

242345

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

ENTERED
Office of Proceedings
December 29, 2016
Part of
Public Record



28 December 2016
By Express Delivery

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

Re: F.D. 36086 - Dakota Southern Railway Company-
Notice of Modified Certificate of Public
Convenience and Necessity

Dear Ms. Brown:

Enclosed for filing please find the original and ten copies of a Notice of Modified Certificate of Public Convenience and Necessity for Dakota Southern Railway Company, and a check in the amount of \$1800 for the filing fee.

Please contact me in the event of questions, thank you for your assistance, and may you have a great new year.

Very truly,

Charles H. Montange
For Dakota Southern Railway
Company

Encls.

cc. John LeSeur, Esq. (for State of South Dakota)
(w/encls) (by email)

FEE RECEIVED
December 29, 2016
SURFACE
TRANSPORTATION BOARD

FILED
December 29, 2016
SURFACE
TRANSPORTATION BOARD

BEFORE THE SURFACE TRANSPORTATION BOARD

DAKOTA SOUTHERN RAILWAY COMPANY -)
NOTICE OF MODIFIED CERTIFICATE OF) F.D. 36086
PUBLIC CONVENIENCE AND NECESSITY)

Notice of Modified Certificate of
Public Convenience and Necessity pursuant to
49 C.F.R. 1150.23(a)

Pursuant to 49 C.F.R. 1150.23(a), Dakota Southern Railway Company ("DSRC"), a Class III rail carrier, hereby files this Notice of Modified Public Convenience and Necessity ("Modified Certificate") to provide freight rail operations over approximately 54.5 miles of rail line owned by the State of South Dakota and located between MP 0.0 (also known as Engineer's Survey Station Number 00+00) at the intersection of the North Sioux City to Mitchell line and extending in a westerly direction to a point of termination at MP 54.5 (also known as Engineer's Survey Station Number 1707+17), in and through the Counties of Yankton, Bon Homme, and Charles Mix. The line in question is sometimes referred to herein as the Napa-Ravinia segment of the Napa to Platte line of the former Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("Milwaukee Road").

Pursuant to 49 C.F.R. 1150.23(b), DSRC provides the following required information:

(1) Name and address of rail carrier: Dakota Southern Railway Company, % Wendall Hoffman, 106 N. Main, White Lake, South Dakota 57383. Mr. Hoffman is the current agent for service of process.

(1)(i) Articles of Incorporation - See Exhibit A (also includes current by-laws and certificate of good standing).

(1)(ii) Names and addresses of all of its Officers and directors and a statement indicating any present affiliation each may have with a rail carrier:

Michael Williams, President and director

address: 12085 Hwy 13, Richmond, MO 64085

Tammy Williams, Secretary and director

address: same

Mr. and Mrs. Williams (the above) own and control the DSRC through SDR Holding Company. Mr. Williams currently owns and controls the following additional rail carriers: (1) BG & CM Railroad (76.2 miles of rail line in Idaho); (2) Ozark Valley Railroad (24.99 miles of purchased and leased rail line in Missouri); (3) St. Maries River Railroad (71 miles of rail line in Idaho); (4) McCloud Railway (19.6 miles of rail line in

California); and (5) Boot Hill & Western Railway Holding Co., Inc. (10.2 miles of rail line and the right to reactivate service on 15.8 miles of rail-banked rail line in Kansas). See Michael Williams - Control Exemption - SDR Holding Company, F.D 35957, served Dec. 15, 2015. In addition, Mr. Williams owns and controls S+S Shortline Leasing, LLC (which is currently provides car storage, but may in the future provide common carrier services, in Nevada) and Fremont Northern Railroad (abandoned and severed line, no operations), and holds an interest in Washington & Idaho Railway, Inc.

(1)(iii) Sufficient information to establish the financial responsibility of the operator: See Exhibit B.

(2) Information about the prior abandonment: The rail line from Napa, SD (MP 0.0) to Platte, SD (MP 83.3) ("Entire Line"), which includes the Napa-Ravinia segment (MP 0.0 to MP 54.4), was formerly part of the Milwaukee Road. The Entire Line was authorized for abandonment in 1980 by the United States District for the Northern District of Illinois following the issuance of a report by the Interstate Commerce Commission ("ICC") recommending abandonment. See In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., No. 77 B 8999 (N.D. Ill. June 2, 1980, Order No. 342A) (authorizing abandonment); Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Co. -

Abandonment - In South Dakota, Iowa, and Nebraska, AB-7 (Sub-No. 88) (ICC served May 14, 1980) (recommending abandonment). Although authorized for abandonment, the Entire Line was not abandoned, but instead acquired by the State of South Dakota ("State") in 1980 during the Milwaukee Road reorganization proceedings. See Napa-Platte Regional Railroad Authority - Modified Rail Certificate, FD No. 35026 (STB served June 14, 2007). Since 1980, the Entire Line, or segments thereof, have been leased and subleased to various entities and various entities have held ICC-authorized or STB-authorized operating rights over the Entire Line or segments thereof. In 2007, the State rail-banked the segment of the Entire Line between Ravinia, SD (MP 54.4) and Platte, SD (MP 83.3). See Decision and Notice of Interim Trail Use or Abandonment, FD 31874 (STB served July 17, 2007) (accepting the State's request for a notice of interim trail use); id., Letter from State counsel to the STB (dated Jan. 11, 2008) (notifying the Board that the State had entered into an interim trail use agreement).

(3) Exact dates of operation and copy of Agreement:

A copy of the lease is attached as Exhibit C. The lease calls for commencement of requested service no later than December 31, 2016 (Exhibit C, para 9). The term of the lease is ten years (Exhibit C, para 22) from the effective date, stated as December 1, 2016 (Exhibit C, para 3). Unless extended, or terminated

earlier pursuant to its terms, the last day of operations is November 30, 2026.

(4) Service to be provided: freight common carrier.

(4)(i) Line over which service is to be performed:

Napa-Ravinia segment as previously described, MP 0.0 to MP 54.4.

(4)(ii) Interline connections, including lines of connecting railroads: BNSF Railway (direct access and haulage agent at MP 0.0).

(4)(iii) Nature and extent of all liability insurance coverage, including binder or policy number and name of insurer: Commercial general liability \$15.0 million/\$30.0 million each occurrence/aggregate; excess railroad liability \$10.0 million limit/\$20.0 million aggregate. See Exhibit D.

(4)(iv) Any preconditions which shippers must meet to receive service: Not applicable.

(5) Name and address of any subsidizers: Not applicable.

(6) Sufficient information to establish the financial responsibility of any subsidizers: Not applicable.

Respectfully submitted,



Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177
206-546-1936
Fax: -3739
E-mail: c.montange@frontier.com

Attorney for Dakota Southern
Railway Company

Attachments:

Verification

Exhibit A -- Articles of Incorporation, current by-laws, and
certificate of good standing

Exhibit B - financial responsibility information

Exhibit C - Lease with State of South Dakota

Exhibit D - Certificate of Liability Insurance for period
7/31/2016 to 7/31/2017.

cc. (by email attachment, Dec. 28, 2016)
John LeSeur, Esq.
Slover & Loftus
1224 - 17th St.,
Washington, D.C. 20036
Attorneys for State of South Dakota

Exhibit A

Corporate Documents

Part I: Articles of Incorporation as Certified Oct. 3, 2016

Part II: Amended and Restated Bylaws as of Sept. 30, 2016

Part III: Certificate of Existence as Certified Oct. 3, 2016

Part I: Articles of Incorporation as Certified Oct. 3, 2016

State of South Dakota



OFFICE OF THE SECRETARY OF STATE

Department of State

United States of America, ☐
Secretary's Office ☐
State of South Dakota ☐

ORGANIZATIONAL ID #: DB024476

This is to certify that the attached instrument of writing is a true, correct and examined copy of the Articles of Incorporation and Amendments for **DAKOTA SOUTHERN RAILWAY COMPANY** filed in this office on **June 10, 1985** until present.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of South Dakota, in Pierre, the Capitol City, this day October 3, 2016.

Shantel Krebs

**Shantel Krebs
Secretary of State**

Fees: \$55

STATE OF SOUTH DAKOTA
OFFICE OF
THE SECRETARY OF STATE

Certificate Of Incorporation
Business Corporation

I, ALICE KUNDERT, Secretary of State of the State of South Dakota, hereby certify that
duplicate originals of the Articles of Incorporation of

.. DAKOTA SOUTHERN RAILWAY COMPANY
duly signed and verified, pursuant to the provisions of the South Dakota Business Corporation Act,
have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this
Certificate of Incorporation

of .. DAKOTA SOUTHERN RAILWAY COMPANY
and attach hereto a duplicate original of the articles of Incorporation.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the Great Seal of the
State of South Dakota, at Pierre, the Capital,
this 10th day of

..... June A.D. 1905

Alice Kundert
Secretary of State

George D. Vogt
Deputy

808 CRP 427 5/80

Filed this 10th day of June 1935

ARTICLES OF INCORPORATION

RECEIVED

JUN 10 1935

Secretary of State

SECRETARY OF STATE

Subscribed by the undersigned for the purpose of forming a SOUTH DAKOTA BUSINESS CORPORATION named

ARTICLE I

The name of the corporation is Dakota Southern Railway Company.

ARTICLE II

The period of existence is perpetual.

ARTICLE III

The purpose or purposes for which the corporation is organized are to operate and maintain a common carrier railroad for the transportation of freight and passengers and all related items and all allied lines in connection therewith.

In connection with said purposes, to lease, rent, own, buy and sell all types of personal and real property, to transact whatever business may be necessary in connection with the purposes above set forth, including the right to borrow money and pledge the property of the Corporation therefore.

ARTICLE IV

The number of shares which it shall have authority to issue, divided by class, par value of shares, shares without par value, and series, if any, within a class:

Class	Series	Number of shares	Par value per share or statement of shares without par value
Common		50	2,000

ARTICLE V

The preferences, limitations, designation and relative rights of each class or series of stock: None.

ARTICLE VI

The corporation will not commence business until consideration of the value of at least One Thousand Dollars (\$1,000.00) has been received for the issuance of shares.

ARTICLE VII

The address of its registered office is P. O. Box 144, Delmont, South Dakota 57130
and the name of its registered agent at each address is Leon E. Steaga.

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
THIS IS TO CERTIFY THAT THE MICROPHOTODUPLICATION LINE, APPEARING ON THIS STATE OF MICROFILM, IS AN ACCURATE REPRODUCTION OF THE ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILLED LAW 1-27.4. IT IS FURTHER CERTIFIED THAT THE MICROFILM PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTODUPLICATION REPRODUCTIONS. REDUCTION 25 ROLL NO. 135
DATE MICROFILMED 6-18-1985
OPERATOR David J. [unclear]

ARTICLE VIII

The number of directors constituting the board of directors is three and the names and addresses of the persons who are or were so directors:

Name	Address
George A. Huff IV	Rte 1, Box 169-B1, Garthage, TX 75633
Richard H. Huff	P. O. Box 685, Wadlerburn, OR 97491
Leon E. Steege	P. O. Box 144, Delmont, SD 57330

ARTICLE IX

The names and addresses of the incorporators:

Name	Address
George A. Huff	Rte 1, Box 169-B1, Garthage, TX 75633
Leon E. Steege	P. O. Box 144, Delmont, SD 57330

ARTICLE X (Other provisions)

None.

ALL INCORPORATORS MUST SIGN BELOW AND SIGNATURES MUST BE NOTARIZED.

These Articles may be amended in the manner authorized by law at the time of Amendment.
Executed in duplicate on the 28 day of JUNE, 1985

George A. Huff IV
Leon E. Steege

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
THIS IS TO CERTIFY THAT THE MICROPHOTODUPLICATION IMAGE APPEARING ON THIS SLIDE OF MICROFILM IS AN ACCURATE REPRODUCTION OF THE
ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILED
LAW 1-77-4. IT IS FURTHER CERTIFIED THAT THE MICROFILMING PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER
AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTODUPLICATION
REPRODUCTION. REDUCTION 25 ROLL NO. 135
DATE MICROFILMED 6-18-85
CAMERA OPERATOR *[Signature]*

STATE OF Minnesota
 County of Winnebago
 On this 17 day of May, 1985
Frank H. Hage, the undersigned officer, personally appeared

known to me or satisfactorily proven to be the person(s) whose name(s) subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notarial seal.



HELEN M. BRYAN
 NOTARY PUBLIC - MINNESOTA
 WINNEBAGO COUNTY
 Commission expires Jun. 12, 1987

Helen M. Bryan
 Notary Public

STATE OF Texas
 County of McComaches
 On this 3rd day of June, 1985
 the undersigned officer, personally appeared George A. Huff IV

known to me or satisfactorily proven to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notarial Seal.

Dorothy K. Kray
 Notary Public

FORMS MUST BE SUBMITTED AS DUPLICATE ORIGINALS AND BOTH MUST CARRY ORIGINAL SIGNATURES OF ALL UNINCORPORATORS AND OF NOTARY PUBLIC.

SDCL 47A-7. Amounts of fees. The secretary of state shall charge and collect for:
 (1) Filing articles of incorporation and issuing a certificate of incorporation

Authorized capital stock of	\$ 25,000 or less	\$ 40
Over \$25,000 and not exceeding 100,000		60
Over \$100,000 and not exceeding 500,000		80
Over \$500,000 and not exceeding 1,000,000		100
Over \$1,000,000 and not exceeding 1,500,000		150
Over \$1,500,000 and not exceeding 2,000,000		200
Over \$2,000,000 and not exceeding 2,500,000		250
Over \$2,500,000 and not exceeding 3,000,000		300
Over \$3,000,000 and not exceeding 3,500,000		350
Over \$3,500,000 and not exceeding 4,000,000		400
Over \$4,000,000 and not exceeding 4,500,000		450
Over \$4,500,000 and not exceeding 5,000,000		500

For purposes only of computing fees under this section, the dollar value of each authorized share having a par value shall be equal to such par value and the value of each authorized share having no par value shall be equal to one hundred dollars per share.

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
 THIS IS TO CERTIFY THAT THE MICROPHOTODUPLICATION IMAGE APPEARING ON THIS SLIDE OF MICROFILM IS AN ACCURATE REPRODUCTION OF THE ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILLED LAW 1-27-1. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTODUPLICATION REPRODUCTION, REDUCTION 2.5 ROLL NO. 135
 DATE MICROFILMED 6-18-85
 OPERATOR David L. Hage

Receipt No. *C36863*

File No. *DB-24,476*

ARTICLES OF INCORPORATION OF

DAKOTA SOUTHERN RAILWAY COMPANY

50 com. shares, \$2,000 par value
\$100,000.00

Filed at Request of

Ivy Associates
Route 1, Box 169 - 81
Carthage, Texas 75633

State of South Dakota

Office of Secretary of State

Filed in the office of the Secretary of State on

the 10th day of June 19 85

Alice Kunder

Secretary of State

By *Jay D. Vogt*
Deputy

Fee Received \$60

SOS CRP 491 4/81

**STATEMENT OF CHANGE OF REGISTERED OFFICE
OR REGISTERED AGENT, OR BOTH**

To the Secretary of State
of the State of South Dakota:

Pursuant to the provisions of the South Dakota Corporation Act, the undersigned corporation, organized under the laws of the State of South Dakota, submit the following statement for the purpose of changing its registered office or its registered agent, or both, in this State of South Dakota:

1. The name of the corporation is Dakota Southern Railway Company
2. The address of its previous registered office was P. O. Box 144, Delmont, SD 57330
3. The address to which its registered office is to be changed is P. O. Box 416, Chamberlain, SD 57325
4. The name of its previous registered agent is Leon E. Stange
5. The name of its successor registered agent is George A. Ruff IV
6. The address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
7. This change has been authorized by resolution duly adopted by the board of directors.

Dated JUNE 27 1987

Dakota Southern Railway Company

By George A. Ruff IV
President

STATE OF South Dakota

COUNTY OF Charles Mix

Charles Mix a notary public, hereby certify that on the 27 day of June, 1987, personally appeared before me George A. Ruff IV who being by me first duly sworn, declares that he/she is the President of Dakota Southern Railway Co that he/she signed the foregoing document as Pres

of the corporation, and that the statements therein contained are true

My Commission Expires Oct 18, 1992

Notary Public Charles Mix

(Notarial Seal)

IF THERE HAS BEEN A CHANGE IN THE REGISTERED AGENT AND/OR THE REGISTERED OFFICE ADDRESS PLEASE COMPLETE THE ABOVE STATEMENT OF CHANGE. THERE IS AN ADDITIONAL \$5 FILING FEE WHICH MUST ACCOMPANY THE STATEMENT.

INSTRUCTIONS:

1. List EXACT corporate name.
2. List the previous registered office address. This address must be the same as listed in item 2 on the annual report. If only the agent is changing and there is no change in the address, insert "no change."
3. List the current registered office address. This must be the same as listed in item 3 on the annual report. If only the agent is changing and there is no change in the address, insert "no change."
4. List the name of its previous registered agent.
5. List the name of its current registered agent. This must be the same as listed in item 5 on the annual report. If only the registered office address is changing and there is no change in the name of the registered agent, insert "no change."
6. The Statement of Change of Registered Office or Registered Agent or Both must be signed by the president or a vice-president and the signature verified by a notary public.

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
THIS IS TO CERTIFY THAT THE MICROPHOTODUPLICATION HERE APPEARING ON THIS STATE OF SOUTH DAKOTA IS AN ACCURATE REPRODUCTION OF THE
ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILATION
LAW 1-27-1. IT IS FURTHER CERTIFIED THAT THE MICROFILMING PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A NUMBER
ONE OR MICROFILM WHICH MEET THE REQUIREMENTS OF THE NATIONAL ARCHIVES OF STANFORD UNIVERSITY FOR THE REPRODUCTION OF
REPRODUCTIONS. REDUCTION 29% ROLL NO. 169 DATE MICROFILMED 7-28-87 OPERATOR SHAGGY STEVENS

Receipt No. 913860
File No. DB-24,476

STATEMENT OF CHANGE OF
REGISTERED AGENT & ADDRESS
OF
DAKOTA SOUTHERN RAILWAY COMPANY

Filed at Request of

Dakota Southern Railway
P.O. Box 398
Wagner, SD 57380

State of South Dakota

Office of Secretary of State

Filed in the office of the Secretary of State on
the 29th day of June 1937

Joseph Hageltine
Secretary of State

By _____
Deputy

Fee Received \$15

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
THIS IS TO CERTIFY THAT THE MICROGRAPHIC IMAGE appearing on this SLIDE OF MICROFILM, IS AN ACCURATE REPRODUCTION OF THE
ORIGINAL RECORD AND WAS MICROFILMED IN THE RECORDS MANAGEMENT DIVISION OF THE SECRETARY OF STATE OF SOUTH DAKOTA COMPLIED
WITH THE REQUIREMENTS OF THE NATIONAL ARCHIVES OF THE NATIONAL BUREAU OF STANDARDS. IT IS FURTHER CERTIFIED THAT THE MICROGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER
RECOMMENDED BY THE NATIONAL BUREAU OF STANDARDS. THIS CERTIFICATE IS VALID FOR THE NATIONAL BUREAU OF STANDARDS.
REPRODUCTION OF RECORDS
ROLL NO. 107
DATE MICROFILMED 6-29-37
STANDARD OPERATING PROCEDURE

332 5758 07/19/2004

State Capitol Suite 204
500 East Capitol Avenue
Pierre SD 57501-5070

Secretary of State

Chris Nelson
Secretary of State

Chad Heinrich
Deputy

CORPORATE NUMBER

605-773-4845



DB-024476

DB-024476

DAKOTA SOUTHERN RAILWAY COMPANY

HUFF, GEORGE A. (IV)

PO BOX 436

CHAMBERLAIN SD 57325-0436



March 31, 2004

(DB - DF)

DOMESTIC BUSINESS CORPORATION DELINQUENT NOTICE

Pending Administrative Dissolution

This is to notify you as the registered agent of record, that the above named corporation is delinquent in filing the annual report as required by SDCL 47-9-1. South Dakota law states that a corporation may be Administratively Dissolved for failure to file the report within sixty days after it is due. Reports are due during the anniversary month of incorporation, so the referenced delinquent report may be the report that was due in 2003 or January through February 2004. Pursuant to SDCL 47-7-29.1, the corporation will be Administratively Dissolved if the report is not filed prior to June 17, 2004. Organizational information containing delinquent annual report date and status is available on our Web site at www.sdsos.gov.

The delinquent report along with the \$30 filing fee and \$50 penalty fee will need to be filed PRIOR to June 17, 2004 to avoid Administrative Dissolution. The annual report form was previously mailed to the registered office address listed with our office. If the registered agent and/or address has changed, the law requires the Statement of Change of Registered Agent and Address form to be filed along with the additional \$10 filing fee.

The domestic annual report and statement of change forms are available on our Web site at the following address www.sdsos.gov, or may be obtained by contacting the Secretary of State's Office, Corporate Division at 605-773-4845.

If the report was previously submitted to our office and we returned it for further information, please promptly resubmit the completed form for filing to bring the corporation into good standing. Also note, that reports received in our office after March 1, 2004 may not have been updated on the computer prior to this delinquent notice.

If you have any questions regarding the above, please feel free to contact our office.

Corporations Division
Office of the Secretary of State
Phone: 605-773-4845
www.sdsos.gov

State of South Dakota



OFFICE OF THE SECRETARY OF STATE

Certificate of Administrative Dissolution

(DB, DF, DL, CO)

I, **Chris Nelson**, Secretary of State of the State of South Dakota, by virtue of the authority vested in me by SDCL 47-7-30.1, § 47-18-16.4, and 47-34A-810 hereby Administratively Dissolve the below named for failure to file the annual report when due.



DB-024476

DAKOTA SOUTHERN RAILWAY COMPANY

HUFF, GEORGE A. (IV)

PO BOX 436

CHAMBERLAIN SD 57325-0436

IN TESTIMONY WHEREOF, I
have hereunto set my hand and
affixed the Great Seal of the State of
South Dakota, at Pierre, the Capital,
this July 1, 2004.



Chris Nelson

Chris Nelson
Secretary of State

372 3572

Receipt Number: 1993423

File Number **DB024476**



APPLICATION FOR REINSTATEMENT

For

DAKOTA SOUTHERN RAILWAY COMPANY

Filed at the request of:

DAVID J LARSON
LARSON LAW PC
PO BOX 131
CHAMBERLAIN SD 57325

*State of South Dakota
Office of the Secretary of State*

Filed in the office of the Secretary of State on: **Wednesday, February 03, 2010**

Secretary of State

Fees Received: \$300.00

State of South Dakota



OFFICE OF THE SECRETARY OF STATE

Certificate of Reinstatement

ORGANIZATIONAL ID #: DB024476

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Application for Reinstatement of **DAKOTA SOUTHERN RAILWAY COMPANY** duly signed and verified, pursuant to the provisions of the South Dakota Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issued this Certificate of Reinstatement and attach hereto a duplicate of the Application for Reinstatement.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this February 3, 2010.



Chris Nelson
Secretary of State

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4848

APPLICATION FOR REINSTATEMENT DOMESTIC BUSINESS CORPORATION

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: \$300 payable to SECRETARY OF STATE

RECEIVEDRECEIVED

OCT 23 2009 FEB 03 2010

S.D. SEC. OF STATE SEC. OF STATE

Telephone # _____

FAX # _____

Filed this 3rd day of Feb. 2010
Chris Nelson
SECRETARY OF STATE

1. The name of the corporation is Dakota Southern Railway Company 06024476

Note: This must be the exact corporate name.

2. The effective date of its administrative dissolution July 1, 2004
3. State that the ground or grounds for dissolution either did not exist, or have been eliminated by filing all required reports and paying all fees and penalties.

The grounds for dissolution have been eliminated by filing all required reports and paying all fees and penalties.

4. The corporation's name satisfies the requirements of the South Dakota Business Corporations Act.
5. Attached hereto is a certificate from the South Dakota Department of Revenue reciting that any and all taxes owed by the corporation have been paid.
6. Attached hereto are ALL delinquent annual reports and filing fees.

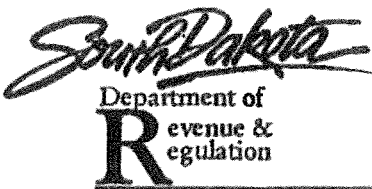
Application may be signed by any authorized officer of the corporation.

Dated Oct 22, 2009

[Signature]
(Signature of an authorized officer)

GEORGE A. HOFFER
(Printed Name)

PRESIDENT
(Title)



Corporation Reinstatement Tax Certification Form

Legal Division
445 East Capitol Avenue
Pierre, SD 57501-3185
(605) 773-4701

February 2, 2010

Dakota Southern Railway Company Inc.
P.O. Box 436
Chamberlain, SD 57325-0436

SD Lic. # [REDACTED]

As of the above date, the tax status of the above named corporation is as follows:

Business Tax Division

- ☒ owes no taxes *vlw 2/2/10*
☐ unknown (no records could be found)
☐ owes the following: _____

Special Taxes Division

- ☐ owes no taxes
☒ unknown (no records could be found)
☐ owes the following: _____

Motor Vehicle Division

Motor Fuel

- ☐ owes no taxes
☒ unknown (no records could be found) *TS*
☐ owes the following: _____

IFTA

- ☐ owes no taxes
☒ unknown (no records could be found) *LA*
☐ owes the following: _____

Prorate

- ☐ owes no taxes
☒ unknown (no records could be found) *NS*
☐ owes the following: _____

South Dakota Department of Revenue & Regulation

By: *Andrew J. Engel*

Date: *2-3-2010*

This certification extends only to taxes administered and collected by the Department of Revenue & Regulation. This is not to be construed as a waiver to collect taxes found to be due as a result of an audit, the correction of incorrect returns filed by the corporation, or the failure of the corporation to file required returns.

372 3570

Receipt Number: 1993423

File Number **DB024476**



STATEMENT_OF_CHANGE

For

DAKOTA SOUTHERN RAILWAY COMPANY

Filed at the request of:

DAVID J LARSON
LARSON LAW PC
PO BOX 131
CHAMBERLAIN SD 57325

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Wednesday, February 03, 2010**

Chi Nelson

Secretary of State

Fee Received: \$10.00

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OR BOTH

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: \$10 Make check payable to SECRETARY OF STATE

1. Corporate ID and Name:

DB-024476

Dakota Southern Railway Company
Huff, George A. IV
PO Box 436
Chamberlain, SD 57325

Filed this 3rd day of

Feb, 2010

Chris Nelson
SECRETARY OF STATE

FILE DATE

RECEIPT NO

RECEIVED

FEB 03 2010

RECEIVED

OCT 23 2009

S.D. SEC. OF STATE

S.D. SEC. OF STATE

Telephone #

FAX #

2. The name of the registered agent on file George A. Huff IV

The name of the successor registered agent George A. Huff IV

3. If listing a Commercial Registered Agent, please state their identification number

4. The address of the agent currently on file for this entity

PO Box 436	Chamberlain	SD	57325
Street Address (Required)	City	State	ZIP+4
Mailing Address (Optional)	City	State	ZIP+4

5. If the address has changed, its new address

408 Prospect Avenue E	Chamberlain	SD	57325
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
PO Box 436	Chamberlain	SD	57325
Mailing Address (Optional - Required to be a South Dakota Address)	City	State	ZIP+4

6. The address of its registered office and the address of the business office of its registered agent, as changed, must be identical.

The undersigned entity submits the following statement for purpose of changing its registered office and/or its registered agent in the State of South Dakota.

Dated

10/22/09

(Signature of an authorized officer)

George A. Huff IV

(Printed Name)

President

(Title)

Statement of change entity July 2008

374 1450

Receipt Number: _____

File Number **DB024476**



RESIGNATION_OF_AGENT

For

DAKOTA SOUTHERN RAILWAY CORPORATION

Filed at the request of:

DAVID J LARSON
LARSON LAW PC
PO BOX 131
CHAMBERLAIN SD 57325

*State of South Dakota
Office of the Secretary of State*

Filed in the office of the Secretary of State on: **Monday, May 03, 2010**

Chi Nelson

Secretary of State

Fee Received: No filing fee

374 1451

Larson Law PC

131 S. Main -- P.O. Box 131

Chamberlain, SD 57325

Phone 605.234.2222

Fax 605.234.2221

email dlaron@larsonlawpc.com

David J. Larson
Lawyer & Counselor

30 April, 2010

RECEIVED

MAY 03 2010

S.D. SEC. OF STATE

Secretary of State
Capitol Building
500 East Capitol Avenue Ste 204
Pierre SD 57501-5070

Filed this 3rd day of
May 2010
Chris Nelson
SECRETARY OF STATE

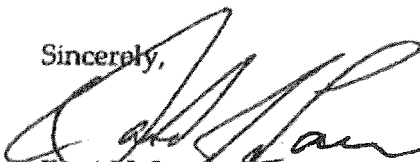
Re: Dakota Southern Railway Company

Dear Sirs:

We've been asked to send you a copy of the enclosed notice that Mr. Huff is resigning as resident agent for the above corporation. If anything additional is necessary on Mr. Huff's behalf please let us know.

Thank you.

Sincerely,


David J. Larson

DJL/jlw

Enc:

Letter of Resignation

374 1452

RECEIVED
MAY 03 2010
S.D. SEC. OF STATE

Mr. Michael Williams
1202 HWY 13
Richmond, Missouri 64085

Re: Dakota Southern Railway Co.
Williams v. Williams

Dear Michael:

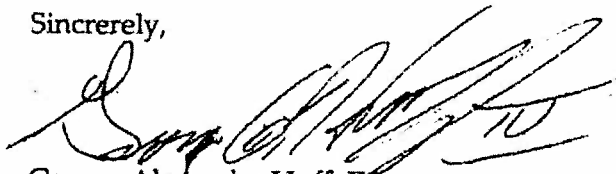
As resident agent I was served with the enclosed documents as a part of your divorce action,

Although I am sure you already have copies, I am passing the documents on to you per my duty as resident agent.

In light of the fact that you now have your own people on site, I would like to be relieved of any further responsibility as resident agent, and herewith give you notice that I am resigning as resident agent effective as of the date of this letter.

Please contract either your own attorney or Dave Larson about the process for naming a new residnet agent.

Sincererely,



George Alexander Huff, IV

2014 Enter Filing Year
Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

STATEMENT OF CHANGE OF REGISTERED
OFFICE OR REGISTERED AGENT OR BOTH
DOMESTIC

Please Type or Print Clearly In Ink

FILING FEE: \$10.00 Make check payable to SECRETARY OF STATE

FILE DATE 9/15/2014
RECEIPT NO 231413

1. Corporate ID and Name:

DB024476
DAKOTA SOUTHERN RAILWAY COMPANY
1202 HIGHWAY H
RICHMOND, MO 64085-8500

2. The jurisdiction under whose law it is formed SOUTH DAKOTA

3. The address of the agent currently on file for this entity.

Agent Name: SCOTT MOORE

106 N MAIN	WHITE LAKE	SD	57383
Street Address or Rural Route Box Number in This State and	City	State	ZIP+4
PO BOX 213	WHITE LAKE	SD	57383-0213
Mailing Address in This State, if Different from Street Address	City	State	ZIP+4

4. If the address has changed, its new address.

New Agent Name: LESTER THOMPSON

106 N MAIN	WHITE LAKE	SD	57383
Street Address or Rural Route Box Number in This State and	City	State	ZIP+4
PO BOX 213	WHITE LAKE	SD	57383-0213
Mailing Address in This State, if Different from Street Address	City	State	ZIP+4

No person may execute this report knowing it is false in any material aspect. Any violation is subject to a civil penalty.
By signing this form you agree to have both the fee and the form processed electronically.

Dated 09/15/2014

Signature Accepted Electronically

(Signature of an Authorized Person)

AVORY BEGGS

(Printed Name)

2016

Enter Filing Year
Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4846

STATEMENT OF CHANGE OF REGISTERED OFFICE
DOMESTIC CORPORATION

SDCL 59-11-24, 24.1

Please Type or Print Clearly In Ink

FILING FEE: \$10.00 Make check payable to SECRETARY OF STATE

FILE DATE 6/2/2016

RECEIPT NO 422122

1. Corporate ID and Name:

DB024476

Enter Corporate ID

DAKOTA SOUTHERN RAILWAY COMPANY

Enter Corporate Name

2. The jurisdiction under whose law it is formed SOUTH DAKOTA

3. The address of the agent currently on file for this entity.

Agent Name: LESTER THOMPSON

106 N MAIN	WHITE LAKE	SD	57383
Actual Street Address or Rural Route Box Number	City	State	ZIP+4
PO BOX 213	WHITE LAKE	SD	57383-0213
Mailing Address, if Different from Street Address	City	State	ZIP+4

4. If the address has changed, its new address.

New Agent Name: WENDALL HOFFMAN

106 N MAIN	WHITE LAKE	SD	57383
Actual Street Address or Rural Route Box Number in This State	City	State	ZIP+4
		SD	
Mailing Address in This State, if Different from Street Address	City	State	ZIP+4

No person may execute this report knowing it is false in any material aspect. Any violation is subject to a civil penalty (SDCL 47-1A-129).

Dated 06/02/2016

Signature Accepted Electronically

(Signature of an Authorized Person)

AVORY BEGGS

(Printed Name)

*By signing this form you agree to have both the fee and the form processed electronically.
A fee of up to \$40 will be assessed for returned payments.

6/2/2016 9:34:10 AM

Part II: Amended and Restated Bylaws as of Sept. 30, 2016

AMENDED AND RESTATED

BYLAWS

OF

DAKOTA SOUTHERN RAILWAY COMPANY,
a South Dakota corporation

(dated as of September 30, 2016)

ARTICLE 1
OFFICES AND RECORDS

1.1 **Registered Office and Resident Agent.** The location of the registered office and the name of the registered agent of Dakota Southern Railway Company, a South Dakota corporation (the "**Corporation**"), in the State of South Dakota is as stated in the Articles of Incorporation of the Corporation, as amended from time to time (the "**Articles**"), or as may be determined from time to time by resolution of the Board of Directors of the Corporation (the "**Board**") and on file in the appropriate public offices of the State of South Dakota as provided by law.

1.2 **Other Corporate Offices.** The Corporation may conduct its business, carry on its operations, have other offices and exercise its powers within or outside of the State of South Dakota as the Board may designate or the business of the Corporation may require.

1.3 **Books, Accounts and Records, and Inspection Rights.** The books, accounts and records of the Corporation, except as may be otherwise required by the laws of the State of South Dakota, may be kept outside of the State of South Dakota, at such place(s) as the Board may from time to time determine. Except as otherwise provided by law, the Board will determine whether, to what extent, and the conditions upon which the books, accounts and records of the Corporation will be open to the inspection of the stockholders of the Corporation.

ARTICLE 2
MEETINGS OF STOCKHOLDERS

2.1 **Place of Meetings; Remote Meetings.**

(a) **Place.** All meetings of the stockholders will be held at the offices of the Corporation in the State of South Dakota, or at such other place either within or without the State of South Dakota as may be designated from time to time by the Board and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

(b) **Remote Communication.** If the Board is authorized to determine the place of a meeting of stockholders, the Board, in its sole discretion, may determine that the meeting will not be held at any place, but may instead be held solely by means of remote communication as authorized by **Section 2.1(c)** below.

(c) Attendance By Electronic Communication. If authorized by the Board, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication, participate in a meeting of stockholders and be deemed present in person and vote at such meeting, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation implements reasonable efforts to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder; (ii) the Corporation implements reasonable measures to provide stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted by the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action will be maintained by the Corporation.

2.2 Annual Meetings. Unless directors are elected by written consent in lieu of an annual meeting as provided in these Bylaws, an annual meeting of the stockholders will be held on the third Tuesday in January of each year, if not a legal holiday, and if a legal holiday, then on the next secular day following, at 10:00 a.m., or at such other date and time as may be designated from time to time by the Board and stated in the notice of the meeting or in a duly executed waiver of notice thereof. At the annual meeting, the stockholders entitled to vote will elect directors and may also transact such other business as may be desired, whether or not the same was specified in the notice of the meeting, unless the consideration of such other business without its having been specified in the notice of the meeting as one of the purposes thereof is prohibited by law.

2.3 Special Meetings.

(a) Purpose. Special meetings of the stockholders may be held for any purpose(s) stated in the notice of the meeting, unless otherwise prohibited by law or by the Articles. The business transacted at the special meeting will be confined to the purpose(s) stated in the notice, unless the transaction of other business is consented to by the holders of all of the outstanding shares of stock of the Corporation entitled to vote at the special meeting. The "call" and the "notice" of any such meeting will be deemed to be synonymous.

(b) Who May Call. A special meeting of the stockholders may be called by the Board, by the Chairman of the Board, by the President, by the Secretary, by such other persons as may be authorized in the Articles, or by the holders of, or by any officer or stockholder upon the written request of the holders of, not less than twenty percent (20%) of the outstanding shares of stock of the Corporation entitled to vote at such meeting.

2.4 Action Without a Meeting.

(a) Unanimous Consent. Unless otherwise provided in the Articles or these Bylaws, any action required to be taken or any action that may be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, are signed by all the holders of outstanding shares of stock entitled to vote, and such consent or consents are delivered, by return receipt or by hand, to the Corporation, its registered agent, or to an officer or agent of the Corporation and filed with the minutes of proceedings of the stockholders.

(b) Election of Directors May Be Non-Unanimous. Notwithstanding **Section 2.4(a)**, unless the Articles otherwise provide, stockholders may act by written consent to elect directors; except that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

(c) Dates of Signatures. Every written consent will bear the date of signature of each stockholder who signs such consent or consents. No written consent will be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in compliance with **Section 2.4(a)**, written consent(s) signed by a sufficient number of stockholders to take such action are delivered to the Corporation, its registered agent, or to an officer or agent of the Corporation.

(d) Electronic Transmissions. A telegram, cablegram, or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, proxy holder, or by a person or persons authorized to act for the stockholder or proxy holder, will be deemed to be written, signed and dated for purposes of this **Section 2.4** provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder. The date on which the electronic transmission is transmitted will be deemed to be the date on which such consent or consents were signed, provided, however, that no electronic transmission will be deemed delivered until such transmission is reproduced in paper form and delivered in the manner provided in **Section 2.4(a)**.

2.5 Notice. Written notice of each meeting of the stockholders, whether annual or special, which will state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose(s) thereof, will be given to each stockholder entitled to vote at such meeting, either personally or by mail, not less than 10 days nor more than 60 days before the date of the meeting, except for the increase of stock and indebtedness when 60 days' notice is required. If mailed, such notice will be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at the stockholder's address as it appears on the records of the Corporation.

2.6 Waiver of Notice. Whenever any notice is required to be given to any stockholder under any law, the Articles or these Bylaws, a written waiver, signed by the person

entitled to such notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, will be deemed equivalent to the giving of such notice. Attendance by a stockholder at a meeting will constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Articles or these Bylaws.

ARTICLE 3 QUORUM AND VOTING OF STOCK

3.1 **Quorum.** The holders of a majority of the shares of stock of the Corporation entitled to vote, present in person or represented by proxy, will constitute a quorum (a "**Quorum**") at all meetings of the stockholders for the transaction of any business, except as otherwise provided by law, the Articles or these Bylaws.

If a Quorum is not present at a meeting of the stockholders, the holders of a majority of the stock present in person or represented by proxy at such meeting will have the power successively to adjourn the meeting from time to time to a specified time and place, without notice to anyone other than an announcement at the meeting at which such adjournment is taken, until a Quorum is present. At such adjourned meeting at which a Quorum is present, any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after adjournment a new record date is fixed for the subsequent session of the adjourned meeting, a notice of the subsequent session of the adjourned meeting will be given to each stockholder entitled to vote at the meeting.

3.2 **Proxies.** Each stockholder entitled to a vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may authorize another person or persons to act for such stockholder by written proxy signed by such stockholder, but no such proxy will be voted or acted upon after 11 months from its date, unless such proxy provides for a longer period.

3.3 **Voting.**

(a) **One Vote Per Share.** Unless otherwise provided in the Articles, each stockholder entitled to vote will be entitled to one vote for each share of stock held and registered in such stockholder's name on the books of the Corporation. If the Articles provide for more or less than one vote for any share on any matter, then every reference in these Bylaws to a vote by a majority or other proportion of stock will refer to such majority or other proportion of the votes of such stock on such matters as provided in the Articles.

(b) **Shares Held by the Corporation.** No person may vote any shares of Corporation stock that at that time belong to the Corporation, or that at that time belong to an entity controlled by the Corporation.

(c) Voting Otherwise Than by Written Ballot. At all meetings of stockholders, the voting may be otherwise than by written ballot, except (i) that any stockholder entitled to vote may request a vote by written ballot on any matter, and (ii) if the Articles do not permit the election of directors other than by written ballot, then in either such case the applicable vote will be by written ballot. If authorized by the Board, such requirement of a written ballot will be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

(d) Stockholder Action. In all matters other than the election of directors, the affirmative vote of the holders of a majority of the shares of stock of the Corporation who are present in person or represented by proxy at a meeting at which a Quorum is present and who are entitled to vote on the subject matter will be the valid corporate act of the stockholders, except in those specific instances in which a larger vote threshold is required by law, the Articles or these Bylaws.

(e) Voting for Directors. Directors will be elected by a plurality of the shares present in person or by proxy at a meeting at which a Quorum is present and entitled to vote on the election of directors. No cumulative voting will be permitted in the election of directors.

3.4 Stock Ledger; Voting Rights of Fiduciaries, Pledgors and Joint Owners of Stock.

(a) Stock Ledger. The stock ledger will be prima facie evidence as to who are the stockholders entitled to examine the list required by **Section 3.5** below, or to vote in person or by proxy at any meeting of the stockholders. Only stockholders whose names are registered in the stock ledger will be entitled to be treated by the Corporation as the holders and owners in fact of the shares standing in their respective names, and the Corporation will not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not the Corporation has express or other notice thereof, except as expressly provided by the laws of the State of South Dakota.

(b) Voting Rights of Fiduciaries and Pledgors. Persons holding stock in a fiduciary capacity will be entitled to vote the shares so held. Persons whose stock is pledged will be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation the pledgor has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or the pledgee's proxy, may represent such stock and vote thereon.

(c) Voting Rights of Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of 2 or more persons, or if 2 or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, or as otherwise provided by the laws of the State of South Dakota, their acts with respect

to voting will have the following effect: (i) if only one votes, the act binds all; (ii) if more than one vote, the act of the majority so voting binds all; (iii) if more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally. If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection will be a majority or even-split in interest rather than in number.

3.5 **Fixing of Date for Determination of Stockholders of Record.** The Board may, by resolution, fix in advance a date as the record date for the purpose of determining stockholders entitled to notice of, or to vote at, any meeting of stockholders or any adjournment/postponement thereof, or stockholders entitled to receive payment of any dividend or the allotment of any rights, or in order to make a determination of stockholders for any other purposes (other than determining stockholders entitled to consent to action by stockholders proposed to be taken without a meeting of stockholders). Such date, in any case, will not be more than 70 days prior to the date on which the particular action requiring such determination of stockholders is to be taken. If no record date is fixed for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders, or stockholders entitled to receive payment of a dividend, such date will be at the close of business on the day on which notice of the meeting is mailed or the date on which the resolution of the Board declaring such dividend is adopted, as the case may be, and will be the record date for such determination of stockholders. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this **Section**, such determination will apply to any adjournment/postponement thereof except where the determination has been made through the closing of the stock transfer records and the stated period of closing has expired. In the event any meeting of stockholders is adjourned for more than 120 days, the Board shall fix a new record date for purposes of giving notice of, and determining the holders of shares entitled to vote at, such adjourned meeting.

ARTICLE 4 BOARD OF DIRECTORS

4.1 **Number, Qualification; Term.** Unless and until changed by the Board as hereinafter provided, the number of directors to constitute the Board will be two. The number of directors constituting the Board may be changed from time to time and at any time by a resolution adopted by a majority of the whole Board. Directors, each of whom must be a natural person, need not be stockholders. Each director will hold office until a successor is elected and qualified or until such director's earlier resignation or removal. The current directors of the Corporation are Tammy Williams and Michael Williams.

4.2 **Powers of the Board.** The business and affairs of the Corporation will be managed by and under the direction of the Board. In addition to the powers and authorities by these Bylaws and the Articles expressly conferred upon it, the Board may exercise all such powers of the Corporation, and do all such lawful acts and things, as are not by statute or by the Articles or by these Bylaws directed or required to be exercised or done by the stockholders.

4.3 **Acceptance of Director.** Each director, upon election, will qualify by accepting the office of director, and such director's attendance at, or written approval of the minutes of,

any meeting of the Board subsequent to the director's election will constitute acceptance of such office by such director; or the director may accept the office of director by executing a separate written acceptance, which will be placed in the minute book.

4.4 **Meetings; Notice.** Except as otherwise provided below, the Board may hold its meetings within or outside the State of South Dakota.

(a) **Annual Meeting.** The first meeting of each newly elected Board will be held (i) immediately following and at the same place as the annual meeting of the stockholders at which such Board was elected, and no notice of such meeting will be necessary, provided a Quorum is present, (ii) at such time and place as consented to in writing by all of the newly elected directors, or (iii) upon notice of such meeting as provided for in **Section 4.4(c)** hereof, except that such notice need not state the purpose(s) of the meeting.

(b) **Regular Meetings.** Regular meetings of the Board may be held without notice at such times and places as adopted by written consent of all directors. Any business may be transacted at any regular meeting.

(c) **Special Meetings.** Special meetings of the Board may be called by the Chairman of the Board, the President, or either of the directors. Special meetings will be held at the place, day and hour specified in the written notice of the meeting which notice will also state the purpose(s) thereof. Such notice will be mailed to each director at the director's residence or usual place of business at least 3 days before the day on which the meeting is to be held, or sent to the director by confirmed facsimile transmission, confirmed electronic mail or delivered personally to the director, at least 2 days before the day on which the meeting is to be held. If mailed, such notice will be deemed to be delivered when it is deposited in the United States mail with postage thereon addressed to the director at his residence or usual place of business. If given by facsimile transmission or electronic mail, such notice will be deemed delivered when received. The notice may be given by any person having authority to call the meeting. "Notice" and "call" with respect to such meetings will be deemed to be synonymous.

(d) **Waiver of Notice.** Whenever any notice is required to be given to any director under any law, the Articles or these Bylaws, a written waiver thereof, signed by the director entitled to such notice, whether before or after the time stated therein, will be deemed equivalent to notice. Attendance by a director at a meeting will constitute a waiver of notice of such meeting, except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice unless so required by the Articles or these Bylaws.

(e) **Meetings by Conference Telephone or Similar Communications Equipment.** Unless otherwise restricted by the Articles or these Bylaws, the directors may participate in a meeting of the Board by means of conference telephone or similar

communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in such manner will constitute presence in person at such meeting.

(f) Action Without a Meeting. Unless otherwise restricted by the Articles or these Bylaws, any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the directors entitled to vote with respect to the subject matter thereof. Any such consent will be filed with the minutes of proceedings of the Board.

4.5 Quorum; Voting Requirements. Unless a greater number is required by the Articles or these Bylaws, a majority of the total number of directors will constitute a Quorum for the transaction of business and the vote of the majority of the directors present at a meeting at which a Quorum is present will be the valid corporate act of the Board.

4.6 Vacancies and Newly Created Directorships. Unless otherwise provided in the Articles or these Bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors to constitute the Board may be filled by a majority of the directors then in office, although less than a Quorum, or by a sole remaining director, and the directors so chosen will hold office until the next annual election of directors by the stockholders at which such director's successor is duly elected and qualified, or until such director's earlier resignation or removal. If, at any time, by reason of death, resignation or other cause, the Corporation should have no directors in office, then any receiver, officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Articles or these Bylaws, or as otherwise provided by law for such election.

4.7 Committees.

(a) Designation. The Board may designate one or more committees of the Board. Each committee will consist of one or more designated directors.

(b) Absence; Disqualification. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the members present at any meeting and not disqualified from voting, whether or not such members constitute a Quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

(c) Powers; Limitation. Any such committee, to the extent provided in the resolution of the Board or in these Bylaws, will have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation; but no such committee will have the power or authority of the Board with respect to (i) approving or adopting, or recommending to the stockholders of the Corporation, any action or matter expressly required by the South Dakota Business

Corporation Act to be submitted to stockholders for approval; or (ii) adopting, amending or repealing these Bylaws.

(d) Recordkeeping. All committees so appointed will, unless otherwise provided by the Board, keep regular minutes of the transactions at their meetings and will cause them to be recorded in books kept for that purpose in the office of the Corporation and will report the same to the Board at its next meeting. The Secretary or an Assistant Secretary of the Corporation may act as Secretary of the committee if the committee or the Board so requests.

(e) Meetings By Conference Telephone or Similar Communications Equipment. Unless otherwise restricted by the Articles or these Bylaws, members of any committee designated by the Board may participate in a meeting of such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other; and participation in a meeting in such manner will constitute presence in person at such meeting.

(f) Committee Action Without a Meeting. Unless otherwise restricted by the Articles or these Bylaws, any action required or permitted to be taken at any meeting of a committee may be taken without a meeting if all members of such committee consent thereto in writing or by electronic transmission. Any such writing or electronic transmission will be filed with the minutes of proceedings of such committee.

4.8 Compensation. Unless otherwise restricted by the Articles or these Bylaws, the Board will have the authority to fix the compensation, if any, of the directors for serving as directors of the Corporation and may, by resolution, fix a sum that will be allowed and paid for attendance at each meeting of the Board and may provide for reimbursement of expenses incurred by directors in attending each meeting; provided that nothing herein contained will be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees may be allowed similar compensation for attending committee meetings.

4.9 Resignations. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Such resignation will take effect at the time specified therein or will take effect upon receipt thereof by the Corporation if no time is specified therein, and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective.

4.10 **Reliance on Records.** A director, or a member of any committee designated by the Board, will be fully protected in the performance of such director's or committee member's duties in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

4.11 **Removal of Directors by Stockholders.** The stockholders may, by a vote of the holders of a majority of the outstanding shares then entitled to vote, to remove any director or directors from office with or without cause.

ARTICLE 5 OFFICERS

5.1 Designations.

(a) **Authorized Officers.** The Corporation will have a President and a Secretary and may also have the following officers: a Chairman of the Board, one or more Vice Presidents, a Treasurer, one or more Assistant Secretaries and one or more Assistant Treasurers, each with such duties as are stated in this **Article 5** or by resolution of the Board which is not inconsistent with these Bylaws. The Board will elect a President and a Secretary at its annual meeting. The Board then, or from time to time, may elect one or more of the other officers as it may deem advisable, and may further identify or describe the duties of any one or more of the officers of the Corporation.

(b) **Qualification of Officers.** Officers of the Corporation need not be members of the Board. Any number of offices may be held by the same person.

(c) **Acceptance of Office.** An officer will be deemed qualified when the officer enters upon the duties of the office to which the officer has been elected or appointed and furnishes any bond required by the Board; but the Board may also require a written acceptance and promise to faithfully discharge the duties of such office.

(d) **Failure to Elect Officers.** A failure to elect the Corporation's officers in accordance with these Bylaws will not dissolve or otherwise affect the Corporation.

5.2 **Term of Office.** Each officer will hold office at the pleasure of the Board or for such other period as the Board may specify at the time of such officer's election or appointment, or until the death, resignation or removal of such officer, whichever first occurs. In any event, each officer of the Corporation who is not reelected or reappointed at the annual election of officers by the Board next succeeding his or her election or appointment will be deemed to have been removed by the Board as of such annual election, unless the Board provides otherwise at the time of such officer's election or appointment.

5.3 **Other Agents.** The Board from time to time may also appoint such other agents for the Corporation as the Board may deem necessary or advisable. Each such agent will serve at the pleasure of the Board or for such period as the Board may specify, and will exercise such

powers, have such titles and perform such duties as may be determined from time to time by the Board or by an officer empowered by these Bylaws or the Board to make such determinations.

5.4 **Removal.** Any officer or agent elected or appointed by the Board may be removed by the Board whenever in the Board's judgment the best interests of the Corporation would be served thereby, but such removal will be without prejudice to the contract rights, if any, of the person so removed.

5.5 **Salaries and Compensation.** Salaries and compensation, if any, of all elected officers of the Corporation may be fixed, increased or decreased by the Board, but this power, except as to the salary or compensation of the Chairman of the Board and the President, may, unless prohibited by law, be delegated by the Board to the Chairman of the Board or the President, or may be delegated to a committee of the Board. Salaries and compensation, if any, of all other officers, agents and employees of the Corporation may be fixed, increased or decreased by the Board, but until action is taken with respect thereto by the Board, the same may be fixed, increased or decreased by the President or such other officer or officers as may be empowered by the Board to do so.

5.6 **Delegation of Authority to Hire, Discharge and Designate Duties.** The Board from time to time may delegate to the Chairman of the Board, the President or other officer or executive employee of the Corporation, authority to hire and discharge and to fix and modify the duties and salary or other compensation of employees of the Corporation under the jurisdiction of such person, and the Board may delegate to such officer or executive employee similar authority with respect to obtaining and retaining for the Corporation the services of attorneys, accountants and other professionals and experts.

5.7 **Chairman of the Board.** If a Chairman of the Board is elected, the Chairman of the Board will preside at all meetings of the stockholders and directors at which he or she may be present and will have such other duties, powers and authority as may be prescribed elsewhere in these Bylaws. The Board may delegate such other authority and assign such additional duties to the Chairman of the Board, other than those conferred by law exclusively upon the President or another officer, as the Board may from time to time determine, and, to the extent permissible by law, the Board may designate the Chairman of the Board as the chief executive officer of the Corporation with all of the powers otherwise conferred upon the President of the Corporation under **Section 5.8** below, or it may, from time to time, divide the responsibilities, duties and authority for the general control and management of the Corporation's business and affairs between the Chairman of the Board and the President.

5.8 **President.** The current President of the Corporation is Michael Williams.

(a) **Duties.** Unless the Board otherwise provides, the President will be the chief executive officer of the Corporation with such general executive powers and duties of supervision and management as are usually vested in the office of the chief executive officer of a corporation, and the President will carry into effect all directions and resolutions of the Board. The President, in the absence of the Chairman of the Board or if there is no Chairman of the Board, will preside at all meetings of the stockholders and directors.

(b) Execute Documents. The President may execute all bonds, notes, debentures, mortgages and other instruments for and in the name of the Corporation, and may execute all other instruments and documents for and in the name of the Corporation.

(c) Vote Securities. Unless the Board otherwise provides, the President, or any person designated in writing by the President, will have full power and authority on behalf of the Corporation to (i) attend and to vote or take action at any meeting of the holders of securities of corporations or other entities in which the Corporation may hold securities, and at such meetings will possess and may exercise any and all rights and powers incident to being a holder of such securities, and (ii) execute and deliver waivers of notice and proxies for and in the name of the Corporation with respect to any securities held by the Corporation.

(d) Member of Committees. The President will, unless the Board otherwise provides, be ex officio a member of all standing committees.

(e) Other Duties. The President will have such other or further duties and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board.

(f) Absence of Chairman. If a Chairman of the Board is elected or appointed and designated as the chief executive officer of the Corporation, as provided above, the President will perform such duties as may be specifically delegated to the President by the Board or are conferred by law exclusively upon the President, and in the absence or disability of the Chairman of the Board or in the event of the Chairman's inability or refusal to act, the President will perform the duties and exercise the powers of the Chairman of the Board.

5.9 Vice Presidents. In the absence or disability of the President or in the event of the President's inability or refusal to act, any Vice President may perform the duties and exercise the powers of the President until the Board otherwise provides. Vice Presidents will perform such other duties and have such other authority as the Board may from time to time prescribe.

5.10 Secretary and Assistant Secretaries. The current Secretary of the Corporation is Tammy Williams.

(a) Keep Minutes. The Secretary will attend all meetings of the Board and the stockholders and will record the minutes of such meetings in a book to be kept for that purpose. The Secretary will perform similar duties for each standing or temporary committee when requested by the Board or such committee.

(b) Duties. The Secretary will have the general duties, powers and responsibilities of a secretary of a corporation and will perform such other duties and have such other responsibility and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board or the chief executive officer of the Corporation, under whose direct supervision the Secretary will be.

(c) Absence of Secretary. In the absence or disability of the Secretary or in the event of the inability or refusal of the Secretary to act, any Assistant Secretary or other elected officer may perform the duties and exercise the powers of the Secretary until the Board otherwise provides. Assistant Secretaries will perform such other duties and have such other authority as the Board may from time to time prescribe.

5.11 Treasurer and Assistant Treasurers.

(a) Safekeeping of Funds. The Treasurer will have responsibility for the safekeeping of the funds and securities of the Corporation, will keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the Corporation and will keep or cause to be kept all other books of account and accounting records of the Corporation. The Treasurer will deposit or cause to be deposited all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board or by any officer of the Corporation to whom such authority has been granted by the Board.

(b) Disbursal of Funds. The Treasurer will disburse, or permit to be disbursed, the funds of the Corporation as may be ordered, or authorized generally, by the Board, and will render to the chief executive officer of the Corporation and the directors, whenever they may require, an account of all such transactions as Treasurer, and of those under the Treasurer's jurisdiction, and of the financial condition of the Corporation.

(c) Chief Financial Officer: Other Duties. The Treasurer will have the general duties, powers, responsibilities and authorities of a treasurer of a corporation and will, unless otherwise provided by the Board, be the chief financial and accounting officer of the Corporation. The Treasurer will perform such other duties and will have such other responsibility and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board.

(d) Bond. If required by the Board, the Treasurer will give the Corporation a bond in a sum and with one or more sureties satisfactory to the Board for the faithful performance of the duties of the Treasurer and for the restoration to the Corporation, in the case of such Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the such Treasurer's possession or under his control that belongs to the Corporation.

(e) Absence of Treasurer. In the absence or disability of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer or other elected officer may perform the duties and exercise the powers of the Treasurer until the Board otherwise provides. Assistant Treasurers will perform such other duties and have such other authority as the Board may from time to time prescribe.

(f) Absence of Treasurer and Assistant Treasurer. In the event the Corporation does not have a Treasurer or Assistant Treasurer, the Secretary shall serve in such role and will be vested with such duties and authority.

5.12 **Duties of Officers May Be Delegated.** If any officer of the Corporation is absent or unable to act, or for any other reason that the Board may deem sufficient, the Board may delegate, for the time being, some or all of the functions, duties, powers and responsibilities of any officer to any other officer, or to any other agent or employee of the Corporation or other responsible person.

ARTICLE 6

LIABILITY LIMITATION AND INDEMNIFICATION

6.1 **Limitation of Liability.** No person will be liable to the Corporation or the stockholders for any loss, damage, liability or expense suffered by the Corporation on account of any action taken or omitted to be taken by such person as a director or officer of the Corporation or of any Other Enterprise (as hereinafter defined) for which such person serves or has served as a director or officer at the request of the Corporation, if such person (i) exercised the same degree of care and skill as a prudent person would have exercised under the circumstances in the conduct of his or her own affairs, or (ii) took or omitted to take such action in reliance upon advice of counsel for the Corporation, or for such Other Enterprise, or upon statements made or information furnished by directors, officers, employees or agents of the Corporation, or of such Other Enterprise, which such person had no reasonable grounds to disbelieve.

6.2 **Indemnification Generally.** In addition to and without limiting the rights to indemnification and advancement of expenses specifically provided for in the other sections of this **Article 6**, the Corporation will indemnify and advance expenses to each person who is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of any Other Enterprise, to the full extent permitted by the laws of the State of South Dakota as in effect on the date of the adoption of these Bylaws and as may hereafter be amended.

6.3 **Indemnification in Actions by Third Parties.** The Corporation will indemnify each person who has been or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or appellate, other than an action by or in the right of the Corporation, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of any Other Enterprise, against all liabilities and expenses, including, without limitation, judgments, fines, amounts paid in settlement (provided that such settlement and all amounts paid in connection therewith are approved in advance by the Corporation using the procedures set forth in **Section 6.6** of these Bylaws, which approval may not be unreasonably withheld or delayed), attorneys' fees, ERISA excise taxes or penalties, and other expenses actually and reasonably incurred by such person in connection with such action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding) if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful; provided, however, that the Corporation may not be required to indemnify or advance expenses to any such person or persons seeking indemnification or advancement of expenses in connection with an action, suit or proceeding initiated by such person or persons (including, without limitation, any crossclaim

or counterclaim initiated by such person or persons) unless the initiation of such action, suit or proceeding was authorized by the Board. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or under a plea of *nolo contendere* or its equivalent, will not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that such person's conduct was unlawful.

6.4 Indemnification in Derivative Actions. The Corporation will indemnify each person who has been or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the Corporation's request as a director or officer of any Other Enterprise against all expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding) if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification under this **Section** will be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable to the Corporation unless and only to the extent that the court in which the action, suit or proceeding was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that such court may deem proper.

6.5 Indemnification for Expenses. Notwithstanding the other provisions of this **Article 6**, to the extent a person who is or was serving as a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of any Other Enterprise, has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in **Sections 6.3** and **6.4** of these Bylaws (including the dismissal of any such action, suit or proceeding without prejudice), or in defense of any claim, issue or matter therein, such person will be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

6.6 Determination of Right to Indemnification. Prior to indemnifying a person pursuant to the provisions of **Sections 6.2, 6.3** and **6.4** of these Bylaws, unless ordered by a court and except as otherwise provided by **Section 6.5** of these Bylaws, the Corporation will determine that such person has met the specified standard of conduct entitling such person to indemnification as set forth under **Sections 6.2, 6.3** and **6.4** of these Bylaws. Any determination that a person will or will not be indemnified under the provisions of **Sections 6.2, 6.3** and **6.4** of these Bylaws will be made (a) by a majority vote of the directors who were not parties to such actions, suit or proceeding, even though less than a Quorum; (b) by a committee of such directors designated by a majority vote of such directors, even though less than a Quorum; (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or (d) by the stockholders; provided, however, that in the event such determination is adverse to the person or persons to be indemnified hereunder, such person or persons will have the right to maintain an action in any court of competent jurisdiction against the Corporation to

determine whether or not such person has met the requisite standard of conduct and is entitled to such indemnification hereunder. If such court action is successful and the person or persons is determined to be entitled to such indemnification, such person or persons will be reimbursed by the Corporation for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with any such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

6.7 **Advancement of Expenses.** Expenses (including attorneys' fees) actually and reasonably incurred by a person who may be entitled to indemnification hereunder in defending an action, suit or proceeding, whether civil, criminal, administrative, investigative or appellate, will be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it is ultimately determined that such person is not entitled to indemnification by the Corporation. Notwithstanding the foregoing, no advance will be made by the Corporation if a determination is reasonably and promptly made by the person or body entitled to determine the right to indemnification pursuant to **Section 6.6**, that, based upon the facts known to the Board, independent legal counsel or stockholders at the time such determination is made, such person acted in bad faith and in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal proceeding, that such person believed or had reasonable cause to believe such person's conduct was unlawful. In no event will any advancement of expenses be made in instances where the Board, independent legal counsel or stockholders reasonably determines that such person intentionally breached such person's duty to the Corporation or the stockholders.

6.8 **Non-Exclusivity.** The indemnification and advancement of expenses provided by, or granted pursuant to, this **Article 6** will not be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any statute, the Articles, these Bylaws, agreement, vote of stockholders or disinterested directors, policy of insurance or otherwise, both as to action in their official capacity and as to action in another capacity while holding their respective offices, and will not limit in any way any right that the Corporation may have to make additional indemnifications with respect to the same or different persons or classes of persons. The indemnification and advancement of expenses provided by, or granted pursuant to, this **Article 6** will continue as to a person who has ceased to be a director or officer and will inure to the benefit of the heirs, executors, administrators and estate of such a person.

6.9 **Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of any Other Enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under this **Article 6**.

6.10 **Vesting of Rights.** The rights granted by this **Article 6** will be vested in each person entitled to indemnification hereunder as a bargained-for, contractual condition of such person's acceptance of such person's election or appointment as a director or officer of the Corporation or serving at the request of the Corporation as a director or officer of any Other

Enterprise and while this **Article 6** may be amended or repealed, no such amendment or repeal will release, terminate, or adversely affect the rights of such person under this **Article 6** with respect to any act taken or the failure to take any act by such person prior to such amendment or repeal or with respect to any action, suit or proceeding with respect to such act or failure to act filed after such amendment or repeal.

6.11 **Definitions.** For purposes of this **Article 6**, references to:

(a) “the Corporation” will, if and only if the Board determines, include, in addition to the resulting Corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers or persons serving at the request of such constituent corporation as a director or officer of any Other Enterprise, so that any person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director or officer of any Other Enterprise, will stand in the same position under the provisions of this **Article 6** with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(b) “Other Enterprise” includes, without limitation, any other corporation, partnership, limited liability company, joint venture, trust or employee benefit plan;

(c) “Director or officer of any Other Enterprise” includes, without limitation, any person performing similar functions with respect to such Other Enterprise, whether incorporated or unincorporated.

(d) “fines” includes any excise taxes assessed against a person with respect to an employee benefit plan;

(e) “defense” includes investigations of any threatened, pending or completed action, suit or proceeding as well as appeals thereof and also includes any defensive assertion of a cross claim or counterclaim; and

(f) “serving at the request of the Corporation” includes, without limitation, any service as a director or officer of the Corporation that imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this **Article 6**. In all other instances where any person serves as a director or officer of an Other Enterprise, if it is not otherwise established that such person is or was serving as such director or officer at the request of the Corporation, the Board will determine whether such person is or was serving at the request of the Corporation, and it will not be necessary to show any prior request for such service, which determination will be final and binding on the Corporation and the person seeking indemnification.

6.12 **Severability.** If any provision of this **Article 6** or the application of any such provision to any person or circumstance is held invalid, illegal or unenforceable for any reason whatsoever, the remaining provisions of this **Article 6** and the application of such provisions to other persons or circumstances will not be affected thereby and, to the fullest extent possible, the court finding such provision invalid, illegal or unenforceable will modify and construe the provision so as to render it valid and enforceable as against all persons or entities and to give the maximum possible protection to persons subject to indemnification hereby within the bounds of validity, legality and enforceability. Without limiting the generality of the foregoing, if any director or officer of the Corporation, or any person who is or was serving at the request of the Corporation as a director or officer of any Other Enterprise, is entitled under any provision of this **Article 6** to indemnification by the Corporation for some or a portion of the judgments, amounts paid in settlement, attorneys' fees, ERISA excise taxes or penalties, fines or other expenses actually and reasonably incurred by any such person in connection with any threatened, pending or completed action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding), whether civil, criminal, administrative, investigative or appellate, but not, however, for all of the total amount thereof, the Corporation will nevertheless indemnify such person for the portion thereof to which such person is entitled.

ARTICLE 7 STOCK

7.1 **Certificates Representing Shares.** Each stockholder will be entitled to receive a certificate, signed by the Chairman of the Board or the President or a Vice President, and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares owned by such stockholder and registered in the stockholder's name. Such certificates will be issued in numerical order. To the extent permitted by law, any or all of the signatures on the certificate may be a facsimile. In the event that any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate ceases to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as if such officer, transfer agent or registrar who signed such certificate, or whose facsimile signature was placed thereon, were such officer, transfer agent or registrar of the Corporation at the date of issue. The Corporation will not have the power to issue a certificate in bearer form.

7.2 **Transfers of Stock.** Transfers of stock will be made only upon the stock transfer books of the Corporation, and before a new certificate is issued the old certificate will be surrendered for cancellation, subject to the provisions of **Section 7.5** below. Until and unless the Board appoints some other person, firm or corporation as its transfer agent (and upon the revocation of any such appointment, thereafter until a new appointment is similarly made), the Secretary of the Corporation will be the transfer agent of the Corporation without the necessity of any formal action of the Board, and the Secretary, or any person designated by the Secretary, will perform all of the duties of such transfer agent.

7.3 **Regulations.** The Board will have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer, conversion and registration

of certificates for shares of stock of the Corporation, not inconsistent with the laws of the State of South Dakota, the Articles or these Bylaws.

7.4 **Lost Certificates.** The Board may direct that a new certificate or certificates of stock or uncertificated shares be issued in place of any certificate or certificates theretofore issued by the Corporation, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate or certificates to be lost, stolen or destroyed. When authorizing the issue of such replacement certificate or certificates of stock or uncertificated shares, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such allegedly lost, stolen or destroyed certificate or certificates, or such owner's legal representative, to give the Corporation a bond as the Board may direct sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of the certificate or certificates or the issuance of such new certificate or certificates or uncertificated shares.

ARTICLE 8 CORPORATE FINANCE

8.1 **Dividends; Redemption.** Subject to the Articles and the laws of the State of South Dakota and **Section 9.5** of these Bylaws, the Board may declare and pay dividends upon the outstanding shares of stock of the Corporation at any meeting, which dividends may be paid in cash, in property or in shares of the Corporation's capital stock, and may cause the Corporation to purchase or redeem any of its outstanding shares of stock. A director or a member of any committee designated by the Board will be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board, or by any other person as to matters the director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities or net profits, of the Corporation, or both, or any other facts pertinent to the existence and amount of net profits, surplus or other funds from which dividends may properly be declared and paid, or with which the Corporation's stock may properly be purchased or redeemed.

8.2 **Creation of Reserves.** The Board may set apart out of any of the funds of the Corporation available for dividends or otherwise a reserve or reserves for any proper purpose and may abolish any such reserve.

8.3 **Depositories; Checks.** The moneys of the Corporation will be deposited in the name of the Corporation in such bank or banks or other depositories as the Board may designate, and all checks or instruments for the payment of money will be signed by persons designated by resolution adopted by the Board. Notwithstanding the foregoing, the Board by resolution may authorize an officer or officers of the Corporation to designate any bank or banks or other depositories in which moneys of the Corporation may be deposited, and to designate the persons who may sign checks or drafts on any particular account or accounts of the Corporation, whether created by direct designation of the Board or by an authorized officer or officers as aforesaid.

ARTICLE 9 GENERAL PROVISIONS

9.1 **Fiscal Year.** The Corporation's fiscal year will be the calendar year, ending on December 31 each year. The Board will have power to fix and from time to time change the fiscal year of the Corporation, so long as the fiscal year is a "permitted year" under Section 1378 of the Internal Revenue Code of 1986.

9.2 **Corporate Seal.** The Corporation will not have a corporate seal.

9.3 **Contracts.** The Board may authorize any officer or officers, or agent or agents, to enter into any contract or execute and deliver any instrument or document for, and in the name of, the Corporation, and such authority may be general or confined to specific instances.

9.4 **Transfer Restrictions Regarding "S" Corporations.** So long as the Corporation remains a "small business corporation" under Section 1361 of the Internal Revenue Code of 1986, as amended from time to time (the "**Code**"), no issuance, sale, exchange, gift, pledge, or other transfer or encumbrance of shares of stock of the Corporation may be made or allowed that would result in the Corporation no longer being a "small business corporation," without the prior written consent of stockholders holding an aggregate of at least 80% of the issued and outstanding shares of the Corporation, which consent specifically acknowledges that after such issuance, transfer or encumbrance the Corporation will no longer be a "small business corporation" under Section 1361 of the Code. Any purported issuance, transfer or encumbrance by or with respect to the Corporation or any stockholder of any portion or all of such shareholder's shares in violation of the terms of this **Section 9.4** will be wholly void and of no effect. For purposes of properly carrying out the terms and provisions of this transfer restriction, all stock certificates now or hereafter issued by the Corporation will be endorsed with a legend referring to the restrictions of these Bylaws. There will be endorsed on all certificates issued by the Corporation a legend substantially in the form of the following:

THIS STOCK IS NOT NEGOTIABLE

TRANSFERABILITY OR ENCUMBRANCE OF THE SHARES
REPRESENTED BY THIS CERTIFICATE IS LIMITED BY
THE PROVISIONS OF THE AMENDED AND RESTATED
BYLAWS OF THE CORPORATION. A COPY OF THE
AMENDED AND RESTATED BYLAWS IS AVAILABLE FOR
INSPECTION AT THE PRINCIPAL OFFICE OF THE
CORPORATION.

9.5 **"S" Corporation Dividends.** Upon approval of the Board, distributions to the stockholders in a taxable year may be made on the basis of the stockholders' varying ownership interests (as compared to the interests at the time of distribution) in the Corporation in the current or immediately preceding taxable year. If the distributions are to be made pursuant to the stockholders' ownership interests in a prior year, they must be made within a reasonable time after the close of the preceding taxable year.

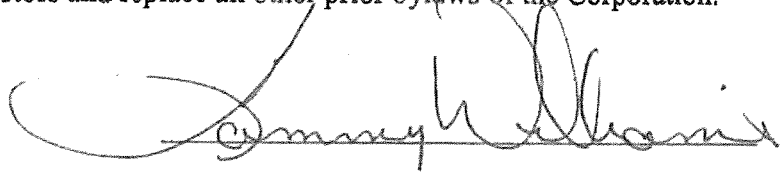
9.6 **Amendments.** These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the vote of stockholders holding at least 67% of the issued and outstanding shares of stock of the Corporation. Notwithstanding the foregoing, **Sections 9.4, 9.5** and this sentence of **Section 9.6** of these Bylaws may be repealed, amended or altered only by the vote of the stockholders holding at least 80% of the issued and outstanding shares of stock of the Corporation.

[Signature page follows.]

CERTIFICATE

The undersigned Secretary of Dakota Southern Railway Company, a South Dakota corporation, hereby certifies that the foregoing Amended and Restated Bylaws are the Bylaws of the Corporation adopted by the directors and replace all other prior bylaws of the Corporation.

Dated as of September 30, 2016.

A handwritten signature in black ink, appearing to read "Tammy Williams", is written over a horizontal line.

Name: Tammy Williams

Title: Secretary

Part III: Certificate of Existence as Certified Oct. 3, 2016

State of South Dakota



OFFICE OF THE SECRETARY OF STATE

Certificate of Existence Domestic Corporation

ORGANIZATIONAL ID #: DB024476

I, **Shantel Krebs**, Secretary of State of the State of South Dakota, do hereby certify that **DAKOTA SOUTHERN RAILWAY COMPANY** was duly incorporated under the laws of this state on **June 10, 1985** for a **perpetual** term of existence.

I, further certify that said corporation has complied with the laws of this State relative to the formation of corporations of its kind and is now a regularly and properly organized and existing corporation under the laws of this State and is in good standing, as shown by the records of this office. The annual report required by law has been filed with our office and articles of dissolution have not been filed. This certificate is not to be construed as an endorsement, recommendation or notice of approval of the corporation's financial condition or business activities and practices. Such information is not available from this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this October 3, 2016.

Shantel Krebs
Secretary of State



Exhibit B

Financial Responsibility
(Condensed Balance Sheet)

Balance Sheet
As of 12/31/2015

Dakota Southern Railroad (DSR)

Assets

Cash

Total Cash: \$ 330,817.36

Accounts Receivable

Total Accounts Receivable: \$ 863,409.87

Inventory

1200

Inventory \$ 316,114.40

Total Inventory: \$ 316,114.40

Prepaid

1320

Prepaid Insurance \$ 19,091.64

Total Prepaid: \$ 19,091.64

Fixed Assets

Total Fixed Assets: \$ 5,830,825.45

NR Related Parties

Other Assets

Total Other Assets: \$ 60,000.00

Total Assets: \$ 7,420,258.72

Liabilities

Current Liabilities

2000

Accounts Payable \$ 32,588.37

2025

Credit Cards BOA \$ 5,059.21

2100

CM of LT Debt \$ 665,854.77

2115

Accrued Interest \$ 45,804.59

Total Current Liabilities: \$ 749,306.94

Long Term Debt

Total Long Term Debt: \$ 5,398,341.98

LTD Related Parties

Total LTD Related Parties: \$ 446,945.37

Total Liabilities: \$ 6,610,491.33

Equity

Total Equity: \$ 809,767.39

Total Liabilities & Equity: \$ 7,420,258.72

Exhibit C

Lease

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
LEASE AGREEMENT**

This Lease Agreement ("Agreement") is made and entered into by and between the South Dakota Department of Transportation, referred to in this Agreement as the "State," and Dakota Southern Railway Company, referred to in this Agreement as "Dakota Southern."

BACKGROUND:

- A. The State is owner of railroad property, including mainline tracks, sidings, and extra-width property and facilities commencing at the intersection of the North Sioux City to Mitchell line located in the West Half of the Southwest Quarter (W½ SW¼) of Section Twenty-two (22), Township Ninety-four North (94N), Range Fifty-six West (56W) of the 5th P.M., also known as Milepost 0.0, and additionally known as Railroad Engineer's Survey Station Number 00+00, and extending in a westerly direction a distance of approximately 54.5 miles in and through the counties of Yankton, Bon Homme, and Charles Mix and terminating at the, westerly line of the Northwest Quarter of the Northeast Quarter (NW¼ NE¼) of Section Seventeen (17), Township Ninety-six North (96N), Range Sixty-four West (64W) of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17, referred to in this Agreement as the "Rail Facilities."
- B. Dakota Southern wants to lease the Rail Facilities from the State.
- C. The parties now wish to enter into this Agreement for the lease of the Rail Facilities by Dakota Southern from the State on the terms and conditions as stated in this Agreement.
- D. The State has received the approval of the South Dakota State Railroad Board (the "Railroad Board") and the written consent of the Governor to enter into this Agreement for railroad purposes, as evidenced by the resolution attached to this Agreement as **Exhibit A**.

DAKOTA SOUTHERN AND THE STATE MUTUALLY AGREE AS FOLLOWS:

- 1. Purpose. The State leases the Rail Facilities to Dakota Southern, subject to the terms and conditions set forth in this Agreement. All property leased to third parties is identified in records on file at the South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. In addition, the State may exclude additional property at any time during the term of this Agreement with Dakota Southern's consent. The parties recognize and agree that this Agreement is for railroad purposes. Consequently, Dakota Southern will not unreasonable withhold its consent to exclude property not necessary for railroad purposes.
- 2. Facility Description. The State will permit Dakota Southern to use the Rail Facilities described in Background paragraph A above.
- 3. Effective Date. This Agreement is effective December 1, 2016. This Agreement supersedes Agreement Number 911022 that was executed by Dakota Southern on February 25, 2016, and by the State on March 24, 2016, and subsequently amended by the parties by an agreement executed by Dakota Southern on July 13, 2016, and by the State on July 15, 2016.
- 4. Condition of the Rail Facilities. Dakota Southern understands and agrees the Rail Facilities are leased in "AS IS" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Agreement.
- 5. Representations and Warranties. Dakota Southern accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Agreement, Dakota Southern acknowledges that Dakota Southern has inspected the Rail Facilities, including all improvements and structures. Dakota Southern further acknowledges that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements to the Rail Facilities.

6. Operating Rights. The State permits Dakota Southern to use any and all of the State's rights and licenses in and to the Rail Facilities to the extent necessary for the purpose of providing rail freight service and, if it can be accommodated without adversely affecting freight service, rail car storage. In the event individual or organizational motorcar clubs will be allowed to utilize the trackage under lease in this Agreement or sublease, as the case may be, then, and in that event, it will be the responsibility of the Dakota Southern to obtain a certificate of insurance showing the State of South Dakota, and Dakota Southern, as additional insureds, prior to any motorcar event; and, further, Dakota Southern will obtain from the individual recreational motorcar enthusiastic or organization, as the case may be, an indemnification agreement to be executed by the person or entity in charge of the motorcar event, indemnifying the State and Dakota Southern from any claim or liability arising out of the event, and will provide copies of said indemnification agreements to the State prior to any motorcar travel on the Rail Facilities. The rights granted Dakota Southern under this Agreement relate solely to the provision of rail service on the Rail Facilities. Dakota Southern will not use the Rail Facilities for any other purpose without the State's prior written authorization.
7. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service. The State may grant leases, easements, licenses and all other similar property rights on the Rail Facilities for non-rail purposes, including but not limited to, placement on the Rail Facilities of utilities, fiber optic cables, pipeline, at-grade crossings and grade separations, and other non-rail related facilities and businesses, provided that such leases and easements, and licenses do not unreasonably interfere with Dakota Southern's rail operations. The State will be entitled to all revenues derived from such grants of property rights.
8. Government Approval. Upon execution of this Agreement, Dakota Southern will immediately prepare, file and obtain a modified certificate of public convenience and necessity from the Surface Transportation Board ("STB") to provide common carrier service on the Rail Facilities. The modified certificate will not contain any reservations on the provision of service. Dakota Southern will permit the State to review any proposed STB filings. Dakota Southern will be solely responsible for any costs incurred in obtaining the modified certificate.
9. Common Carrier Obligations. Dakota Southern will assume all common carrier obligations related to the operation of the Rail Facilities upon the effective date of this Agreement. No later than December 31, 2016, Dakota Southern will provide service to shippers requesting service on the Rail Facilities. Dakota Southern will, at Dakota Southern's sole expense, be responsible for making any repairs or improvements necessary to provide such service.
10. Liability. Dakota Southern will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of Dakota Southern, its representatives, officers, employees, or agents.
11. Laws to be Observed. Dakota Southern will keep fully informed of all federal, state, and local laws, ordinances, regulations, injunctions, and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, rules, ordinances, regulations, orders, or decrees identified in this Agreement. Dakota Southern will at all times observe and comply with all such laws, rules, ordinances, regulations, and all final orders and decrees. Dakota Southern will protect, hold harmless, and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, rule, ordinance, regulation, injunction, or final order or decree.
12. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Department of Transportation, Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Department of Transportation, Office of Air, Rail, and Transit, and Dakota Southern. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board

will issue a written decision, which will be binding on all parties to this Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.

13. Insurance. Dakota Southern will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Dakota Southern will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Dakota Southern of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Agreement.

Dakota Southern will provide the State with evidence of the liability insurance coverage required by this Agreement before Dakota Southern operates along the Rail Facilities and Dakota Southern will supply State with copies of its insurance policies and any amendments, as soon as they are available and with evidence of continued insurance coverage on January 1 of each year. Dakota Southern's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, and to immediately terminate this Agreement without notice and without opportunity to cure such default. Dakota Southern acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit Dakota Southern's liability to the State as set forth in this Agreement.

14. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to Dakota Southern by or within the scope of this Agreement, there will be no liability upon any member of the State, or its authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
15. Assignment. Dakota Southern will not assign its rights or delegate its duties under this Agreement or any part of this Agreement, without the State's prior written consent. An approved assignment, including assignments occurring by operator contracts, will not relieve Dakota Southern of Dakota Southern's primary responsibility to the State.
16. Amendment. No term or provision of this Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by written memorandum.
17. State Inspection. The State or its duly authorized representative, upon reasonable notice to Dakota Southern, reserves the right at all times to perform any and all necessary inspections over and across the Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Agreement. Dakota Southern will promptly address any deficiencies identified by the State as a result of these inspections.
18. Responsibility for Rehabilitation. The State will have no obligation to rehabilitate the Rail Facilities.

19. Additions to Rail Facilities. As partial consideration for this Agreement, Dakota Southern will at a minimum make the following improvements to the Rail Facilities during each year of this Agreement:

- a. Installation of 3,000 crossties;
- b. Rehabilitation of three railroad crossings with heavy rail (115# or greater) and new ties; and
- c. Improvement of two miles of ditch drainage.

The State grants to Dakota Southern the right to make such further improvements and additions to the Rail Facilities as Dakota Southern may require to permit rail freight service. All improvements and additions to the Rail Facilities will be at Dakota Southern's sole expense, unless agreed to in writing by the State.

20. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. Dakota Southern will be responsible for the normal and regular work required to keep the Rail Facilities in an excepted track condition sufficient to provide service to shippers on the Rail Facilities. Such maintenance will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs, and work. If the Rail Facilities are rehabilitated, then Dakota Southern will maintain the rail Facilities to their rehabilitated condition.
21. Rent Payments. As partial rent for the Rail Facilities, Dakota Southern will pay the State fifty percent (50%) of any fees billed for car storage originating or terminating at any point along the Rail Facilities (excluding switching fees). Dakota Southern will establish storage fees according to market conditions to ensure the rates are reasonable. The State's share of car storage fees will be calculated as of November 30 of each year and Dakota Southern will remit payment to the State by May 1 of the following year. Dakota Southern will not be required to remit any portion of the switching fees charged or collected for the Rail Facilities.

As additional rent for the use of the Rail Facilities, Dakota Southern will make an annual payment to the State equal to one and one-half percent (1.5%) of the gross revenues for any rail freight originating, terminating, or carried along any point on the Rail Facilities. Gross revenues will be calculated as of November 30 of each year and Dakota Southern will remit payment to the State by May 1 of the following year.

22. Term. This Agreement will continue in full force and effect for a period of ten (10) years from and after the effective date of this Agreement, unless terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear that cannot be obviated by routine maintenance, as existed on the effective date of this Agreement, except that all improvements and additions to the Rail Facilities will become the sole property of the State.
23. Termination by the State For Fault. If Dakota Southern fails to perform its obligations under this Agreement, and continues in such default for a period of sixty (60) days after written notice of such default from the State, then State may terminate this Agreement. Default includes, but is not limited to, nonpayment of rent, lapse of insurance, inadequate maintenance or repair of the Rail Facilities, and failure to provide safe and efficient common carrier rail service. Fraud, theft of State property, or any other criminal act, other than Class 2 Misdemeanors, would be a material breach of the Agreement, and is grounds for immediate termination of the Agreement by State. No advanced notice is required and there is no opportunity to cure the breach.
24. Termination of Modified Certificate. Upon termination or expiration of this Agreement, Dakota Southern agrees to promptly terminate its modified certificate before the STB and relinquish any other rights it may have to provide common carrier service over the Rail Facilities, subject to the requirements set out in 49 CFR 1150.24. If Dakota Southern fails to promptly terminate these rights, then the State is authorized and empowered to submit the requisite filings to the STB and take all other necessary steps to terminate any rights Dakota Southern may have to provide common carrier service over the Rail Facilities. Dakota Southern will reimburse the State for all expenses incurred to effectuate the termination of these rights.

25. Audit. Dakota Southern will keep detailed records, accounts, invoices, and supporting documentation pertaining to all costs paid for under this Agreement. Upon reasonable notice, Dakota Southern will allow the State, through any authorized representative, to examine and copy all records, accounts, invoices, and supporting documents.
26. The terms of this Agreement alone will control the relationship between the State and Dakota Southern.
27. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State:
Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For Dakota Southern:
President
Dakota Southern Railway Company
10100 N. Ambassador Drive, Suite 105
Kansas City, Missouri 64153

28. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
29. Entire Agreement. This Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
30. Force Majeure. This Agreement and any sublease is subject to force majeure, and is contingent on acts of God, weather conditions, tortious acts of third parties, restrictions imposed by any government or governmental agency, and other events beyond the control of parties. If performance under this Agreement or operability of the Rail Facilities is prevented by any of these causes, neither Dakota Southern nor the State is under any obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Agreement. If restoration is not made, then this Agreement will be void without penalty to either party.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested to by their duly authorized officers on the date and year first above written.

Dakota Southern Railway Company

By: Mike Allen

Its: President

Date: Nov 30, 2016

(Corporate Seal)

State of South Dakota
Department of Transportation

By: [Signature]

Its: Secretary

Date: 11/30/16

Approved as to Form
[Signature]
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
): SS
COUNTY OF Hughes)

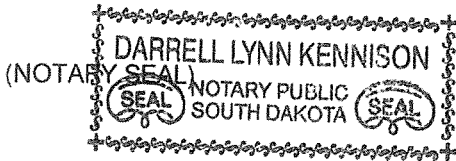
On this the 30th day of November, 2016, before me, Darrell Lynn Kennison, a Notary Public within and for said County and State, personally appeared Mike Williams, who acknowledged himself/herself to be the President, of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.

Darrell Lynn Kennison

NOTARY PUBLIC

My Commission Expires: 01/24/2020



STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
): SS
COUNTY OF HUGHES)

On this the 30th day of November, 2016, before me, Darrell Lynn Kennison, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Darrell Lynn Kennison

NOTARY PUBLIC

My Commission Expires: 01/24/2020

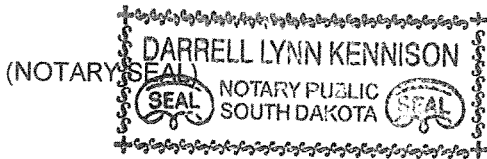


Exhibit D

Certificate of Liability Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/15/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER TRUSS 4551 W. 107th St., Third Floor Overland Park KS 66207	CONTACT NAME: Certificate Department	
	PHONE (A/C, No, Ext): 913.341.8998	FAX (A/C, No): 913-491-6379
	E-MAIL ADDRESS: Certificates@TrussAdvantage.com	
INSURED BG & CM Railroad, Inc. *See Below for Named Insureds 10100 North Ambassador Drive, Ste 105 Kansas City MO 64153	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Steadfast Insurance Co.	
	INSURER B: Aspen Specialty Ins Co	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 1392348159 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY ☒ CLAIMS-MADE ☐ OCCUR ☒ Railroad Liab. GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☒ OTHER: \$50K SIR Per OCC			SCO012038900	7/31/2016	7/31/2017	EACH OCCURRENCE \$15,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$30,000,000 PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N ☐ N/A						PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Excess Railroad Liability			RX004L116	7/31/2016	7/31/2017	Limit 10,000,000 Aggregate 20,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Ozark Valley Railroad, Inc.; S & S Shortline Leasing, LLC; SDR Holding Company, Inc.; Dakota Southern Railway Company; Fremont Northern Railroad, Inc.; St. Maries River Railroad; McCloud Railway Company; Shasta Sunset Corp.; Midwest Pacific Rail Net & Logistics Co.; Washington & Idaho Railway, LLC; Boot Hill & Western Railway Company, Inc. dba Boot Hill & Western; Williams Equipment Leasing, Company; mw steel holdings llc

For Informational Purposes Only

CERTIFICATE HOLDER Sample Certificate Dakota Southern Railway Company 10100 N Ambassador Dr, Ste 105 Kansas City MO 64153	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--