for payment of or, subject to the restriction referred to above, the payment for, any tendered Shares, and may terminate the Offer as to any Shares not then paid for, if (i) the Minimum Condition has not been satisfied prior to the expiration of the Offer, (ii) the Interstate Commerce Commission's ("ICC") approval of Parent's application for an order authorizing the common control, within the meaning of the Interstate Commerce Act, of the rail subsidiaries of the Company and Parent shall not have become final and effective prior to the expiration of the Offer, or (iii) at any time on or after March 16, 1995 and prior to the acceptance for payment of any such Shares, any of the following events shall occur or shall be determined by the Purchaser to have occurred:

(a) there shall have been instituted or pending any action, proceeding, application, claim or suit, or any statute, rule, regulation, judgment, order or injunction promulgated, entered, enforced, enacted, proposed, issued or applicable to the Offer or the Merger by any domestic or foreign federal, state or local governmental regulatory or administrative agency or authority or court or legislative body or commission which directly or indirectly (1) prohibits or makes illegal, or imposes any material adverse limitations on, Parent's or the Purchaser's ownership or operation of all or a material portion of the businesses or assets of the Company and its Subsidiaries, taken as a whole, or compels Parent or the Purchaser or their respective Subsidiaries and affiliates to dispose of or hold separate any material portion of the business or assets of the Company or its Subsidiaries, in each case taken as a whole, (2) prohibits, or makes illegal the acceptance for payment, payment for or purchase of Shares or the consummation of the Offer or the Merger, (3) restricts the ability of the Purchaser, or renders the Purchaser unable, to accept for payment, pay for or purchase some or all of the Shares, (4) imposes material limitations on the ability of the Purchaser or Parent effectively to exercise full rights of ownership of the Shares, including, without limitation, the right to vote the Shares purchased by it on all matters properly presented to the Company's stockholders, (5) prohibits, restricts, results in a delay, or imposes material limitations on the ability of Purchaser to convert the Non-Voting Shares into Shares, or (6) otherwise materially adversely affects the financial condition, businesses or results of operations of the Company and its Subsidiaries, taken as a whole; provided that in each such case Parent shall have used all reasonable efforts to cause any such judgment, order or injunction to be vacated or lifted;

(b) the representations and warranties of the Company set forth in the Merger Agreement shall not have been true and correct when made, except (i) those representations and warranties that address matters only as of a particular date are true and correct as of such date, and (ii) where the failure of such representations and warranties to have been

true and correct when made (without giving effect to any limitation as to "materiality" or "material adverse effect" set forth therein), does not have, and is not likely to have, individually or in the aggregate, a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole, or the Company shall have breached or failed in any material respect to perform or comply with any material obligation, agreement or covenant required by the Merger Agreement to be performed or complied with by it;

(c) (i) it shall have been publicly disclosed or Parent or the Purchaser shall have otherwise learned that any person, entity or "group" (as defined in Section 13(d)(3) of the Exchange Act), other than Parent or its affiliates or any group of which any of them is a member, shall have acquired beneficial ownership (determined pursuant to Rule 13d-3 promulgated under the Exchange Act) of more than 30% of the outstanding shares of any class or series of capital stock of the Company (including the Shares), through the acquisition of stock, the formation of a group or otherwise, or shall have been granted an option, right or warrant, conditional or otherwise, to acquire beneficial ownership of more than 30% of any class or series of capital stock of the Company (including the Shares); or (ii) any person or group shall have entered into a definitive agreement or agreement in principle with the Company with respect to a Takeover Proposal or other business combination with the Company;

(d) the Company's Board of Directors shall have withdrawn, or modified or changed in a manner adverse to Parent or the Purchaser (including by amendment of the Schedule 14D-9) its recommendation of the Offer, the Merger Agreement, or the Merger, or recommended another proposal or offer, or shall have resolved to do any of the foregoing; or

(e) the Merger Agreement shall have been terminated in accordance with its terms;

which in the sole judgment of Parent or the Purchaser, in any such case, and regardless of the circumstances (including any action or inaction by Parent or the Purchaser giving rise to such condition) makes it inadvisable to proceed with the Offer or with such acceptance for payment or payments.

The foregoing conditions are for the sole benefit of the Purchaser and Parent and may be waived by Parent or the Purchaser, in whole or in part at any time and from time to time in the sole discretion of Parent or the Purchaser. The failure by Parent or the Purchaser at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

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## COMPANY STOCK OPTION AGREEMENT

COMPANY STOCK OPTION AGREEMENT, dated as of March 16, 1995, by and between UP RAIL, INC., a Utah corporation (the "Purchaser"), and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (the "Company").

WHEREAS, concurrently with the execution and delivery of this Agreement, the Purchaser, Union Pacific Corporation, a Utah corporation and the indirect parent of the Purchaser ("Parent"), and the Company are entering into an Agreement and Plan of Merger (the "Merger Agreement") providing, among other things, for the acquisition by Parent of the Company through a tender offer by the Purchaser (the "Offer") for all of the outstanding shares of Common Stock, \$.01 par value per Share, of the Company (the "Shares") and the subsequent merger (the "Merger") of the Purchaser with and into the Company;

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements set forth herein, the adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Grant of Option. The Company hereby grants the Purchaser an irrevocable option (the "Option") at its election to purchase at the price per Share paid by the Purchaser in the Offer (the "Option Price") such number of authorized but unissued Shares (the "Option Shares") as, when added to the number of Shares owned by Parent and its affiliates immediately prior to such purchase, would result in Parent and its affiliates owning immediately thereafter 90.01% of the then outstanding Shares (assuming conversion of the Purchaser's non-voting shares of Common Stock of the Company into Shares); provided, however, that the Option is subject to the conditions that (a) the Purchaser shall have accepted all Shares validly tendered pursuant to the Offer for payment; (b) the Purchaser, together with its affiliates, shall own at least 85% and less than 90.01% of the number of Shares then outstanding (assuming conversion of the Purchaser's non-voting shares of Common Stock of the Company into Shares); and (c) as a result of the exercise of the Option the Purchaser and its affiliates shall own at least 90.01% of the outstanding Shares (assuming conversion of the Purchaser's non-voting shares of Common Stock of the Company into Shares).

2. Closing. Provided that the Purchaser exercises the Option, and that the conditions thereto in Section 1 above are satisfied, the purchase and sale hereunder shall occur at a closing (the "Closing") as promptly as practicable following the purchase of Shares by the Purchaser pursuant to the Offer

3. Expiration of Option. The Option shall expire at the Effective Time (as defined in the Merger Agreement).

4. Payment of Option Price and Delivery of Certificates for Shares. At the Closing, (a) the Company will deliver to the Purchaser a certificate or certificates representing the number of Option Shares being purchased upon exercise of the Option, registered in the name of the Purchaser or such subsidiary thereof as the Purchaser shall designate, and (b) in full payment for the Option Shares, the Purchaser will deliver to the Company the aggregate price for the Option Shares being purchased by wire transfer of immediately available funds or certified or bank check.

5. Representations and Warranties of the Company. The Company represents and warrants to the Purchaser that (a) the Company is a corporation duly

organized, validly existing and in good standing under the laws of the State of Delaware and has the corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement by the Company and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company and no other proceedings on the part of the Company are necessary to authorize this Agreement or any of the transactions contemplated hereby; and (c) this Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery of this Agreement by the Purchaser, constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

6. Representations and Warranties of the Purchaser. The Purchaser represents and warrants to the Company that (a) the Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Utah and has the corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Purchaser and no other proceedings on the part of the Purchaser are necessary to authorize this Agreement or any of the transactions contemplated hereby; and (c) this Agreement has been duly executed and delivered by the Purchaser and, assuming due authorization, execution and delivery of this Agreement by the Company, constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms.

7. Filings and Consents. The Purchaser and the Company each will use its best efforts to make all filings with, and to obtain consents of, all third parties and governmental authorities necessary to the consummation of the transactions contemplated by this Agreement.

8. Covenant of the Company. The Company shall not engage in any action or omit to take any action which would have the effect of preventing or disabling the Company from delivering the Option Shares to the Purchaser upon exercise of the Option or otherwise performing its obligations under this Agreement.

9. Parties in Interest; Assignment. No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto, except that the rights and obligations of the Purchaser hereunder may be assigned by the Purchaser to any direct or indirect wholly-owned subsidiary or Parent of the Purchaser, but no such assignment shall relieve the Purchaser of its obligations hereunder. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the successors and permitted assigns of the parties hereto.

10. Specific Performance. The parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in accordance with the terms hereof or were otherwise breached and that each party shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

11. Entire Agreement; Amendment. This Agreement, and the documents referred to herein or delivered pursuant hereto which form a part hereof, contain the entire understanding of the parties hereto with respect to its subject matter. There are no restrictions, agreements, promises, warranties, covenants or undertakings with respect to the subject matter hereof other than those expressly set forth herein or therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to its



subject matter. This Agreement may not be amended except by an instrument in writing duly executed on behalf of both parties.

12. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by telex or telegram or mailed by registered or certified mail (postage prepaid, return receipt requested) to the respective parties as follows:

(a) If to the Company:

Chicago and North Western  
Transportation Company  
165 North Canal Street  
Chicago, IL 60606

Attention: Chairman and Chief  
Executive Officer

with copies to:

Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, IL 60606

Attention: Paul J. Miller, Esq.

(b) If to the Purchaser:

Union Pacific Corporation  
Martin Tower  
Eighth & Eaton Avenues  
Bethlehem, PA 18018

Attention: Chairman and Chief  
Executive Officer

with a copy to:

Skadden, Arps, Slate, Meagher & Flom  
919 Third Avenue  
New York, New York 10022

Attention: Paul T. Schnell, Esq.

or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of changes of address shall only be effective upon receipt.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the provisions thereof relating to conflicts of law.

14. Severability of Provisions. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

15. Further Assurances. From time to time, at the other party's request and without further consideration, the Company and the Purchaser will execute and deliver all such further documents and instruments and take all such further action as may be necessary in order to consummate the transactions contemplated hereby, including, without limitation, to vest in the Purchaser good title to the Option Shares purchased hereunder.

16. Descriptive Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

17. Counterparts. This Agreement may be

executed in counterparts, each of which shall be deemed to be an original but both of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Purchaser and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

UP RAIL, INC.

By: /s/ Carl W. von Bernuth

Name:

Title:

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY

By: /s/ Robert Schmiede

Name: Robert Schmiede

Title: Chairman, President &  
Chief Executive Officer

UNION PACIFIC ANNOUNCES BOARD APPROVAL  
OF CNW ACQUISITION

Bethlehem, PA, March 16, 1995 -- Union Pacific Corporation (NYSE: UNP) announced today that its Board of Directors has approved the previously announced acquisition of Chicago and North Western Transportation Company (NYSE: CNW) at a price of \$35 per share in cash.

Union Pacific said that it understands that CNW's Board of Directors will be meeting later today to consider approval of the transaction.

CNW Contact: Michael W. Payette  
(312) 633-4310

FOR IMMEDIATE RELEASE

BETHLEHEM, MARCH 17, 1995 - Union Pacific Corporation (UNP) and Chicago and North Western Transportation Company (CNW) announced today that they have executed a definitive agreement reflecting the previously announced transaction in which Union Pacific will acquire 100 percent of CNW's common stock at a price of \$35 per share in cash. Union Pacific will shortly commence a tender offer for all CNW shares. Following the consummation of the tender offer, Union Pacific will acquire the remaining outstanding CNW shares in a merger for \$35 per share in cash.

"This acquisition will strengthen our capacity to compete in the key western freight corridors," said Drew Lewis, Union Pacific chairman and CEO. "It will increase Union Pacific's growing intermodal traffic from the major West Coast ports to the Midwest and enhance our low-sulfur coal shipments out of the Powder River Basin in Wyoming to the Mississippi Valley and the East. We are delighted to have this fine railroad joining the Union Pacific family."

"In addition to providing a substantial premium for our shareholders," said Robert Schmiede, chairman, president and CEO of the CNW, "this merger offers an opportunity for our customers and virtually all of our employees to participate in a larger railroad with broader horizons, greater resources and enhanced opportunities for the marketing of our customers' products and our employees' professional growth."

Union Pacific Corporation is a transportation and natural resource company based in Bethlehem, Pennsylvania, with sales of approximately \$8 billion.

The Chicago and North Western Transportation Company is the holding company for the Chicago and North Western Railway Company, a leading railroad freight hauler in the central transcontinental corridor and major transporter of coal, grain and double-stack containers.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

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MICHAEL GERBER, individually and on      :
behalf of all others similarly situated, :
                                           :
                               Plaintiff,  :
                                           :
                               v.          :
                                           :
JAMES E. MARTIN, JAMES J. MOSSMAN,      :
JAMES R. THOMPSON, ROBERT SCHMIEGE,     :
RICHARD K. DAVIDSON, HAROLD A. POLING,   :
SAMUEL K. SKINNER, CHICAGO &           :
NORTHWESTERN TRANSPORTATION COMPANY,    :
UNION PACIFIC COMPANY and UP RAIL       :
INC.,                                     :
                               Defendants. :
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C.A. No. 14117

CLASS ACTION COMPLAINT

Plaintiff, as and for its complaint, alleges upon information and belief except as to paragraph 2 which is alleged upon knowledge, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action on behalf of himself and all other public shareholders of Chicago & Northwestern Transportation Company ("CNW" or the "Company") who are threatened with the deprivation of the opportunity to maximize the value of their shares by the wrongful acts of the defendant described herein.

THE PARTIES AND CERTAIN AFFILIATES

2. Plaintiff is and was at all times relevant to this action the owner of shares of common stock of CNW.

3. CNW is a Delaware corporation with its principal place of business in Chicago, Illinois. CNW provides railroad freight transportation and commuter services. As of October 15, 1994, CNW had approximately 44 million shares of common stock outstanding. Approximately 29% of the outstanding stock of CNW is controlled by defendant Union Pacific Company ("Union Pacific"), identified below. Union Pacific owns all the shares of UP Holdings, inc. which, in turn, owns all the shares of UP Rail, Inc., a Delaware corporation, which owns the CNW shares.

4. Each individual defendant was a director of CNW at all times relevant hereto and owed fiduciary duties to its stockholders. In addition, defendant Richard K. Davidson is and at all relevant times was Chairman and Chief Executive Officer of Union Pacific.

5. Defendant Union Pacific is a Utah corporation with its headquarters in Bethlehem, Pennsylvania. Union Pacific is a holding company with interests in transportation and oil and gas, among other things. Union Pacific controls approximately 29% of the outstanding stock of CNW.

6. By virtue of its control over CNW, at all times relevant hereto, defendant Union Pacific was a fiduciary of CNW and its stockholders and owed them the duties of good faith, fair dealing, due care and candor.

7. Union Pacific's conduct, as more fully described herein, wrongfully utilized its position to deprive CNW's shareholders of an opportunity to maximize their investment in CNW.

CLASS ACTION ALLEGATIONS

8. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery on behalf of himself

and all other stockholders of the Company (except defendant and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant), who are or will be threatened with injury arising from defendants' actions as more fully described herein (the "Class").

9. This action is properly maintainable as a class action for the following reasons:

(a) The Class is so numerous that joinder of all members is impracticable. As of October 15, 1994, CNW had approximately 44 million shares of common stock outstanding.

(b) The members of the Class are scattered throughout the United States and are so numerous as to make it impracticable to bring them all before this Court.

(c) There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, inter alia, the following:

(i) whether defendants have breached their fiduciary and other common law duties which they owe to plaintiff and the other members of the Class; and

(ii) whether plaintiff and the other members of the Class are being irreparably damaged.

(d) The claims of plaintiff are typical of the claims of the Class in that all members of the Class will be damaged by defendants' actions.

(e) Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff is an adequate representative of the class.

(f) The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class.

(g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

#### FACTUAL BACKGROUND

10. On March 10, 1995, defendants announced that CNW and Union Pacific had agreed, subject to execution of a definitive merger agreement and Board approval, that Union Pacific would buy CNW for \$35 per share in cash.

11. Union Pacific already controls 29% of CNW's stock, precluding any competing bid not approved by Union Pacific.

12. The proposal grossly undervalues CNW. It fails to adequately account for CNW's expected future profitability and the synergies between the companies.

13. Because of Union Pacific's control of 29% of CNW, no third party could be successful in any competing offer for CNW if Union Pacific refused to sell its stock. Union Pacific therefore controls the terms of any buyout transaction.

14. Due to Union Pacific's control of CNW, no bona fide negotiations can or will occur and a transaction will be consummated which is not in the best interests of the members of the Class, absent judicial intervention.

15. By failing to take appropriate actions to ensure that the public stockholders' interests are protected, defendants have violated their fiduciary duties owed to the public stockholders of CNW and have acted to put their own interests ahead of those of CNW's public stockholders. Union Pacific is using its position as controlling stockholder for

the purpose of benefitting itself to the detriment of plaintiff and the other members of the Class.

16. Because Union Pacific is in possession of private corporate information concerning CNW's assets, businesses and future prospects, there exists an imbalance and disparity of knowledge and economic power between it and the public stockholders of CNW which makes it inherently unfair for it to effect the transaction complained of herein.

17. By reason of the foregoing acts, practices and course of conduct, defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward plaintiff and the other CNW public stockholders.

18. As a result of the actions of defendants, plaintiff and the other members of the Class have been and will be damaged in that they have not received and will not receive their fair proportion of the value of CNW's assets and businesses.

19. Unless enjoined by this Court, defendants will continue to breach their fiduciary duties owed to plaintiff and the other members of the Class.

20. Plaintiff and the other members of the Class have no adequate remedy at law.

WHEREFORE, plaintiff prays for judgment and relief, as follows:

- A. Declaring this to be a proper class action;
- B. Ordering defendants to carry out their fiduciary duties to plaintiff and the other members of the Class, including those of due care, loyalty and candor;
- C. Preliminarily and permanently enjoining the proposed transaction or any similar unfair transaction proposed by Pacific Union;
- D. Ordering defendants to pay to plaintiff and the Class all damages suffered and to be suffered by them as a result of the acts alleged herein;
- E. Awarding plaintiff the costs and disbursements of this action, including allowance for plaintiff's reasonable attorneys' and experts' fees; and
- F. Granting such other and further relief as may be just and proper in the premises.

Dated: March 13, 1995

ROSENTHAL, MONHAIT, GROSS & GODDESS, P.A.

By:  
First Federal Plaza, Suite 214  
P.O. Box 1070  
Wilmington, DE 19899  
(302) 656-4433  
Attorneys for Plaintiff

OF COUNSEL:

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New York, New York 10016  
(212) 889-3700

KAUFMAN, MALCHMAN, KAUFMANN,  
& KIRBY  
919 Third Avenue  
New York, New York 10022

FARUQI and FARUQI  
415 Madison Avenue  
New York, New York 10017  
(212) 986-1074





IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
 IN AND FOR NEW CASTLE COUNTY

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CHARLES KOWAL AND HARRY W. KENT,      :
in his Individual Retirement Account,  :
on their own behalf and on behalf of  :
all others similarly situated,        :
                                        :
                                Plaintiffs, :
                                        :
                                -against-   :
                                        :
CHICAGO AND NORTHWESTERN TRANSPORTATION : CLASS ACTION
COMPANY, UNION PACIFIC CORPORATION,    : COMPLAINT
RICHARD K. DAVIDSON, JAMES E. MARTIN,  :
JAMES J. MOSSMAN, JAMES R. THOMPSON,   :
ROBERT SCHMIEGE, HAROLD A. POLING, and :
SAMUEL K. SKINNER,                    :
                                        :
                                Defendants. :
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Plaintiffs, by their attorneys, for their complaint against defendants, allege upon information and belief, except for paragraphs 1 and 2 hereof, which are alleged upon knowledge, as follows:

1. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery on their behalf and as a class action on behalf of all persons, other than the defendants and those in privity with them, who own common stock of Chicago And North Western Transportation Company ("CNW" or the "Company").
2. Plaintiffs are, and have been at all relevant times, the owners of the common stock of the Company.
3. Defendant CNW is a corporation duly organized and existing under the laws of the State of Delaware. The Company is the holding company for the Chicago and North Western Railway Company, a leading railroad freight hauler in the central transcontinental corridor and major transporter of coal, grain and double-stack containers. The Company's common stock is traded on the New York Stock Exchange under the symbol CNW. The Company maintains its principal corporate offices at 165 North Canal Street, Chicago, Illinois 60606.
4. Defendant Union Pacific Corporation ("Union Pacific") is a publicly-held corporation with the symbol "UNP." Union Pacific is a transportation and natural resource company based in Bethlehem, Pennsylvania, with sales of approximately \$8 billion. Union Pacific beneficially owns 29% of CNW and has three seats on CNW's board.
5. Defendant Richard K. Davidson ("Davidson") is, and at all relevant times, has been a director of the Company. Davidson is Chairman and Chief Executive Officer of Union Pacific Railroad Co., a subsidiary of Union Pacific.
6. Defendant James E. Martin ("Martin") is, and at all relevant times, has been a director of the Company.
7. Defendant James J. Mossman ("Mossman") is, and at all relevant times, has been a director of the Company.
8. Defendant James R. Thompson ("Thompson") is, and at all relevant times, has been a director of the Company.
9. Defendant Robert Schmiede ("Schmiede") is, and at all relevant time, has been a Chairman, Chief Executive Officer and President of the Company.
10. Defendant Harold A. Poling ("Poling") is, and at all relevant times, has been a director of the Company.
11. Defendant Samuel K. Skinner ("Skinner") is, and at all relevant times, has been a director of the Company.

12. The defendants named in paragraphs 5 through 11 may be referred to herein as the "individual defendants."

13. The individual defendants are members of the board of CNW. Certain of the individual defendants are members of the board of directors of Union Pacific. Union Pacific, by virtue of its 29% interest in CNW and its three seats on CNW's board, is a controlling shareholder of CNW and orchestrated the merger at issue for its own benefit, at the expense of CNW's minority shareholders.

14. The individual defendants, by reason of their corporate directorships, stand in a fiduciary position relative to the Company's public shareholders, whose fiduciary duties, at all times relevant herein, require them to exercise their best judgment, and to act in a prudent manner, and in the best interests of the Company's minority shareholders. Said defendants owe the public shareholders, of CNW, including the plaintiffs, the highest duty of good faith, fair dealing, due care, loyalty, and full, candid and adequate disclosure.

15. Each defendant herein is sued individually as an aider and abettor, as well as in his capacity as a director of the Company (in the case of the individual defendants), or as a control person and the liability of each arises from the fact that he has engaged in all or part of the unlawful acts, plans, schemes, or transactions herein.

#### CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action on their own behalf and as a class action, pursuant to Rule 23 of the Rules of the Court of Chancery, on behalf of all security holders of the common stock of the Company (except the defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the defendants) and their successors in interest, who are or will be threatened with injury arising from defendants' actions as more fully described herein.

17. This action is properly maintainable as a class action.

18. The class is so numerous that joinder of all members is impracticable. As of March 23, 1994, there were 43,786,787 shares of CNW common stock outstanding.

19. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted, and no unusual difficulties are likely to be encountered in the management of this class action. The likelihood of individual class members prosecuting separate claims is remote.

20. There are questions of law and fact which are common to the class and which predominate over questions affecting any individual class member. The common questions include, inter alia, the following:

(a) whether defendants have breached their fiduciary and other common law duties owed by them to plaintiff and the members of the class;

(b) whether defendants are pursuing a scheme and course of conduct designed to eliminate the public securities holders of CNW in violation of the laws of the State of Delaware in order to benefit from a proposed acquisition of CNW by Union Pacific at the expense and to the detriment of the plaintiffs and the other public stockholders who are members of the class;

(c) whether defendants are acting on both sides of the possible going-private transaction, thus presenting a conflict of interest, self-dealing and overreaching;

(d) whether the said proposed acquisition, hereinafter described, constitutes a breach of the duty of fair dealing with respect to the members of the class; and,

(e) whether the class is entitled to injunctive relief or damages as a result of the wrongful conduct of the defendants.

21. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. The claims of the plaintiffs are typical of the claims of other members of the class and plaintiffs have the same interests as the other members of the class. A class action is superior to any other type of adjudication of this controversy.

22. Defendants have acted in a manner which affects plaintiffs and all members of the class, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the class as a whole.

#### SUBSTANTIVE ALLEGATIONS

23. CNW's prospects have been improving over the last several quarters as the economy has come out of recession.

24. On November 4, 1994, CNW said it completed ahead of schedule more than ten miles of track capacity expansion on the joint line of its Western Railroad Properties Inc. coal-hauling subsidiary. In addition, the Company said that it planned to add another 27.2 miles of double-track on both the joint and connector lines by the end of 1994. The Company said the coal line track expansion project will continue throughout 1995 when \$29.5 million is scheduled to be invested. CNW stated that its growth would continue as its Western Railroad unit was expected to haul 88 million tons of coal in 1994 and increase up to 100 million tons in 1995.

25. On December 13, 1994, Union Pacific declared that it was taking control of CNW. Union Pacific reported that an Interstate Commerce Commission ("ICC") ruling allowed it to take control of CNW's railway subsidiary. The ICC said that Union Pacific can convert its 29.5% stake in CNW from non-voting to voting shares and that Union Pacific will be allowed to take three seats on CNW's nine member board. Prior to the ICC ruling, Union Pacific had one seat on CNW's seven member board.

26. In January, 1995, Railway Age reported on Union Pacific's control of CNW. According to Union Pacific Chairman and Chief Executive Officer, Dick Davidson, joint marketing and operating efforts are expected to produce benefits of approximately \$23 million this year and \$75 million annually by 1997. Davidson stated that if full integration was proposed, annual benefits of \$184 million would be possible.

27. On January 26, 1995, CNW reported lower fourth quarter 1994 earnings, \$0.43 per share compared to 1993's \$0.54 per share, but said that capacity expansion and increased business on its core railroad had positioned it for future growth. The number of loads hauled rose nine percent in 1994 to 2,563,750 loads. Coal shipments grew by 16% on the railway's coal hauling subsidiary in Wyoming and grew by 16% on the core railroad.

28. On February 22, 1995, only three weeks before the merger with Union Pacific was announced, CNW stated that it expects its 1995 net income to be 30 to 35 percent above its 1994 net income. The Company had expected its net income to rise by 15 to 20 percent over the prior year but due to a better-than-anticipated operating performance, the Company raised its estimates. The Company also said that its improved performance will permit an additional \$40 million to \$50 million of long-term debt to be retired this year.

29. On February 23, 1995, Bear Stearns analyst Gary Schneider confirmed that he upgraded CNW to "attractive" from "neutral." He raised his 1995 earnings estimate to \$2.62 from \$2.20.

30. Due to the Company's vast growth opportunities, and an improved economy in its markets, CNW is on the verge of increased and sustained profitability.

31. However, just as CNW was establishing its growth position, Union Pacific shocked the market with its proposal to merge CNW into Union Pacific. On March 10, 1995, Union Pacific announced that it plans to increase its existing stake in CNW from 29% to 100%. Union Pacific plans to pay \$35 per share in cash. The transaction is subject, among other things, to

negotiation and execution of a mutually satisfactory definitive purchase agreement and approvals by the companies' respective boards of directors. Union Pacific Chairman and Chief Executive Officer Drew Lewis stated:

I am very excited about this transaction. The Chicago and North Western is an excellent managed and maintained railroad with a great route to Chicago. This is a strategic move that will make Union Pacific an even greater mover of southern Powder River Basin coal, grain, intermodal and other products.

32. The proposed plan in which Union Pacific will pay \$35 in cash for each share of CNW outstanding at the time of the merger does not represent the true value of the assets and future prospects underlying each share of CNW.

33. By virtue of its dominance and control over CNW, Union Pacific, together with the individual defendants, has engaged in a plan involving acts which are grossly unfair to plaintiffs and the other members of the class. The purpose of the plan is to enable Union Pacific to acquire 100% equity ownership of CNW and its assets for its own benefit, and at the expense of the other CNW stockholders who would be deprived of their equity investment and the benefits to accrue thereafter, for a grossly inadequate price.

34. Defendants' announcement of the proposed bid fails to disclose whether, prior to making the offer, they obtained an unconditional opinion of an independent investment banker regarding the fair value of the CNW stock. Nor does the merger announcement make any mention of the improving prospects for CNW due to the improving economy in its markets and track capacity expansion, the cost of which was partially borne by the minority shareholders. The merger announcement does not mention that CNW is on the verge of reporting sustained and significant profits.

35. Because of Union Pacific's 29% equity power, seats on CNW's Board and overwhelming control over CNW, all of CNW's directors who will be considering the offer, and the entire board of directors, no third party, as a practical matter, can attempt any competing bid for CNW, as the success of any such bid would require the consent and cooperation of Union Pacific. In fact, because of the predominant control of CNW by Union Pacific, it is a foregone conclusion that whatever Union Pacific may offer, such offer will be accepted.

36. The proposed transaction serves no legitimate business purpose of CNW but rather is an attempt by defendants to unfairly benefit Union Pacific from the transaction at the expense of CNW's public stockholders. The proposed plan will deny plaintiffs and the other members of the class their right to share proportionately in the future success and growth in profitability of CNW and its valuable assets, while permitting defendants to reap huge benefits from the contemplated transaction.

37. The price of \$35 per share of CNW to be paid to the class members is unconscionable, unfair and grossly inadequate. The terms of the proposed merger constitute a fraud upon the minority stockholders because, among other things:

(a) the intrinsic value of each share of CNW is materially in excess of \$35, giving due consideration to the possibilities of growth and profitability of CNW in light of its business, earnings and power, present and future.

(b) the \$35 for each share of CNW stock is not the result of arm's length negotiations and was not based upon any independent evaluation of the current value of CNW shares, assets or business, but was fixed arbitrarily by defendants, as part of a plan by Union Pacific to obtain complete ownership of CNW's assets and business at the lowest possible price, to obtain for itself benefits disproportionate with those to be received by the public stockholders, which facts were not and perhaps will not be disclosed since it is not in defendants' interests to disclose such facts.

38. Because the defendants are in possession of corporate information concerning CNW's assets, businesses and

future financial prospects, the degree of knowledge and economic power between defendants and the public stockholders is unequal, making it grossly and inherently unfair for Union Pacific to obtain ownership of CNW's assets from the public common shareholders.

39. By reason of the foregoing acts, practices and course of conduct, Union Pacific has breached and continues to breach its duty as a controlling stockholder of CNW and the individual defendants have breached and continue to breach their duties as directors of CNW, to the remaining stockholders including plaintiff and the other members of the class herein.

40. Plaintiffs and the class will suffer irreparable damage unless defendants are enjoined from continuing to breach their fiduciary duties and from carrying out the aforesaid plan and scheme.

41. Plaintiffs and other members of the class have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment against the defendants jointly and severally, as follows:

(1) declaring this action to be a class action and certifying plaintiffs as the class representatives, and their counsel as class counsel;

(2) enjoining, preliminarily and permanently, Union Pacific's offer for acquisition of the CNW stock owned by plaintiffs and the other members of the class;

(3) to the extent, if any, that the contemplated transaction or transactions complained of are consummated prior to the entry of this Court's final judgment, rescinding such transaction or transactions, and granting, inter alia, rescissionary damages;

(4) directing that defendants pay to plaintiffs and the other members of the class all damages caused to them and account for all profits and any special benefits obtained as a result of their unlawful conduct;

(5) awarding to plaintiffs the costs and disbursements of this action, including a reasonable allowance for the fees and expenses of plaintiffs' attorneys and experts; and

(6) granting plaintiffs and the other members of the class such other and further relief as may be just and proper.

Dated: March 13, 1995

MORRIS and MORRIS

By:

Suite 1600  
1105 North Market Street  
Wilmington, Delaware 19801  
(302) 426-0400

Attorneys for Plaintiffs

Of Counsel:

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