MEMORANDUM OF AGREEMENT
BETWEEN THE **FEDERAL TRANSIT ADMINISTRATION ("FTA")**
AND
THE **ILLINOIS STATE HISTORIC PRESERVATION OFFICER ("SHPO")**
REGARDING THE
CONSTRUCTION OF A THIRD TRACK AND SERVICE
ADJACENT TO THE UNION PACIFIC WEST LINE
IN LA FOX, ILLINOIS

WHEREAS, the FTA proposes to grant funding to the Commuter Rail Division of the Regional Transportation Authority ("Metra") to construct a third track and service road adjacent to the existing Union Pacific Railroad West Line in LaFox, Illinois (the "Undertaking"), and

WHEREAS, the FTA, in consultation with the SHPO, considers that the Potter and Baxter Elevator within the project area is eligible for inclusion in the National Register of Historic Places, and

WHEREAS, the FTA and SHPO agree that no other properties of historic, architectural, or archaeological significance exist within the project area, and

WHEREAS, the FTA has determined in accordance with Section 106 of the National Historic Preservation Act, as amended (16 USC § 470) and its implementing regulations (36 CFR Part 800) that this Undertaking will have an adverse effect on the Potter and Baxter Elevator and the SHPO has concurred in this finding, and

WHEREAS, the Metra and the Kane County Historic Preservation Commission ("Commission") have participated in the consultation and have been invited to concur in this Memorandum of Agreement ("MOA");

NOW, THEREFORE, the FTA and the SHPO agree that FTA shall implement the following stipulations in order to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

FTA shall ensure that the following measures are carried out.

Stipulation #1: Relocation

A. FTA, in coordination with Metra, shall move the Potter and Baxter Elevator (the Property) in consultation with the SHPO and the Commission to a location that maintains its integrity

of setting.

B. FTA, in coordination with Metra, shall ensure that the Property is moved in accordance with the approaches recommended in *Moving Historic Buildings* (John Obed Curtis, 1979, American Association for State and Local History), by a professional mover who has the capability to move historic structures properly.

C. The SHPO and Commission shall be provided an opportunity to review and approve plans and specifications in writing for the removal of any non-contributing additions from the Property and the plan for the move, prior to commencement of any activities.

D. Any stabilization or rehabilitation undertaken to the structure prior to conveying it to another party shall adhere to the recommended approaches of the Secretary of the Interior's "Standards for Rehabilitation." All plans and specifications produced for this purpose shall be reviewed and approved in writing by the SHPO and the Commission prior to the initiation of any construction activities.

Stipulation #2: Disposition and Marketing

A. Metra as owner of the Property, shall ensure that the Property is maintained in good condition prior to Transfer of the Property to a third party in compliance with the recommended approaches of the Secretary of the Interior's "Standards for Rehabilitation."

B. Metra shall retain ownership of the Property until such time that it can transfer ownership to a local not-for-profit organization for one (1) dollar.

C. However, if no offers come forward within one year, Metra may market the building for a period of twelve (12) months in consultation with the SHPO and the Commission. In that event, Metra shall ensure that a plan is prepared for marketing that includes the following:

1. Information about the Property, including information on its historical significance
2. Information on financial incentives available for the rehabilitation and maintenance of the Property
3. A distribution list of potential purchases or transferees
4. An advertising plan and schedule
5. A schedule for receiving and reviewing offers.

D. Upon agreement with the marketing plan by Metra, the SHPO, and the Commission, Metra shall implement the plan.

E. All offers received as a result of either method shall be reviewed by Metra in consultation with the SHPO and the Commission. A grantee shall be selected only if the offerer agrees to accept the transfer of the property with the covenant attached hereto as Attachment 1 and demonstrates the expertise and financial capacity to maintain the Property.

F. If Metra, in consultation with the SHPO and the Commission, receives no offer that it determines conforms to the requirements of this Stipulation 2C, Metra may modify the requirements and re-offer the property or may demolish the Property . Should any of the other parties not agree with Metra's decision regarding the Property, Stipulation 3 will be implemented.

G. If all parties are in agreement that the Property will be demolished, FTA will ensure that the property is recorded in accordance with the Standards and Guidelines of the Illinois Historic American Building Survey ("IHABS") in consultation with the SHPO. Such documentation shall be accepted by the SHPO in writing prior to demolition of the Property. The SHPO shall accept the documentation upon determination that the Standards of the IHABS have been met.

Stipulation #3: Dispute Resolution

Should any party to this MOA object in writing to FTA regarding any action carried out or proposed with respect to the Property or implementation of this MOA, FTA shall consult with the objecting party to resolve the objection. If after initiating such consultation FTA determines that the objection cannot be resolved through consultation, FTA shall forward all documentation relevant to the objection to the Advisory Council on Historic Preservation ("Council") and request the participation of the Council to assist in resolving the dispute.

Stipulation #4: Amendment

Modification, amendment or termination of this Agreement as necessary shall be accomplished by the signatories in the same manner as the original Agreement.

This Agreement shall be null and void if its terms are not carried out with 5 (five) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms. Ratification of the Agreement and carrying out its terms satisfies compliance with Section 106 of the National Historic Preservation Act as amended (16 USC § 470).

Federal Transit Administration

Date: 7 - 20 - 00

Illinois State Historic Preservation Officer

Date: 6-13-00

CONCUR:

Commuter Rail Division of the Regional Transportation Authority

Gerald C. Hoff, Dept. Head

Date: 5/16/2000

Kane County Historic Preservation Commission

SHAUNA WIET, CHAIR

Date: MAY 25, 2000

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Attachment #1

ARCHITECTURAL COVENANT

In consideration of the conveyance of certain real property, hereinafter referred to as the Potter and Baxter Elevator (the "Building"), located at LaFox, in unincorporated Kane County, State of Illinois:

1. The grantee hereby covenants on behalf of itself, its heirs, successors, and assigns at all times to maintain and preserve the existing Building in accordance with the recommended approaches of the "Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (National Park Service, 1992) in order to preserve and enhance those qualities that make the existing Building eligible for listing on the National Register of Historic Places.

2. No construction, alteration or rehabilitation shall be undertaken or permitted to be undertaken on the existing Building which would affect the historic architectural features of the existing Building without consultation and the express prior written permission of the Illinois Historic Preservation Agency ("IHPA") or a fully authorized representative thereof.

3. The IHPA shall be permitted at all reasonable times to inspect the existing Building in order to ascertain if the above conditions are being observed.

4. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the IHPA may, following reasonable notice to the grantee, institute suit to enjoin said violation or to require the restoration of the existing Building.

5. The grantee agrees that the IHPA may at its discretion, convey and assign all or part of its rights and responsibilities contained herein to a third party.

6. This covenant is binding on the grantee, its heirs, successors and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the grantee verbatim or by express reference in any deed or other legal instrument by which the grantee divests itself of the fee simple title or any other lesser estate in the existing Building or any part thereof.

7. The failure of the IHPA to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or use of such right or remedy at any other time.

8. The IHPA may, for good cause, modify or cancel any or all of the foregoing restrictions upon application of the grantee, its heirs, successors or assigns.

The covenant shall be binding servitude upon the existing Building and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that the grantee agrees to be bound by the foregoing conditions and restrictions and to perform to obligations herein set forth.