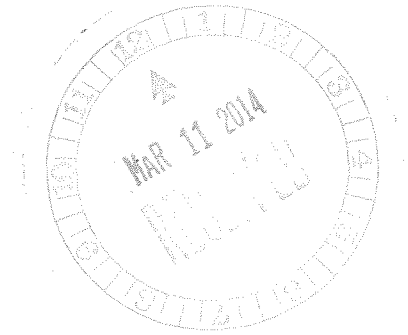


BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35799



**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
-- ACQUISITION AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1150.35**

235608

(contains color images)

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Office of Proceedings

March 11, 2014

Volume 1 of 2

**Part of
Public Record**

ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
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Dated: March 10, 2014

Attorneys for
Rapid City, Pierre & Eastern Railroad, Inc.

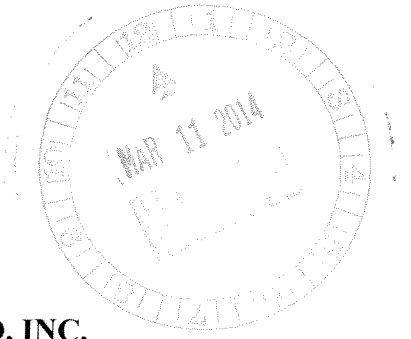
**FILED
March 11, 2014
Surface Transportation Board**

**FEE RECEIVED
March 11, 2014
Surface Transportation Board**

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35799

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
-- ACQUISITION AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**



**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1150.35**

Rapid City, Pierre & Eastern Railroad, Inc. (“RCP&E” or “Applicant”), a non-carrier, hereby files this Verified Notice of Exemption pursuant to 49 C.F.R. §1150.35(d), to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific Railway (“DM&E”), and to operate, approximately 670 miles of rail lines located west of Tracy, Minnesota (the “DM&E West Lines”). RCP&E will also acquire incidental trackage rights over connecting lines of DM&E and other carriers. The rights being acquired are more fully described in the summary of the transaction included in the Required Information (see pp. 3-5 below). The rail lines to be acquired and/or operated are described on the attached Exhibit A, and are shown on the map attached as Exhibit B.

In accordance with the requirements of 49 C.F.R. §1150.35(a), on February 12, 2014, RCP&E filed with the Board, and served, a notice of its intent to file this notice of exemption (the “Notice of Intent”).

The projected annual revenues of RCP&E will make it a Class II rail carrier once it commences operations.

RCP&E is a wholly-owned subsidiary of Genesee & Wyoming Inc. (“GWI”), a non-carrier holding company. GWI’s continuance in control of RCP&E when it becomes a carrier, together with the other carriers in GWI’s corporate family, is the subject of a notice of exemption being filed in STB Docket No. FD 35800.

Required Information

In accordance with the provisions of 49 C.F.R. §§1150.33 - 1150.35, RCP&E submits the following information:

1150.33(a) Full name and address of Applicant.

Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020

1150.33(b) Name, address and telephone number of representative of Applicant.

Eric M. Hocky
Clark Hill PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

1150.33(c) Statement that agreement has been reached.

RCP&E and DM&E entered into a definitive Transaction Agreement on January 2, 2014. Although not required, RCP&E is submitting a Public version of the Transaction Agreement, including Exhibits, as a separate Appendix (Volume 2 of this Notice).¹ Additionally, a Highly Confidential version of the Transaction Agreement, including Exhibits, is being submitted

¹ To the extent necessary, RCP&E requests a waiver of the requirement that it submit an additional 10 copies of both the Public and Highly Confidential versions of the Transaction Agreement, each of which is over 600 pages, as such requirement would be unduly burdensome and expensive. RCP&E is also submitting an electronic version of each version on a disk.

separately under seal in accordance with the Protective Order served by the Board in this proceeding on February 13, 2014.

1150.33(d) The operator of the property.

DM&E is the current operator of the DM&E West Lines, with the exception of the Crawford subdivision that is operated by Nebraska Northwestern Railroad, Inc. (“NNW”) pursuant to a lease agreement with DM&E.

1150.33(e) A brief summary of the proposed transaction.

RCP&E is a non-carrier formed for the purpose of acquiring the DM&E West Lines from DM&E, and operating them as an independent regional carrier. RCP&E will maintain all existing connections with the residual lines of DM&E and the Canadian Pacific Railway (“CP”) rail system, as well as with BNSF Railway Company (“BNSF”) and NNW. Incidental to the acquisition, RCP&E will be granted trackage rights from DM&E to a point of connection with Union Pacific Railroad Company (“UP”) at Mankato, Minnesota. RCP&E also will acquire incidental trackage rights, subject to any necessary consents, over connecting lines of other carriers. The approximately 670 miles of rail lines and rights to be acquired and operated are more fully described on Exhibit A and are shown on the map attached as Exhibit B.

Notwithstanding the sale of the lines described above, DM&E is retaining the common carrier obligation with respect to the handling of coal to, from and over the DM&E West Lines until December 31, 2030, and RCP&E will not assume the common carrier obligation to handle coal shipments during that period.² To enable DM&E to fulfill its retained common carrier

² The acquisition by RCP&E also does not include any of the rights of DM&E or its affiliates to build into the Powder River Basin. See *Wyoming Dakota Railroad Properties, Inc. – Acquisition and Operation Exemption – Dakota, Minnesota & Eastern Railroad Corporation*, STB Finance Docket No. 34871 (decision served August 14, 2006, and notice of exemption served August 22, 2006).

obligation, DM&E is reserving an easement over the DM&E West Lines for the sole purpose of providing coal service pursuant to this continuing obligation. (There is not currently any coal service provided to, from or over the DM&E West Lines.) A copy of the reserved coal easement that will be included in every deed that is recorded in connection with this transaction is attached hereto as Exhibit C.

Additionally, RCP&E will grant DM&E trackage rights between Tracy, Minnesota and Wolsey, South Dakota, that will allow DM&E to continue to handle overhead grain trains in conjunction with BNSF that are operating today between Florence and points on DM&E beyond Tracy, and to handle non-revenue ballast trains, including the right to interchange such trains with BNSF at Wolsey. DM&E will file a separate notice of exemption with the Board for the trackage rights granted by RCP&E to DM&E.

RCP&E is a wholly-owned subsidiary of GWI. As such, it will benefit from GWI's safety and training programs, and from the expansive reach of GWI's national marketing and commercial resources, all of which will supplement the locally based railroad. In STB Docket No. 35800, GWI is filing a notice of exemption to continue in control of RCP&E when RCP&E becomes a carrier, in common with the other carriers in GWI's corporate family. The control transaction is eligible for the class exemption set forth at 49 C.F.R. §1180.2(d)(2) because the lines of RCP&E do not connect with the lines of any other carriers in GWI's corporate family, the transaction is not part of a series of anticipated transactions that would connect them, and no Class I carrier is involved in the continuance in control transaction.

RCP&E also provides the following additional information as required under 49 C.F.R. §1150.33(e):

(1) The name and address of the railroad transferring the subject property.

Dakota, Minnesota & Eastern Railroad Corporation
120 S. 6th Street, Suite 700
Minneapolis, MN 55402

(2) The proposed time schedule for consummation of the transaction.

Pursuant to 49 C.F.R. § 1150.35(e), this exemption will be effective 45 after the date of filing, *i.e.*, April 25, 2014. The parties expect to consummate the transaction shortly after the exemption becomes effective, assuming all other conditions to closing have been satisfied by that time.

(3) The mileposts of the subject property.

The mileposts of the DM&E West Lines are shown on Exhibit A attached hereto.

(4) The total route miles being acquired.

The total route miles being acquired are 672.88 ±, as shown on Exhibit A attached hereto.

1150.33(f) Map of the subject property.

A map of the DM&E West Lines is attached hereto as Exhibit B.

1150.33(g) A certificate that revenues will not exceed those of a Class III carrier.

Not applicable. RCP&E projects that its annual revenues will make it a Class II carrier when it commences operations.

1150.33(h)(1) Information for transactions imposing interchange commitments.

RCP&E certifies that the proposed acquisition involves an interchange commitment. As part of the transaction, RCP&E will be acquiring DM&E's so-called "Colony Line" as identified in Exhibit A and shown on Exhibit B. RCP&E will be assuming certain rights and obligations

arising under the existing agreements that were executed when the DM&E acquired the Colony Line from UP in 1996. Among those assumed obligations will be certain obligations under the existing Colony Line Car Supply, Services and Divisions Agreement (“CSSDA”), for the remainder of the term of the CSSDA. As required under 49 C.F.R. §1150.33(h)(1), the following additional information is provided by RCP&E:

(i) As noted above, the CSSDA contains an interchange commitment that affects interchange with carriers other than UP at the following interchange points as shown on the map attached as Exhibit B: Florence and Tracy, Minnesota; Dakota Jct. and Crawford, Nebraska; and Wolsey, Aberdeen, Yale and Watertown, South Dakota. The interchange commitment was negotiated as part of the overall economic package in the original transaction between DM&E and UP, which was approved by the Board.

(ii) A complete version of the CSSDA was submitted by RCP&E as part of the Confidential Appendix that was filed with the Board on February 12, 2014 (the “Confidential Appendix”), together with the Notice of Intent.³

(iii) A list of the shippers who currently use or who have used the Colony Line in the last two years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit D.

(iv) The aggregate number of carloads originated or terminated within the last two years by the shippers identified in subparagraph (iii) above was included as part of the Confidential Appendix.

³ The Confidential Appendix and the confidentiality of the information contained therein is protected as set forth in the Board’s regulations at 49 C.F.R. §1150.33(h)(1). Access to such information is governed by the Board’s regulations at 49 C.F.R. §1150.33(h)(2).

(v) RCP&E hereby certifies, as set forth in the certificate of service, that it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Verified Notice of Exemption on the shippers identified in subparagraph (iii) above. The identified shippers were also served with a copy of the Notice of Intent.

(vi) NNW and BNSF connect with the Colony Line at Dakota Jct. and Crawford, Nebraska, respectively. Additionally, BNSF and DM&E connect elsewhere with the DM&E West Lines that RCP&E will be acquiring and operating.

(vii) The CSSDA requires that any acquirer of the Colony Line assume the obligations of DM&E under the CSSDA, including the interchange commitment, and thus, there was no discussion or negotiation of the acquisition with and without the commitment. RCP&E does not have an estimate of the difference between the acquisition price with and without the assumption of the interchange commitment, or of the difference in price with and without the interchange commitment that would have applied when DM&E acquired the Colony Line from UP in 1996. Accordingly, RCP&E requested an estimate of the difference from DM&E as permitted by the Board. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-6. Copies of the RCP&E request and the DM&E response are included in the Confidential Appendix.

(viii) The caption of this proceeding reflects the existence of an interchange commitment.

1150.35(b)(1) General statement of service intentions.

RCP&E initially expects to continue service at substantially the same level as has historically been provided by DM&E. This service generally will include two daily through

trains to and from Tracy, Minnesota, service as warranted to and from BNSF, three trains a week between Huron and UP at Mankato, five local trains (consisting of two locals serving customers on the Black Hills Subdivision, two locals serving customers on the Huron Subdivision, and one local serving customers on branch lines near Huron), and two yard assignments each day. Crews will generally operate five days per week at all locations, except between Huron and Tracy, where crews will operate seven days per week. Seasonal unit trains will be operated as extras outside this regularly scheduled service. While initially continuing existing levels of service, RCP&E believes that it can bring to its operation of the DM&E West Lines a focused attention to customer service and safety that are the trademarks of the GWI subsidiary railroads. RCPE will continuously monitor traffic volumes and expects to add train starts if required to maintain necessary levels of service efficiency.

RCP&E will maintain access to the DM&E and CP rail systems for its customers through an interchange with DM&E at Tracy, Minnesota. RCP&E and its customers will also maintain the current access to BNSF (at Wolsey, Aberdeen, Yale and Watertown, South Dakota, at Florence, Minnesota, and at Crawford, Nebraska via NNW), NNW (at Dakota Jct., Nebraska) and UP (at Mankato, Minnesota). RCP&E expects to build relationships with DM&E/CP, BNSF and UP, and to provide enhanced access to the national rail system for the customers it will serve.

1150.35(b)(2) General statement of labor impacts.

While there may be labor impacts, RCP&E is taking steps that it expects will minimize that impact. DM&E estimates that there are approximately 215 employees currently working on

the DM&E West Lines. Representatives of RCP&E had four “town hall” meetings⁴ with DM&E employees who are currently working on the DM&E West Lines about positions that will be available on RCP&E. Additionally, RCP&E has complied with the notice requirements set forth in 49 C.F.R. §1150.32(e) by posting a list of the available positions at the workplaces of the DM&E employees working on the DM&E West Lines, serving a copy on the national offices of the labor unions of those employees, and filing its certification with the Board.⁵ As shown in the notice, RCP&E expects to hire approximately 180 employees for the various positions needed at start-up. If RCP&E is successful in growing the business, additional positions may become available. RCP&E believes that the wages and benefits that it is offering are substantially similar to those provided by DM&E to the employees working on the DM&E West Lines. RCP&E also expects that some of the potentially affected DM&E employees will be able to exercise their rights under their existing agreements with DM&E to move to other positions on the DM&E.

RCP&E has started accepting applications for employment. It has been conducting interviews and expects to make its hiring decisions as soon as possible to minimize uncertainty in the workforce.

1150.35(d) Certification of compliance with notice of intent requirements

RCP&E hereby certifies that on February 12, 2014, more than fourteen days prior to the filing of this Verified Notice of Exemption, it filed the Notice of Intent which contained the information required in 49 C.F.R. §1150.35(b), and served the Notice of Intent on the parties specified in 49 C.F.R. §1150.35(c). A copy of the Notice of Intent is attached hereto as Exhibit F.

⁴ The meetings were held in Brookings and Huron, South Dakota, on January 15, 2014, and in Pierre and Rapid City, South Dakota on January 16, 2014.

⁵ The certification was filed with the Board on January 28, 2014, more than 60 days before the effective date of this exemption. A copy is attached hereto as Exhibit E.

Caption Summary

A caption summary complying with the requirements of 49 C.F.R. §1150.34 is attached hereto as Exhibit G.

Labor Protection

Pursuant to 49 U.S.C. §10901(e), approval of this acquisition by a non-carrier may not be subjected to labor protection conditions.

Environmental and Historic Reports

Pursuant to 49 C.F.R. §1105.6(c)(2)(i), no environmental documentation should be required because this proceeding involves authority for an acquisition under 49 U.S.C. §10901 for continued operations that will not result in significant changes in operations that would exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (e)(5).

No historic report under 49 C.F.R. §1105.8(b)(1) should be required because the transaction merely involves an acquisition for continued rail operations, and further Board approval would be required in the event of a decision to discontinue or abandon any service. RCP&E has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

Service

As shown in the certificate of service, RCP&E is serving copies of this Verified Notice of Exemption on all of the parties that received copies of the Notice of Intent pursuant to 49 C.F.R. §1150.35(c), as well as other parties, or their counsel, that have filed notice of their intent to participate in this proceeding.⁶ The shippers on whom RCP&E is serving a copy of the Verified

⁶ RCP&E is serving the 10 largest shippers which represent approximately 75% of the volume of traffic during 2012, the last year for which RCP&E has complete traffic data.

Notice of Exemption include those shippers who are entitled to service under 49 C.F.R. §1150.33(h).

Conclusion

For the foregoing reasons, RCP&E requests that the Board issue a notice of exemption pursuant to 49 C.F.R. §1150.35.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: March 10, 2014

Attorneys for
Rapid City, Pierre & Eastern Railroad, Inc.

VERIFICATION

I, Allison M. Fergus, Secretary of Rapid City, Pierre & Eastern Railroad, Inc.,
verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am
qualified and authorized to file the foregoing document.

Executed on March 10, 2014.


Allison M. Fergus

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following by U.S. first class mail, postage pre-paid:

Terence M. Hynes
Sidley Austin LLP
1501 K Street, NW
Washington DC 20005

Hon. John Thune
United States Senate
511 Dirksen Senate Office Building
Washington, DC 20510

Hon. Dennis Daugard
Office of the Governor
500 E Capitol Ave
Pierre, SD 57501

Hon. Tim Johnson
United States Senate
136 Hart Senate Office Building
Washington, DC 20510

Darin Bergquist, Secretary
South Dakota Department of Transportation
Becker-Hansen Building
700 East Broadway Avenue
Pierre, SD 57501-2586

Hon. Kristi Noem
United States Congress
1323 Longworth House Office Building
Washington, DC 20515

Hon. Dave Heineman
Office of the Governor
P.O. Box 94848
Lincoln, NE 68509-4848

Nebraska Department of Roads
Attention: Rail & Public Transportation
Division
PO Box 94759
1500 Nebraska Highway 2
Lincoln, NE 68509-4759

Hon. Mark Dayton
Office of the Governor
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Tom Sorel, Commissioner
Minnesota Department of Transportation
Transportation Building, MS-100
395 John Ireland Boulevard
St. Paul, MN 55155-1899

Hon. Matt Mead
Office of the Governor
State Capitol
200 West 24th Street
Cheyenne, WY 82002-0010

John Cox, Director
Wyoming Department of Transportation
5300 Bishop Boulevard
Cheyenne, WY 82009-3340

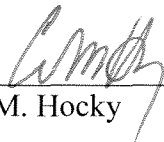
Erika A. Diehl-Gibbons
Assistant General Counsel
SMART – Transportation Division
(formerly United Transportation Union)
24950 Country Club Blvd., Ste. 340
North Olmsted, OH 44070-5333

Hon. Fred W. Romkema
State Capitol
500 East Capitol Ave.
Pierre, SD 57501

Joseph Guerrieri, Jr.
Carmen Parcelli
Guerrieri, Clayman, Bartos & Parcelli, PC
1900 M. Street, NW
Suite 700
Washington, DC 20036

Richard S. Edelman
O'Donnell, Schwartz and Anderson, P.C.
1300 L Street, N.W.
Suite 1200
Washington, DC 20005

and to the shippers shown on the attached list who represent approximately 75% of the volume of local traffic and traffic originating or terminating on the DM&E West Lines, and who include the shippers subject to the interchange commitment identified on Exhibit D.



Eric M. Hocky

Dated: March 10, 2014

Craig Havlik
Manager, Rail Transportation
American Colloid Co.
2870 Forbs Avenue
Hoffman Estates, IL 60192

Ken Applegate
Vice President, Transportation Services
Valero Marketing & Supply Co.
One Valero Way
San Antonio, TX 78249-1616

Dan Mack
Vice President, Transportation
CHS Inc.
5500 Cenex Drive
Inver Grove Heights, MN 55077-1733

Roger Krueger
Sr. Vice President, Grain
South Dakota Wheat Growers Assoc.
908 Lamont Street South
Aberdeen, SD 57401

Rick Jones
Manager, Transportation
Bentonite Performance Minerals LLC
3000 N. Sam Houston Parkway, East
Houston, TX 77032

Tom Kersting
President & CEO
South Dakota Soybean Processors
100 Caspian Avenue
P.O. Box 500
Volga, SD 57071

Tom Lien, CEO
Dakota Mill & Grain Inc.
P.O. Box 2340
Rapid City, SD 57709-2340

Randy Brown, Vice President - Grain
Harrold Grain Company
Harrold Terminal LLC
19723 321st Avenue
Harrold, SD 57536

Tim Luken, General Manager
Oahe Grain Corp.
300 Ash Avenue
Onida, SD 57564

Stevie Ambrose
Vice President, Sales & Logistics
GCC Dacotah Inc.
600 South Cherry Street, 10th Floor
Glendale, CO 80246

EXHIBIT A

DESCRIPTION OF ACQUIRED LINES AND RIGHTS

DM&E West Lines

1. Acquired Lines

(a) Huron Subdivision

Between Tracy, MN MP 231.5 and Huron⁷ MP 362.7, a distance of 131.2 miles

(b) Pierre Subdivision

Between Huron MP 362.7 and Ft. Pierre MP 484.4, a distance of 121.7 miles

(c) PRC Subdivision

Between Ft. Pierre MP 484.4 and Pressler Jct. MP 649.2, a distance of 164.8 miles

(d) Black Hills Subdivision

Between Dakota Jct., NE MP 0.4 and Bentonite/Colony, WY MP 174.7, a distance of 174.3 miles

(e) Crawford Subdivision⁸

Between Dakota Jct., NE MP 411.72± and Crawford, NE MP 432.5±, a distance of 20.78 miles

(f) Onida Subdivision

Between Onida MP 97.5 and Blunt MP 115.1, a distance of 17.6 miles

(g) Mansfield Subdivision

Between Redfield MP 39.7 and Mansfield MP 66.9, a distance of 27.2 miles

(h) Yale Spur⁹

Between Yale MP 145.0 and Huron MP 160.3±, a distance of 15.3 miles

2. Incidental Trackage Rights

(a) Over lines owned and operated of DM&E

Between Tracy, MN MP 231.5 and Mankato, MN MP 142.4, a distance of 89.1 miles

(b) Over lines operated by BNSF (as operator for State of South Dakota, as successor to Chicago, Milwaukee, St. Paul and Pacific Railroad Company), being assigned to RCP&E by DM&E, as successor to Chicago and Northwestern Transportation Company

Between Wolsey MP 70.50 and Aberdeen MP 777.04, a distance of 72.04 miles

(c) Over lines owned and operated by BNSF, being assigned to RCP&E by DM&E

Between Yale MP 148.5 and Watertown MP 90.72, and yard trackage at Huron MP 160.33 to the end of track, a distance of 58.65 miles

⁷ All end points are located in South Dakota unless otherwise noted.

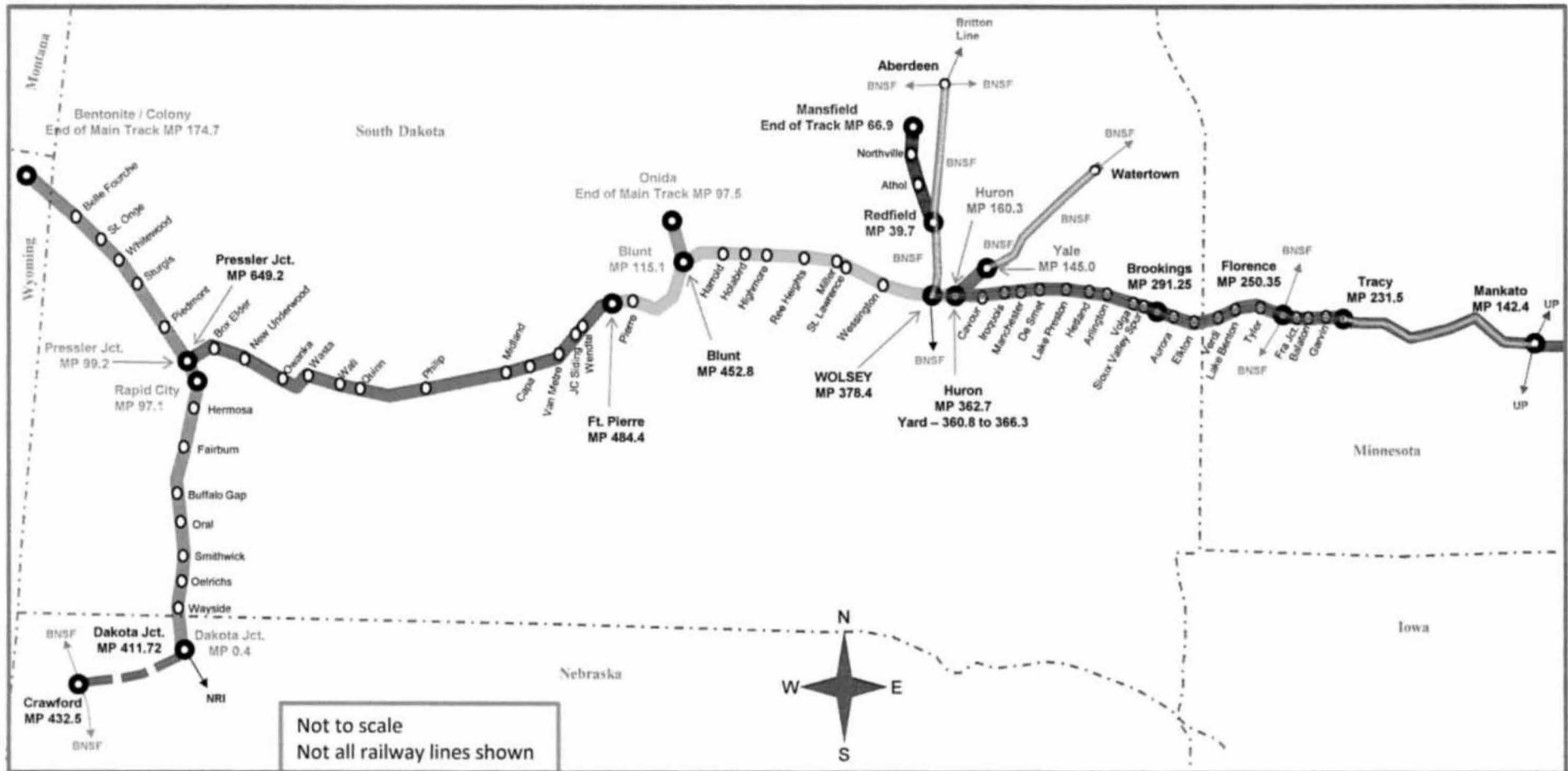
⁸ Leased to NNW.

⁹ Subleased from East Central Railroad Authority; sublease being assigned by DM&E.

EXHIBIT B

MAP

Main System Map for STB – Slide 1 of 2



Main System Map for STB – Slide 2 of 2

LEGEND

LINES	
	CP
	Huron
	Yale
	Mansfield
	Pierre
	Onida
	PRC
	Black Hills
	Crawford
NEWCO TRACKAGE RIGHTS	
	
-Tracy to Mankato	
-Wolsey to Aberdeen (BNSF)	
-Yale to Watertown (BNSF)	
CP TRACKAGE RIGHTS	
	
-Tracy to Florence	
-Tracy to Brookings	
-Tracy to Wolsey	

EXHIBIT C

FORM OF RESERVED COAL EASEMENT

(FORM OF EXHIBIT D TO DEED)

**Reserved Coal
Service Rights and Easements**

1. Reservation of Easement. Subject to the terms and conditions set forth below, Grantor excepts from the Real Property hereby quitclaimed, and reserves unto itself, and does not transfer an exclusive and unconditional easement (this “**Easement**”) in gross for a term of years commencing as of the date hereof and terminating on December 31, 2030, at 11:59 p.m. Chicago Time (subject to Section 5, the “**Term**”), over, under and on the Real Property, including all facilities constructed thereon as improved from time to time, for the Exclusive Uses.

“**Exclusive Uses**” means the following purposes in connection with the provision of common carrier coal service by Grantor (which common carrier coal service rights and obligations shall automatically transfer from Grantor to Grantee upon the expiration of the Term):

(a) accessing, installing, placing, altering, repairing, renewing, replacing, rehabilitating, improving, constructing, operating and maintaining new and existing rail tracks, rails, ties, ballast, track material, structures, improvements and facilities for hauling, stockpiling, transferring, processing, or storing coal from any source on or along the Real Property, including other related capital improvements to the Real Property to support the foregoing (all of the foregoing together with any additional real property acquired by Grantor for the foregoing, is referred to as “**Coal Easement Facilities**”); and

(b) undertaking the “**PRB Expansion**,” consisting of any of (i) the construction and operation of a new line of railroad that extends between any point on the Real Property and coal mines in the Powder River Basin area of Wyoming or Montana,

as defined in STB Finance Docket No. 33407 (the “**New Construction**”) and improvements or rehabilitation to the rail lines of the Grantee reasonably relating thereto as set forth in paragraph (a) above, (ii) the entering into of mine access agreements related to coal from in and around the Powder River Basin area of Wyoming and Montana (“**PRB Coal**”) in connection with the Real Property, and (iii) the construction of any rail lines that would connect or interchange the Real Property with (A) any New Construction or (B) any rail line or transportation facility of a third party that ships PRB Coal or serves mines producing PRB Coal;

(c) whether or not Grantor undertakes the PRB Expansion, transporting coal from any source on the Real Property; and

(d) the exclusive right to disturb the right-of-way or move earth for any of the foregoing purposes.

Grantor’s exercise of its Exclusive Use to transport coal on the Real Property shall only be pursuant to the Haulage Agreement (identified in Exhibit B of this Quit Claim Deed) or such other written agreement as may be mutually agreed upon by Grantor and Grantee.

2. Exclusive Use Rights. Without limiting the generality of this Easement reserved herein, this Easement reserved by Grantor shall be exclusive to Grantor, and shall exclude Grantee as well as third parties from using the Real Property for the Exclusive Uses (subject to Grantee’s right and obligation to transport coal for Grantor under the Haulage Agreement (identified in Exhibit B of this Quit Claim Deed) or other written agreement as may be mutually agreed upon between Grantor and Grantee, including any agreement necessary to effect the provisions of this Easement and subject to the other provisions of this Easement), as follows, in each case, during the Term:

(a) This Easement reserves to Grantor the exclusive right and obligation, including common carrier rights and obligations, to transport coal by rail to, from or over the Real Property (which common carrier right and obligation to transport coal shall automatically transfer from Grantor to Grantee upon the expiration of the Term).

(b) This Easement reserves to Grantor the exclusive right (but not the obligation) to commence and complete (including the exclusive right to make any decision regarding the commencement, design, construction, or completion of) the New Construction and the PRB Expansion.

(c) Subject to any Permitted Encumbrances affecting the Real Property as of the date of this Quit Claim Deed (“**Existing Encumbrances**”), the easement rights reserved herein shall be exclusive to Grantor and its agents, licensees, contractors, successors and assigns.

(d) Grantee shall not construct or operate and shall not grant to any other party the right to construct or operate any Coal Easement Facilities on, over, under or through the Real Property or any portion of the Real Property without the prior written consent of Grantor, which consent Grantor may grant, withhold, condition or delay in its sole discretion. Notwithstanding the foregoing, Grantor shall not unreasonably withhold, condition or delay its consent to any proposed exercise or grant of rights for rehabilitating, improving, constructing, operating and maintaining new and existing rail tracks and facilities for purposes other than hauling, stockpiling, transferring, processing, or storing coal (“**Subsequent Encumbrances**”), provided such Subsequent Encumbrances do not materially interfere with Grantor’s Exclusive Use. In no event shall Grantor’s consent be deemed to have been granted, nor shall Grantor’s authority to

grant, withhold, condition or delay such consent be deemed to have been waived, except in writing by Grantor.

3. Unobstructed Access. Subject to any Existing Encumbrances and Subsequent Encumbrances, the Haulage Agreement and any other agreements between Grantor and Grantee, Grantor shall have rights to access, ingress and egress over and across the Real Property to the extent necessary to access the Coal Easement Facilities for the purpose of rehabilitating, improving, altering, relocating, constructing, installing, inspecting, maintaining, repairing, replacing or removing any Coal Easement Facilities (including any improvements to the Railroad Facilities or Grantee's lines incidental to the Coal Easement Facilities, "**Coal Facilities Work**"), including emergency maintenance and repairs, for the purpose of planning and designing Coal Facilities Work, or any other purpose consistent with the terms of this Easement, provided that Grantor (a) shall comply with any additional requirements set forth in other provisions of this Easement, (b) shall provide Grantee with at least five (5) business' days written notice (except in the event of an emergency) before entering onto the Real Property, (c) shall not unreasonably interfere with Grantee's use of the Real Property for railroad purposes, or any other purpose for which the Real Property may be used, including, without limitation, Grantee's common carrier rail operations, (d) shall not unreasonably interfere with the rights of any third parties under any Existing Encumbrances or any Subsequent Encumbrances, (e) shall use its best efforts not to disturb or damage any railbed, track, ties, pipe or any other improvements, structures or facilities or personal property located upon or under the Real Property (the "Railroad Facilities"), and shall restore, at Grantor's sole cost and expense, any Railroad Facilities Grantor does disturb or damage, (f) at Grantor's sole cost and expense, after completion, remove from the Real Property all personal property and equipment used in the construction, maintenance or repair work and

restore the Real Property to at least the condition that existed prior to such construction, maintenance or repairs, and (g) shall comply with Grantee's standard requirements for entry onto its property, including entering into Grantee's customary right of entry form and any other customary undertakings in connection therewith, and the provision of insurance.

4. Construction and Alteration of Coal Easement Facilities. Grantor shall have the right, at its sole cost and expense, to undertake Coal Facilities Work that shall not unreasonably interfere with Grantee's use of the Real Property for railroad purposes or any other purpose for which the Real Property may be used and shall not unreasonably interfere with the rights of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise, as follows:

(a) Grantor shall notify Grantee in writing, with preliminary plans and specifications for the proposed Coal Facilities Work.

(b) At Grantor's expense, Grantor and Grantee shall cooperate in developing final plans and specifications, a budget, and a schedule for completion of the proposed Coal Facilities Work that are reasonably acceptable to Grantor and Grantee.

(c) Grantor shall perform or contract for performance of such Coal Facilities Work, on the terms Grantor would perform the work on its own behalf on its own property, with its own forces or through solicitation of proposals or bids from third parties reasonably acceptable to Grantee.

(d) Before Grantor commences any Coal Facility Work, Grantor shall provide Grantee with reasonable evidence that Grantor has made financial arrangements to complete such work in accordance with the approved plans and schedule.

(e) Grantor will reimburse Grantee for reasonable costs and expenses incurred by Grantee in connection with Grantee's design, construction and monitoring of Coal Facility Work or Grantee's cooperation with Grantor in connection with Grantor's design, construction and monitoring of Coal Facility Work.

Except to the extent required by law, regulation or court order, Grantee shall not disclose or furnish to any third party (other than its representatives or any regulatory body or other governmental authority) any copy of any plans for any Coal Easement Facilities without the consent of Grantor, which consent will not be unreasonably withheld, conditioned or delayed.

Grantor and Grantee shall reasonably cooperate with each other in structuring any expenditures on improvements to the Property pursuant to this Section 4 to minimize any adverse tax consequences to Grantee or Grantor or any reimbursement therefore. If Grantee is ever required to include for purposes of federal or state income tax or any other tax (including property and ad valorem taxes) the value of, or any income or gain attributable to, all or any portion of the Coal Easement Facilities, then Grantor shall pay Grantee an amount equal to the additional taxes resulting therefrom.

5. Ownership of Coal Easement Facilities. All Coal Easement Facilities (but not any incidental improvements to the Railroad Facilities or Grantee's lines and not any real property acquired by Grantor in connection with the Exclusive Uses) will be the sole property of Grantor during the term of this Easement. Any real property acquired and paid for by Grantor in connection with the Exclusive Uses will be owned by Grantee during and following expiration of the term of this Easement. Upon expiration of this Easement (at the end of the term or earlier termination of this Easement by Grantor), Grantor shall advise Grantee of the depreciated net book value of the Coal Easement Facilities other than real property acquired by Grantor during

the Term and incidental improvements to the Railroad Facilities or Grantee's lines. To the extent the depreciated net book value of the Coal Easement Facilities (other than real property) at the time of such expiration (including any extension thereto) or termination is no more than \$10.00, Grantee shall not be obligated to pay Grantor any amount for such Coal Easement Facilities, and the Easement will terminate. To the extent the depreciated net book value of the Coal Easement Facilities (other than real property) is more than \$10.00, Grantee shall have the option to either extend the term of the Easement (until the time that such value is no more than \$10.00) or purchase the Coal Easement Facilities for an amount equal to the depreciated net book value (other than real property) thereof. If Grantee elects to extend the term of the Easement, it shall be permitted at any time thereafter to terminate the Easement by providing written notice to Grantor of such termination and paying Grantor an amount equal to the depreciated net book value at the time such termination notice is provided. "Depreciated net book value" means an amount equal to any expenditures on the Coal Easement Facilities, reduced, for purposes of this Easement, by depreciation calculated based on Grantor's GAAP accounting treatment at the time the construction occurs, from the date of the expenditure to the date of expiration or termination.

Grantor and Grantee shall reasonably cooperate with each other in structuring any reimbursement pursuant to this Section 5 to minimize any adverse tax consequences to Grantee or Grantor or any reimbursement therefore. If Grantee is ever required to include for purposes of federal or state income tax or any other tax (including property and ad valorem taxes) the value of, or any income or gain attributable to, all or any portion of the Coal Easement Facilities, then Grantor shall pay Grantee an amount equal to the additional taxes resulting therefrom.

Grantee shall pay Grantor any such amounts within 30 days after Grantee exercises any right that would require payment pursuant to the preceding paragraph of this Section 5. Such 30

day period, however, shall be freely extended as reasonably necessary to resolve any dispute or ambiguity in the amount to be paid or method of payment

Upon payment in full, Grantor shall quit claim (and take any other action necessary to transfer ownership of) its interests in the Coal Easement Facilities to Grantee.

6. Maintenance of Coal Easement Facilities. After completion of any construction described in Section 4, at Grantee's sole cost and expense, Grantee shall maintain and repair all Coal Easement Facilities (including any additions thereto pursuant to Section 4 and any improvements to the Railroad Facilities incidental to the Coal Easement Facilities) in good condition and repair and in accordance with all applicable laws, regulations or ordinances, and with the specifications and standards established by Grantee for its railroad facilities.

7. Mechanic's and Other Liens. Grantor shall not suffer any mechanic's or other lien or encumbrance to be filed against the Real Property by reason of any work, labor, services or materials performed or furnished at Grantor's, its successors', assigns' or licensees' request or otherwise on behalf of or for the benefit of Grantor, its successors, assigns or licensees or any third party, including without limitation any financing source, in connection with construction, operation, or maintenance of the Coal Easement Facilities or otherwise. If such lien or encumbrance shall at any time be filed, Grantor shall forthwith, at Grantor's sole cost and expense, promptly cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, in a manner acceptable to Grantee, but Grantor shall have the right to contest any and all such liens or encumbrances, provided that Grantor, at Grantor's sole cost and expense, shall first deposit with Grantee a bond or other security satisfactory to Grantee in such amounts as Grantee shall require and provided further, that Grantor shall thereafter diligently and continuously proceed to cause such lien or encumbrance to be removed

and discharged. If Grantor shall fail to cause such lien or encumbrance to be discharged within thirty (30) days after being notified of the filing thereof, Grantee may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Grantee, and the amount so paid by Grantee and all costs and expenses incurred by Grantee in procuring the discharge of such lien or encumbrance, including reasonable attorney's fees and fees and expenses of other agents, shall be reimbursed by Grantor to Grantee on demand.

8. Use of Real Property by Grantee. Grantee shall have the right to use the Real Property in any manner not inconsistent with this Easement. Grantor expressly agrees it will not, through its use of the privileges and authority granted herein, unreasonably interfere with Grantee's operations on the Real Property or the operations of third parties using the Real Property, or any portion thereof or without Grantee's permission, unreasonably interfere with the rights or privileges of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise. Nothing herein shall be construed to limit the right of Grantee to make repairs, alterations, changes, improvements, or additions determined by Grantee to be in its interests; provided such repairs, alterations, changes, improvements or additions do not unreasonably interfere with Grantor's use of the Coal Easement Facilities.

Grantee may at any time, for any reason, and in its sole discretion, seek Surface Transportation Board (“STB”) authority (or an exemption therefrom) to abandon freight service, over all of, or any segment of, the Real Property. Grantor agrees to cooperate with, and not to directly or indirectly oppose, Grantee's abandonment efforts, and to seek abandonment or discontinuance authority for any common carrier or trackage rights applicable to the line for which Grantee is seeking abandonment or discontinuance. Grantor shall have the option to

purchase any segment for which Grantee is seeking abandonment, either through the STB's offer of financial assistance procedures or outside of such procedures, for net liquidation value as determined under the standards applied by the STB at that time. In connection with such purchase, Grantor shall be responsible for compliance with applicable STB requirements.

9. Indemnification. Grantor does hereby indemnify and hold harmless Grantee and Grantee's owners, officers, directors, managers, employees, contractors, agents, representatives, licensees and invitees from and against any and all liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments arising from, in connection with or relating to, acts or omissions of, or use of the Real Property by, Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees related to the Coal Easement Facilities or Railroad Facilities or otherwise related to the Real Property, including but not limited to, costs related to any personal injury, death or property damage occurring as a result of such acts or omissions or use and tax liabilities or obligations to the extent arising from Grantor's repairs, alterations, changes, improvements, or additions related to the Real Property, except to the extent such liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments relate to or arise from the willful misconduct or gross negligence of Grantee or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees, provided Grantor shall not be required to provide indemnification for any of the foregoing if settled or compromised by Grantee without Grantor's prior written consent (not to be unreasonably withheld).

Grantee does hereby indemnify and hold harmless Grantor and Grantor's officers, directors, managers and employees from and against any and all liabilities, damages, costs,

expenses, losses, actions, causes of action, suits, claims or judgments to the extent arising from, in connection with or relating to, grossly negligent acts or omissions of Grantee or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees (other than, for the avoidance of doubt, Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees) related to the Coal Easement Facilities, including but not limited to, costs related to any personal injury, death or property damage occurring as a result of such gross negligence, except to the extent such liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments relate to or arise from the willful misconduct or negligence of Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees. Grantee shall be entitled to assume the defense of any of the foregoing, and Grantee shall not be required to provide indemnification for any of the foregoing if settled or compromised by Grantor without Grantee's prior written consent (not to be unreasonably withheld).

Notwithstanding the foregoing, the parties mutually waive any claims for indirect, consequential, punitive or exemplary damages, including loss of profits or income.

10. Restrictive Covenants. Grantee for itself and its successor and assigns, covenants and agrees that prior to the expiration of the Term, except pursuant to the Haulage Agreement – Coal, this Reserved Coal Service Rights and Easements and the other agreements entered into in connection herewith, Grantee shall not (i) directly or indirectly take any action which results in any Milestone Payment becoming due and payable, (ii) hold itself out as a “transferee, successor or assign” of Grantor or SOO Line Holding Company, as those terms are used in the DM&E Merger Agreement, or make any public statement or take any position in litigation that Grantee

and its successors and assigns or any of their Affiliates is such a “transferee, successor or assign” of Grantor or SOO Line Holding Company or (iii) take any action in violation of Section 5.08 of the Transaction Agreement. “**Milestone Payments**” means “Construction Milestone Payments” and “Coal Milestone Payments” that may be due under, and as such terms are defined in the DM&E Merger Agreement and similar payments that may be due under the Amended and Restated Dakota, Minnesota & Eastern Railroad Corporation Warrant dated November 4, 2005 and Effective October 3, 2007 between Grantor and Kevin V. Schieffer (as in effect on January 2, 2014) and the First Amendment to the Dakota, Minnesota & Eastern Railroad Corporation Director Change In Control Agreement (as in effect on January 2, 2014) entered into in connection with the DM&E Merger Agreement. “**DM&E Merger Agreement**” means the Agreement and Plan of Merger dated as of September 4, 2007 among Soo Line Holding Company, Soo Line Properties Company, Canadian Pacific Railway Company and Grantor as in effect on January 2, 2014.

11. Enforcement of Restrictive Covenants. Grantee acknowledges and agrees that Grantor would suffer irreparable damage in the event that Grantee failed to observe, perform or enforce any of the Restrictive Covenants, or any other covenants, restrictions and agreements of this Easement in accordance with their specific terms. Grantee accordingly agrees that Grantor and its Affiliates shall be entitled to seek an injunction or injunctions to specifically enforce the performance of this Easement in accordance with its terms. In addition to the right to seek specific performance of this Easement, Grantor and its Affiliates shall have the right to seek any of its direct damages and reasonable attorney fees, including without limitation, any amounts paid or due and owing by Grantor to any third party as a result of a breach of the Restrictive Covenants or any other covenants, restrictions and agreements of this Easement, including

without limitation (a) Milestone Payments which become due as a result of Grantee's breach of this Easement and (b) 100% of all linehaul revenue received by Grantee derived from transporting coal by rail to, from or over the Real Property in violation of this Easement, or any other revenue received by Grantee derived from an Exclusive Use in violation of this Easement at any time during the term of this Easement. For the avoidance of doubt, any actions taken directly or indirectly by Grantor that result in any Milestone Payment becoming due and payable shall not be a breach of this Easement by Grantee.

12. Default. In the event either party believes that the other party has breached any of the covenants or agreements contained herein, the party asserting the default shall notify the other party of said breach in writing. Should a party fail to correct any breach or condition, other than the prohibition against use of the Real Property for Exclusive Uses or any Restrictive Covenant, within 10 days after receiving written notice of default, then the non-defaulting party may pursue any remedy available at law or equity other than termination; provided, however, in the case of a condition violated, other than the prohibition against use of the Real Property for Exclusive Uses or any Restrictive Covenant, that cannot be cured with due diligence within said 10 day period, the defaulting party shall be entitled to such additional time to correct the condition as may be reasonably necessary, but no more than 60 additional days, provided that the defaulting party gives the other party written notice of its need for additional time, prior to the expiration of the initial 10 day period, and provided that the defaulting party shall not be entitled to the benefit of the additional 60 day period if the default unreasonably interferes with the use of the Real Property for railroad purposes or unreasonably interferes with rights of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise.

Notwithstanding the foregoing, if the event of default consists of Grantee using or allowing others to use the Real Property for Exclusive Uses or a breach of any Restrictive Covenant, Grantee shall be deemed to be in default immediately on occurrence of the breach, and Grantor shall be entitled to exercise any remedy available at law or in equity immediately upon discovery of the breach.

In all events of default, the party asserting the default shall have available all rights and remedies provided at law or in equity (provided Grantee shall not have the right to terminate this Easement under any circumstances), and defaulting party shall not interpose the defense that specific performance should not be available on the basis of the availability of an adequate remedy at law.

13. Grantee's Covenants Run With Land. This Easement constitutes an easement in gross. The burdens imposed on the Grantee, as owner of the fee interest in the Real Property, shall run with the land and be binding upon future owners of the Real Property or any interest therein for the Term of this Easement. The rights and obligations of Grantor shall be binding on Grantor and its successors and permitted assigns. Grantor shall not assign this Easement or its rights or obligations under this Easement without any necessary regulatory approvals. Subject to such regulatory approvals, Grantor may assign its rights and obligations under this Easement to an entity controlled by, controlling or under common control with Grantor, provided that Grantor shall provide Grantee with written notice of any such assignment within five (5) days after such assignment occurs; provided, no such assignment by Grantor shall relieve Grantor of any of its obligations under this Easement.

14. Notices. All notices, requests, demands, consents and other communications required or permitted under this Easement shall be in writing and shall be deemed to have been

duly and properly given on the date of service if delivered personally, or, if mailed, on the third business day after such notice is deposited in a receptacle of the United States Postal Service, registered or certified mail, first class postage prepaid, return receipt requested, or on the first business day following deposit with a nationally recognized overnight courier service (e.g., FedEx), postage prepaid, in any event addressed appropriately as follows:

If to Grantee: Rapid City, Pierre & Eastern Railroad, Inc.
 c/o Genessee & Wyoming Inc.
 20 West Avenue
 Darien, Connecticut
 Attention:General Counsel
 Facsimile: (203) 656-1148

If to Grantor: Dakota, Minnesota & Eastern Railroad Corporation
 Suite 700, 120 S. 6th Street
 Minneapolis, MN 55402
 Facsimile No.: 612 904 5981

With a copy to: James Clements, AVP Commercial Performance
 Canadian Pacific Railway
 Building 1
 7550 Ogden Dale Road SE
 Calgary, AB T2C 4X9 Canada

with a copy to:

Paul Guthrie, Esq.
Canadian Pacific Railway
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9 Canada

with a copy to:

Real Estate Department
Canadian Pacific Railway
900 Canadian Pacific Plaza
120 South Sixth Street
Minneapolis, Minnesota 55402
Tele: (612) 904-6143
Real Estate - US@cpr.ca

Either party may change its address for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

15. Amendment. This Easement shall not be amended except by written agreement executed by Grantor and Grantee, or their successors and permitted assigns, which agreement shall be duly recorded in the land records where the Real Property is located.

16. No Dedication. The provisions of this Easement shall not be deemed to constitute a dedication for public use or to create any right in the general public.

17. Counterparts. This Easement may be executed in counterparts, each of which may be deemed an original but together shall constitute but one and the same instrument.

18. Entire Agreement. This Easement, together with the agreements referenced herein, constitutes the entire agreement between the Parties relating to its subject matter and, except as provided herein, no other representations, warranties or agreements, oral or written, will be binding on the Parties with respect to such subject matter.

[signatures on next page]

By _____
(signature)

(printed name)

Its _____
(title)

- 18 -

EXHIBIT D

SHIPPERS SUBJECT TO INTERCHANGE COMMITMENT

American Colloid Co.

Bentonite Performance Materials LLC

EXHIBIT E

**CERTIFICATION OF COMPLIANCE WITH
REGULATIONS RELATING TO
NOTICE OF INTENT TO DM&E EMPLOYEES**

CLARK HILL | THORP REED

Eric M. Hocky
T 215.640.8523
F 215.640.8501
Email: ehocky@clarkhill.com

235362
ENTERED
Office of Proceedings
January 28, 2014
Part of
Public Record

January 28, 2014

Clark Hill Thorp Reed
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103
T 215.640.8500
F 215.640.8501
clarkhillthorpreed.com

VIA ELECTRONIC FILING

Cynthia T. Brown
Chief, Section of Administration - Office of
Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

**Re: Rapid City, Pierre & Eastern Railroad, Inc. -
Acquisition and Operation Exemption -
Dakota, Minnesota & Eastern Railroad Corporation
STB Docket No. FD 35799
Certificate of Compliance with 49 CFR 1150.32(e)
*(contains color images)***

Dear Ms. Brown:

Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E") hereby certifies that as of January 27, 2014, the enclosed Notice was posted at the workplaces of the employees on the DM&E West Lines that RCP&E intends to acquire from Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"). A certificate of DM&E evidencing the posting and the locations posted is also enclosed.

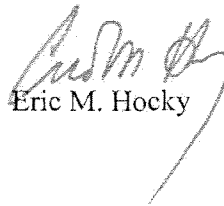
RCP&E also certifies that it has served a copy of this letter, including the Notice, on the national offices of all labor unions with employees on the DM&E West Lines as shown on the attached certificate of service.

Cynthia T. Brown
January 28, 2014
Page 2

Please let me know if you have any questions regarding this filing. Thank you for your assistance.

Respectfully,

CLARK HILL PLC

A handwritten signature in dark ink, appearing to read "Eric M. Hocky", with a long, sweeping underline that extends to the right.

EMH/dml

Encls.

cc: All persons on the attached certificate of service

Cynthia T. Brown
January 28, 2014
Page 3

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2014, copies of the foregoing letter, certificate of posting and Notice were served on the following persons by the method indicated:

By U.S. mail, postage prepaid:

Malcom B. Futhey, Jr
International President
United Transportation Union
24950 Country Club Blvd., Ste. 340
North Olmsted, OH 44070-5333

Dan Pickett
President
Brotherhood of Railroad Signalmen
917 Shenandoah Shores Road
Front Royal, VA 22630

Freddie N. Simpson
President
Brotherhood of Maintenance of Way
Employees Division of the IBT
41475 Gardenbrook Road
Novi, MI 48375-1328

R. Thomas Buffenbarger
International President
The International Association of Machinists and Aerospace Workers
9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

By electronic mail:

Terence M. Hynes
Sidley Austin LLP
1501 K Street, NW
Washington DC 20005
thynes@sidley.com



Eric M. Hocky

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35799

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION -
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

**NOTICE OF INTENT DIRECTED TO EMPLOYEES OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

Pursuant to the regulations of the Surface Transportation Board (the "Board") at 49 CFR §1150.32(e), Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E"), a newly formed subsidiary of Genesee & Wyoming Inc. ("GWI"), hereby gives notice of its intent to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific ("DM&E"), approximately 670 miles of railroad representing all of DM&E's rail lines west of Tracy, MN, together with incidental trackage rights, all as more fully described on Exhibit A attached hereto. On or after February 10, 2014, RCP&E intends to file a notice of intent to seek an exemption to acquire the lines pursuant to 49 CFR § 1152.35. RCP&E anticipates commencing operations as early as the second or third week of April, 2014, subject to the receipt of all necessary regulatory approvals and satisfaction of the other conditions of closing.

As a result of the transaction, RCP&E preliminarily estimates that it will be hiring for the positions shown on the list attached as Exhibit B. The number and types of positions listed represent RCP&E's current good faith estimate of the positions it expects to have available. The number of positions may change.

RCP&E employees will be provided with railroad retirement, medical insurance, holidays, vacation and other benefits consistent with the benefits currently provided to employees of other railroad subsidiaries of GWI.

RCP&E is an equal opportunity employer. RCP&E employees will be selected based upon their experience and suitability of the jobs that may be offered. Successful applicants will be required to pass a standard background check, pre-employment drug and alcohol screen, complete a medical questionnaire, and take a physical exam. Employees subject to Federal Railroad Administration certification qualifications will be required to provide proof that their certifications are current.

Any DM&E employee interested in obtaining further information concerning positions that RCP&E may have available, should contact Matthew Adams, HR Director, at RCPEapplications@gwrr.com.

Applications for employment should be made by sending a cover letter and resume stating the applicant's experience, in chronological order, and providing references for any employment held during the last five (5) years and any rail industry employment held at any time. The applicant may apply for multiple job opportunities and must be sure to list those job opportunities, in order of interest, in his/her cover letter. The applicant must be available to start work by the seventh day prior to the effective date of the acquisition.

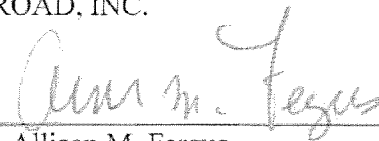
Cover letters and resumes should be sent by regular or electronic mail to Rapid City, Pierre & Eastern Railroad, Inc. as follows:

Matthew Adams
HR Director
Rapid City, Pierre & Eastern Railroad, Inc.
166 E. 14000 Street, Suite 140
Draper, UT 84020
RCPEapplications@gwrr.com

RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.

Dated: January 23, 2014

By:



Allison M. Fergus
Secretary

EXHIBIT A
DM&E WEST LINES

DM&E West Lines

1. Acquired Lines

(a) Huron Subdivision

Between Tracy, MN MP 231.5 and Huron¹ MP 362.7, a distance of 131.2 miles

(b) Pierre Subdivision

Between Huron MP 362.7 and Ft. Pierre MP 484.4, a distance of 121.7 miles

(c) PRC Subdivision

Between Ft. Pierre MP 484.4 and Pressler Jct. MP 649.2, a distance of 164.8 miles

(d) Black Hills Subdivision

Between Dakota Jct., NE MP 0.4 and Bentonite/Colony, WY MP 174.7, a distance of 174.3 miles

(e) Crawford Subdivision²

Between Dakota Jct., NE MP 411.72± and Crawford, NE MP 432.5±, a distance of 20.78 miles

(f) Onida Subdivision

Between Onida MP 97.5 and Blunt MP 115.1, a distance of 17.6 miles

(g) Mansfield Subdivision

Between Redfield MP 39.7 and Mansfield MP 66.9, a distance of 27.2 miles

(h) Yale Spur³

Between Yale MP 145.0 and Huron MP 160.3±, a distance of 15.3 miles

2. Incidental Trackage Rights

(a) Over lines owned and operated of DM&E

Between Tracy, MN MP 231.5 and Mankato, MN MP 142.4, a distance of 89.1 miles

(b) Over lines operated by BNSF (as operator for State of South Dakota, as successor to Chicago, Milwaukee, St. Paul and Pacific Railroad Company), being assigned to RCP&E by DM&E, as successor to Chicago and Northwestern Transportation Company

Between Wolsey MP 70.50 and Aberdeen MP 777.04, a distance of 72.04 miles

(c) Over lines owned and operated by BNSF, being assigned to RCP&E by DM&E

Between Yale MP 148.5 and Watertown MP 90.72, and yard trackage at Huron MP 160.33 to the end of track, a distance of 58.65 miles

¹ All end points are located in South Dakota unless otherwise noted.

² Leased to NNW.

³ Subleased from East Central Railroad Authority; sublease being assigned by DM&E.

EXHIBIT B
ESTIMATED POSITIONS AVAILABLE

RCPE Job List

Dept	New Job Title	Total by Job	Huron	Rapid City	Pierre	Brookings	Philip	Belle Fourche	Wall	Miller	Draper	FLSA	Grade	Min\$	Mid\$	Max\$	Bonus
G&A	General Manager II	1		1								E	12	\$78,000	\$109,200	\$140,400	20%
G&A	Director, Sales & Marketing	1		1								E	11	\$66,700	\$93,300	\$120,100	15%
G&A	Director, Engineering	1		1								E	11	\$66,700	\$93,300	\$120,100	15%
G&A	Director, Safety & Compliance	1		1								E	11	\$66,700	\$93,300	\$120,100	15%
G&A	Assistant General Manager	1	1									E	10	\$57,000	\$79,700	\$102,600	12%
G&A	Manager, Sales & Marketing	1	1									E	10	\$57,000	\$79,700	\$102,600	12%
G&A	Manager, Human Resources	1									1	E	10	\$57,000	\$79,700	\$102,600	12%
G&A	Manager, Training	1	1									E	9	\$48,700	\$68,100	\$87,700	10%
G&A	Accountant	1		1								E	8	\$42,000	\$58,700	\$75,800	5%
G&A	IT Support Technician	1		1								E	7	\$37,500	\$50,800	\$63,800	5%
G&A	Office Manager	1		1								E	7	\$37,500	\$50,800	\$63,800	5%
G&A	Clerk	2	1	1								NE	5	\$13.85	\$18.65	\$23.56	5%
	13		1	2	0	0	0	0	0	0	1						
Trans	Trainmaster	6	3	3								E	9	\$48,700	\$68,100	\$87,700	10%
Trans	Engineer	41	20	16	5							NE	7	\$18.03	\$24.33	\$30.67	5%
Trans	Conductor	42	21	16	5							NE	6	\$15.82	\$21.30	\$26.92	5%
	89		44	35	10	0	0	0	0	0	0						
MoW	Roadmaster	2		1		1						E	9	\$48,700	\$68,100	\$87,700	10%
MoW	Supervisor, Signals	1		1								E	9	\$48,700	\$68,100	\$87,700	10%
MoW	Supervisor, Structures	1				1						E	9	\$48,700	\$68,100	\$87,700	10%
MoW	Signal Maintainer	5	1	2		1	1					NE	7	\$18.03	\$24.33	\$30.67	5%
MoW	Foreman, MOW	10	1	1	1	2	1	1	2	1		NE	7	\$18.03	\$24.33	\$30.67	5%
MoW	Track Inspector	7	2	2	1	1	1					NE	6	\$15.82	\$21.30	\$26.92	5%
MoW	Track Machine Operator	4				2			2			NE	6	\$15.82	\$21.30	\$26.92	5%
MoW	Welder	2	2									NE	6	\$15.82	\$21.30	\$26.92	5%
MoW	Track Laborer	17	2	4	2	3	2	1	2	1		NE	5	\$13.85	\$18.65	\$23.56	5%
MoW	Bridge Foreman	1		1								NE	5	\$13.85	\$18.65	\$23.56	5%
MoW	Bridge Laborer	3		3								NE	5	\$13.85	\$18.65	\$23.56	5%
	53		8	15	4	11	5	2	6	2	0						
Mech	Manager, Mechanical	1	1									E	9	\$48,700	\$68,100	\$87,700	10%
Mech	Supervisor, Mechanical	3	2	1								NE	8	\$18.03	\$24.33	\$30.67	5%
Mech	Mechanical Foreman	2	2									NE	7	\$18.03	\$24.33	\$30.67	5%
Mech	Mechanic	7	6	1								NE	6	\$15.82	\$21.30	\$26.92	5%
Mech	Electrician	5	4	1								NE	6	\$15.82	\$21.30	\$26.92	5%
	18		15	3	0	0	0	0	0	0	0						
Car	Mechanical Foreman	1		1								NE	7	\$18.03	\$24.33	\$30.67	5%
Car	Car Repairman	6	4	2								NE	6	\$15.82	\$21.30	\$26.92	5%
	7		4	3	0	0	0	0	0	0	0						
	Total Headcount	180	75	64	14	11	5	2	6	2							

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35799

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION -
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

CERTIFICATE OF POSTING

The attached Notice of Intent Directed to Employees was posted at Rapid City, South Dakota, Huron, South Dakota, Pierre, South Dakota, Miller, South Dakota, Belle Fourche, South Dakota, Brookings, South Dakota and Tracy, Minnesota.

I, Susan C. Bobb, Managing Director, Human Resources, U.S. of Dakota, Minnesota & Eastern Railroad Corporation, certify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on January 27, 2014.



Susan C. Bobb

EXHIBIT F

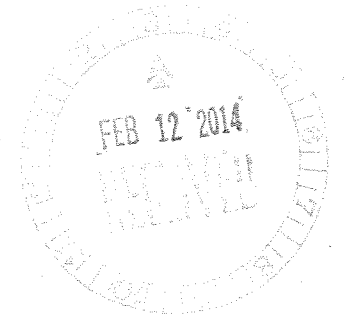
NOTICE OF INTENT

235456

ENTERED
Office of Proceedings
February 12, 2014
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35799



**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
-- ACQUISITION AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

**NOTICE OF INTENT TO FILE NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1150.35**

(contains color images)

ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: February 12, 2014

Attorneys for
Rapid City, Pierre & Eastern Railroad, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35799

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
-- ACQUISITION AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

**NOTICE OF INTENT TO FILE NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1150.35**

Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E" or "Applicant"), a non-carrier, hereby files this Notice of Intent pursuant to 49 C.F.R. §1150.35(a), and states that, on or after February 27, 2014, it intends to file a verified notice of exemption to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific Railway ("DM&E"), and to operate, approximately 670 miles of rail lines located west of Tracy, Minnesota (the "DM&E West Lines"). RCP&E will also be acquiring incidental trackage rights over lines of DM&E and over connecting lines of other carriers. The rights being acquired are more fully described in the summary of the transaction included in the Required Information (see pp. 3-4 below). The rail lines to be acquired and/or operated are shown on the attached Exhibit A, and are shown on the map attached as Exhibit B. The projected revenues of RCP&E will make it a Class II rail carrier once it commences operations.

RCP&E is a wholly-owned subsidiary of Genesee & Wyoming Inc. ("GWI"), a non-carrier holding company. GWI's control of RCP&E when it becomes a carrier, together with the other carriers in GWI's corporate family, will be the subject of a notice of exemption to be filed in STB Docket No. FD 35800.

Required Information

In accordance with the provisions of 49 C.F.R. §1150.35, and §1150.33 as incorporated therein, RCP&E submits the following information:

1150.33(a) Full name and address of Applicant.

Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020

1150.33(b) Name, address and telephone number of representative of Applicant.

Eric M. Hocky
Clark Hill PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

1150.33(c) Statement that agreement has been reached.

RCP&E and DM&E entered into a definitive Transaction Agreement on January 2, 2014.

1150.33(d) The operator of the property.

DM&E is the current operator of the DM&E West Lines, with the exception of the Crawford subdivision which is operated by Nebraska Northwestern Railroad, Inc. ("NNW") pursuant to a lease agreement.

1150.33(e) A brief summary of the proposed transaction.

RCP&E is a non-carrier formed for the purpose of acquiring the DM&E West Lines from DM&E, and operating them as an independent regional carrier with continuing connections to DM&E and the Canadian Pacific Railway ("CP") rail system, as well as to BNSF Railway Company ("BNSF"), Union Pacific Railroad Company ("UP") and NNW. RCP&E also will acquire incidental trackage rights over lines of DM&E and, subject to any necessary consents,

over connecting lines of other carriers. The approximately 670 miles of rail lines and rights to be acquired and operated are more fully described on Exhibit A and are shown on the map attached as Exhibit B.

Notwithstanding the transfer of the lines described above, DM&E is retaining the common carrier obligation with respect to the handling of coal to, from and over the DM&E West Lines through December 31, 2030, and RCP&E will not acquire the common carrier obligation during that period.¹ To facilitate the exercise of its retained rights, DM&E is reserving an easement over the DM&E West Lines that will enable it to provide coal service. (There is not currently any coal service provided to, from or over the DM&E West Lines.) A copy of the reserved coal easement that will be included in every deed that is recorded is attached hereto as Exhibit C.

Additionally, RCP&E will grant DM&E trackage rights between Tracy, Minnesota and Wolsey, South Dakota, that will allow DM&E to continue to handle through grain trains with BNSF that are operating today between Florence and points on DM&E beyond Tracy, and to handle non-revenue ballast trains including the right to interchange such trains with BNSF at Wolsey. DM&E will make a separate filing with the Board for an exemption for the trackage rights being granted by RCP&E to DM&E.

RCP&E is a wholly-owned subsidiary of GWI. As such, it will benefit from GWI's safety and training programs, and from the expansive reach of GWI's national marketing and commercial resources, all of which will supplement the locally based railroad. In STB Docket

¹ The acquisition by RCP&E also does not include any of the rights of DM&E or its affiliates to build into the Powder River Basin. See *Wyoming Dakota Railroad Properties, Inc. – Acquisition and Operation Exemption – Dakota, Minnesota & Eastern Railroad Corporation*, STB Finance Docket No. 34871 (decision served August 14, 2006, and notice of exemption served August 22, 2006).

No. 35800, GWI will seek an exemption to control RCP&E when it becomes a carrier, in common with the other carriers in its corporate family. The control is eligible for the exemption because the lines of RCP&E do not connect with the lines of any other carriers in GWI's corporate family, the transaction is not part of a series of anticipated transactions that would connect them, and no Class I carrier is involved.

RCP&E also provides the following additional information as required under 49 C.F.R. §1150.33(e):

(1) The name and address of the railroad transferring the subject property.

Dakota, Minnesota & Eastern Railroad Corporation
120 S. 6th Street, Suite 700
Minneapolis, MN 55402

(2) The proposed time schedule for consummation of the transaction.

The parties expect to consummate the transaction as soon as ten days after the exemption becomes effective, assuming all other conditions of closing have been satisfied by that time.

(3) The mileposts of the subject property.

The mileposts of the DM&E West Lines are shown on Exhibit A attached hereto.

(4) The total route miles being acquired.

The total route miles being acquired are 672.88 ±, as shown on Exhibit A attached hereto.

1150.33(f) Map of the subject property.

A map of the DM&E West Lines is attached hereto as Exhibit B.

1150.33(g) A certificate that revenues will not exceed those of a Class III carrier.

Not applicable.

1150.33(h)(1) Information for transactions imposing interchange commitments.

RCP&E certifies that the proposed acquisition involves an interchange commitment. As part of the transaction, RCP&E will be acquiring the Colony Line as identified in Exhibit A and shown on Exhibit B, and will be assuming certain rights and obligations arising under the agreements pursuant to which DM&E acquired the Colony Line from UP in 1996. Among the assumed obligations will be those obligations under the existing Colony Line Car Supply, Services and Divisions Agreement ("CSSDA"), for the remainder of the term as set forth in the CSSDA. As required under 49 C.F.R. §1150.33(h)(1), the following additional information is provided by RCP&E:

(i) As noted above, the CSSDA contains an interchange commitment that affects interchange with carriers other than UP at the following interchange points as shown on the map attached as Exhibit B: Florence and Tracy, Minnesota; Dakota Jet and Crawford, Nebraska; and Wolsey, Aberdeen, Yale and Watertown, South Dakota. The interchange commitment was negotiated as part of the overall economic package in the original transaction between DM&E and UP which was approved by the Board.

(ii) A complete version of the CSSDA is being submitted as part of the Confidential Appendix being submitted herewith.²

(iii) A list of the shippers who currently use or who have used the Colony Line in the last two years, and which are subject to the interchange commitment is attached hereto as Exhibit D.

² RCP&E has filed a motion for a protective order which remains pending at the Board. However, the Confidential Appendix and the confidentiality of the information contained therein is protected separately as set forth in the Board's regulations at 49 C.F.R. §1150.33(h)(1). Access to such information is governed by the Board's regulations at 49 C.F.R. §1150.33(h)(2).

(iv) The aggregate number of carloads originated or terminated within the last two years by the shippers identified in subparagraph (iii) above is being submitted as part of the Confidential Appendix.

(v) RCP&E hereby certifies, as set forth in the certificate of service, that it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Notice of Intent on the shippers identified in subparagraph (iii) above.

(vi) NNW and BNSF connect with the Colony Line at Dakota Jct. and Crawford, Nebraska. Additionally, BNSF and DM&E connect elsewhere with the DM&E West Lines that RCP&E will be acquiring and operating.

(vii) The CSSDA requires that any acquirer of the Colony Line assume the requirements of the CSSDA, including the interchange commitment, and thus, there was no discussion or negotiation of the acquisition with and without the commitment. RCP&E does not have an estimate of the difference between the acquisition price with and without the assumption of the interchange commitment, or of the difference in price with and without the interchange commitment that would have applied when DM&E acquired the Colony Lines from UP in 1996. Accordingly, RCP&E requested an estimate of the difference from DM&E as permitted by the Board. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-6. Copies of the RCP&E request and the DM&E response are included in the Confidential Appendix.

(viii) The caption of this proceeding reflects the existence of an interchange commitment.

1150.35(b)(1) General statement of service intentions.

RCP&E initially expects to continue service at substantially the same level as is currently being provided by DM&E. This generally will include two through trains to and from Tracy, Minnesota, service as warranted to and from BNSF, three trains a week between Huron and UP at Mankato, five local trains (consisting of two locals serving customers on the Black Hills Subdivision, two locals serving customers on the Huron Subdivision, and one local serving customers on branch lines near Huron), and two yard assignments each day. Crews will generally operate five days per week at all locations, except between Huron and Tracy where crews will operate seven days per week. Seasonal unit trains will be operated as extras outside this regularly scheduled service. While initially continuing existing levels of service, RCP&E believes that it can bring to its operation of the DM&E West Lines a focused attention to customer service and safety that are the trademarks of the GWI subsidiary railroads. RCPE will continuously monitor traffic volumes and expects to add train starts if required to maintain necessary levels of service efficiency.

RCP&E will maintain access to the DM&E and CP rail systems for its customers through an interchange with DM&E at Tracy, Minnesota. RCP&E and its customers will also maintain the current access to BNSF (at Wolsey, Aberdeen, Yale and Watertown, South Dakota, at Florence, Minnesota, and at Crawford, Nebraska via NNW), NNW (at Dakota Jct., Nebraska) and UP (at Mankato, Minnesota). RCP&E expects to build relationships with DM&E/CP, BNSF and UP, and to provide enhanced access to the national rail system for the customers it will serve.

1150.35(b)(2) General statement of labor impacts.

While there may be some impact on labor, RCP&E is taking steps that it expects will minimize that impact. DM&E estimates that there are approximately 215 employees currently working on the DM&E West Lines. Representatives of RCP&E have had four “town hall” meetings³ with DM&E employees who are working on the DM&E West Lines about positions that will be available on RCP&E. Additionally, RCP&E has complied with the notice requirements set forth in 49 C.F.R. §1150.32(e) by posting the available positions at the workplaces of the DM&E employees working on the DM&E West Lines, serving a copy on the national offices of the labor unions of those employees, and filing its certification with the Board.⁴ As shown in the notice, RCP&E expects to hire approximately 180 employees for the various positions needed at start-up. RCP&E believes that the wages and benefits that it is offering are substantially similar to those provided by DM&E to the employees working on the DM&E West Lines. RCP&E also expects that some of the potentially affected DM&E employees will be able to exercise their rights under their existing agreements with DM&E to move to other positions on the DM&E.

RCP&E has started accepting applications for employment. It expects to conduct interviews and make its hiring decisions as soon as possible to minimize uncertainty in the workforce.

³ The meetings were held in Brookings and Huron, South Dakota, on January 15, 2014, and in Pierre and Rapid City, South Dakota on January 16, 2014.

⁴ The certification was filed with the Board on January 28, 2014. A copy is attached hereto as Exhibit E.

Service

In accordance with the requirements of 49 C.F.R. §1150.35(a), and as discussed in the discussion of labor impacts above, RCP&E has complied with the notice requirements of 49 C.F.R. §1150.32(e).

In accordance with the requirements of 49 C.F.R. §1150.35(c), RCP&E is serving copies of this Notice of Intent on the Governor of each State in which the DM&E West Lines are located (South Dakota, Minnesota, Nebraska and Wyoming), the Department of Transportation or equivalent agency in each such State, the national offices of the labor unions with employees on the DM&E West Lines, and on shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the DM&E West Lines in the most recent 12 months for which data is available (beginning with the largest shipper and working down).⁵ In addition, RCP&E is serving a copy of the Notice of Intent upon those shippers who will be entitled to service of the Notice of Exemption under 49 C.F.R. §1150.33(h). A certificate of service is attached hereto.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: February 12, 2014

Attorneys for
Rapid City, Pierre & Eastern Railroad, Inc.

⁵ RCP&E is serving the 10 largest shippers which represent approximately 75% of the volume of traffic during 2012, the last year for which RCP&E has complete traffic data.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following by U.S. first class mail, postage pre-paid:

Terence M. Hynes
Sidley Austin LLP
1501 K Street, NW
Washington DC 20005
thynes@sidley.com

Hon. Dennis Daugard
Office of the Governor
500 E Capitol Ave
Pierre, SD 57501

Darin Bergquist, Secretary
South Dakota Department of Transportation
Becker-Hansen Building
700 East Broadway Avenue
Pierre, SD 57501-2586

Hon. Dave Heineman
Office of the Governor
P.O. Box 94848
Lincoln, NE 68509-4848

Nebraska Department of Roads
Attention: Rail & Public Transportation Division
PO Box 94759
1500 Nebraska Highway 2
Lincoln, NE 68509-4759

Tom Sorel, Commissioner
Minnesota Department of Transportation
Transportation Building, MS-100
395 John Ireland Boulevard
St. Paul, MN 55155-1899

Hon. Matt Mead
Office of the Governor
State Capitol
200 West 24th Street
Cheyenne, WY 82002-0010

John Cox, Director
Wyoming Department of Transportation
5300 Bishop Boulevard
Cheyenne, WY 82009-3340

Erika A. Diehl-Gibbons
Assistant General Counsel
SMART – Transportation Division
(formerly United Transportation Union)
24950 Country Club Blvd., Ste. 340
North Olmsted, OH 44070-5333

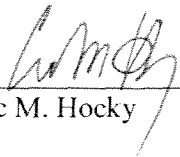
Dan Pickett
President
Brotherhood of Railroad Signalmen
917 Shenandoah Shores Road
Front Royal, VA 22630

Freddie N. Simpson
President
Brotherhood of Maintenance of Way
Employees Division of the IBT
41475 Gardenbrook Road
Novi, MI 48375-1328

R. Thomas Buffenbarger
International President
The International Association of Machinists and Aerospace Workers
9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

Joseph Guerrieri, Jr.
Carmen Parcelli
Guerrieri, Clayman, Bartos & Parcelli, PC
(counsel to IAM District Lodge 19)
1900 M. Street, NW
Suite 700
Washington, DC 20036

and to the shippers shown on the attached list who represent approximately 75% of the volume of local traffic and traffic originating or terminating on the DM&E West Lines, and who include the shippers subject to the interchange commitment identified on Exhibit D.


Eric M. Hocky

Dated: February 12, 2014

Craig Havlik
Manager, Rail Transportation
American Colloid Co.
2870 Forbs Avenue
Hoffman Estates, IL 60192

Ken Applegate
Vice President, Transportation Services
Valero Marketing & Supply Co.
One Valero Way
San Antonio, TX 78249-1616

Dan Mack
Vice President, Transportation
CHS Inc.
5500 Cenex Drive
Inver Grove Heights, MN 55077-1733

Roger Krueger
Sr. Vice President, Grain
South Dakota Wheat Growers Assoc.
908 Lamont Street South
Aberdeen, SD 57401

Rick Jones
Manager, Transportation
Bentonite Performance Minerals LLC
3000 N. Sam Houston Parkway, East
Houston, TX 77032

Tom Kersting
President & CEO
South Dakota Soybean Processors
100 Caspian Avenue
P.O. Box 500
Volga, SD 57071

Tom Lien, CEO
Dakota Mill & Grain Inc.
P.O. Box 2340
Rapid City, SD 57709-2340

Randy Brown, Vice President - Grain
Harrold Grain Company
Harrold Terminal LLC
19723 321st Avenue
Harrold, SD 57536

Tim Luken, General Manager
Oahe Grain Corp.
300 Ash Avenue
Onida, SD 57564

Stevie Ambrose
Vice President, Sales & Logistics
GCC Dacotah Inc.
600 South Cherry Street, 10th Floor
Glendale, CO 80246

EXHIBIT A

DESCRIPTION OF ACQUIRED LINES AND RIGHTS

DM&E West Lines

1. Acquired Lines

(a) Huron Subdivision

Between Tracy, MN MP 231.5 and Huron⁶ MP 362.7, a distance of 131.2 miles

(b) Pierre Subdivision

Between Huron MP 362.7 and Ft. Pierre MP 484.4, a distance of 121.7 miles

(c) PRC Subdivision

Between Ft. Pierre MP 484.4 and Pressler Jct. MP 649.2, a distance of 164.8 miles

(d) Black Hills Subdivision

Between Dakota Jct., NE MP 0.4 and Bentonite/Colony, WY MP 174.7, a distance of 174.3 miles

(e) Crawford Subdivision⁷

Between Dakota Jct., NE MP 411.72± and Crawford, NE MP 432.5±, a distance of 20.78 miles

(f) Onida Subdivision

Between Onida MP 97.5 and Blunt MP 115.1, a distance of 17.6 miles

(g) Mansfield Subdivision

Between Redfield MP 39.7 and Mansfield MP 66.9, a distance of 27.2 miles

(h) Yale Spur⁸

Between Yale MP 145.0 and Huron MP 160.3±, a distance of 15.3 miles

2. Incidental Trackage Rights

(a) Over lines owned and operated of DM&E

Between Tracy, MN MP 231.5 and Mankato, MN MP 142.4, a distance of 89.1 miles

(b) Over lines operated by BNSF (as operator for State of South Dakota, as successor to Chicago, Milwaukee, St. Paul and Pacific Railroad Company), being assigned to RCP&E by DM&E, as successor to Chicago and Northwestern Transportation Company

Between Wolsey MP 70.50 and Aberdeen MP 777.04, a distance of 72.04 miles

(c) Over lines owned and operated by BNSF, being assigned to RCP&E by DM&E

Between Yale MP 148.5 and Watertown MP 90.72, and yard trackage at Huron MP 160.33 to the end of track, a distance of 58.65 miles

⁶ All end points are located in South Dakota unless otherwise noted.

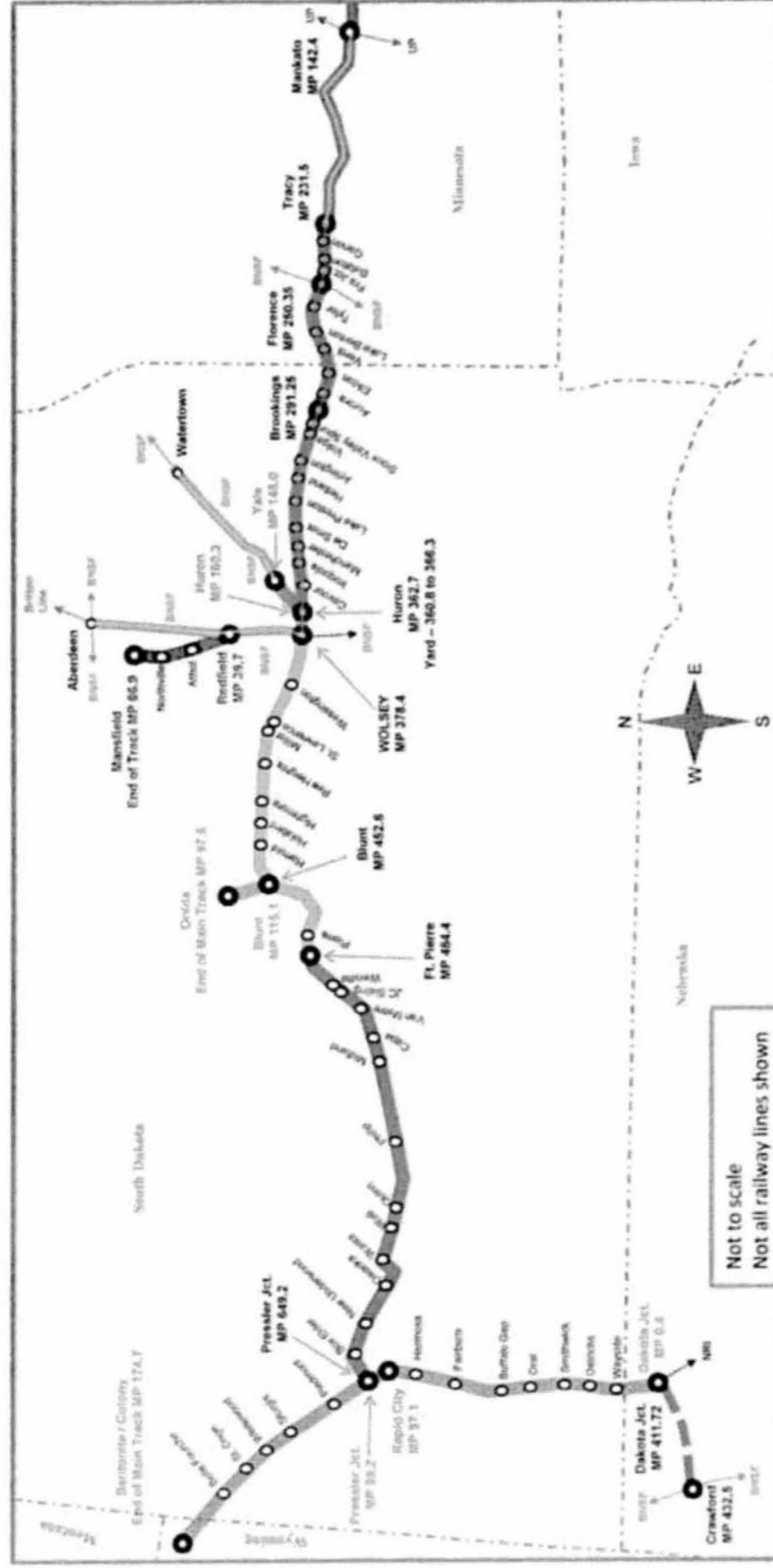
⁷ Leased to NNW.

⁸ Subleased from East Central Railroad Authority; sublease being assigned by DM&E.

EXHIBIT B

MAP

Main System Map for STB – Slide 1 of 2



Main System Map for STB – Slide 2 of 2

LEGEND

LINES	
	CP
	Huron
	Yale
	Mansfield
	Pierre
	Onida
	PRC
	Black Hills
	Crawford
NEWCO TRACKAGE RIGHTS	
	
-Tracy to Mankato	
-Wolsey to Aberdeen (BNSF)	
-Yale to Watertown (BNSF)	
CP TRACKAGE RIGHTS	
	
-Tracy to Florence	
-Tracy to Brookings	
-Tracy to Wolsey	

EXHIBIT C

FORM OF RESERVED COAL EASEMENT

(FORM OF EXHIBIT D TO DEED)

Reserved Coal
Service Rights and Easements

1. Reservation of Easement. Subject to the terms and conditions set forth below, Grantor excepts from the Real Property hereby quitclaimed, and reserves unto itself, and does not transfer an exclusive and unconditional easement (this “**Easement**”) in gross for a term of years commencing as of the date hereof and terminating on December 31, 2030, at 11:59 p.m. Chicago Time (subject to Section 5, the “**Term**”), over, under and on the Real Property, including all facilities constructed thereon as improved from time to time, for the Exclusive Uses.

“**Exclusive Uses**” means the following purposes in connection with the provision of common carrier coal service by Grantor (which common carrier coal service rights and obligations shall automatically transfer from Grantor to Grantee upon the expiration of the Term):

(a) accessing, installing, placing, altering, repairing, renewing, replacing, rehabilitating, improving, constructing, operating and maintaining new and existing rail tracks, rails, ties, ballast, track material, structures, improvements and facilities for hauling, stockpiling, transferring, processing, or storing coal from any source on or along the Real Property, including other related capital improvements to the Real Property to support the foregoing (all of the foregoing together with any additional real property acquired by Grantor for the foregoing, is referred to as “**Coal Easement Facilities**”); and

(b) undertaking the “**PRB Expansion**,” consisting of any of (i) the construction and operation of a new line of railroad that extends between any point on the Real Property and coal mines in the Powder River Basin area of Wyoming or Montana,

as defined in STB Finance Docket No. 33407 (the “**New Construction**”) and improvements or rehabilitation to the rail lines of the Grantee reasonably relating thereto as set forth in paragraph (a) above, (ii) the entering into of mine access agreements related to coal from in and around the Powder River Basin area of Wyoming and Montana (“**PRB Coal**”) in connection with the Real Property, and (iii) the construction of any rail lines that would connect or interchange the Real Property with (A) any New Construction or (B) any rail line or transportation facility of a third party that ships PRB Coal or serves mines producing PRB Coal;

(c) whether or not Grantor undertakes the PRB Expansion, transporting coal from any source on the Real Property; and

(d) the exclusive right to disturb the right-of-way or move earth for any of the foregoing purposes.

Grantor’s exercise of its Exclusive Use to transport coal on the Real Property shall only be pursuant to the Haulage Agreement (identified in Exhibit B of this Quit Claim Deed) or such other written agreement as may be mutually agreed upon by Grantor and Grantee.

2. Exclusive Use Rights. Without limiting the generality of this Easement reserved herein, this Easement reserved by Grantor shall be exclusive to Grantor, and shall exclude Grantee as well as third parties from using the Real Property for the Exclusive Uses (subject to Grantee’s right and obligation to transport coal for Grantor under the Haulage Agreement (identified in Exhibit B of this Quit Claim Deed) or other written agreement as may be mutually agreed upon between Grantor and Grantee, including any agreement necessary to effect the provisions of this Easement and subject to the other provisions of this Easement), as follows, in each case, during the Term:

(a) This Easement reserves to Grantor the exclusive right and obligation, including common carrier rights and obligations, to transport coal by rail to, from or over the Real Property (which common carrier right and obligation to transport coal shall automatically transfer from Grantor to Grantee upon the expiration of the Term).

(b) This Easement reserves to Grantor the exclusive right (but not the obligation) to commence and complete (including the exclusive right to make any decision regarding the commencement, design, construction, or completion of) the New Construction and the PRB Expansion.

(c) Subject to any Permitted Encumbrances affecting the Real Property as of the date of this Quit Claim Deed ("**Existing Encumbrances**"), the easement rights reserved herein shall be exclusive to Grantor and its agents, licensees, contractors, successors and assigns.

(d) Grantee shall not construct or operate and shall not grant to any other party the right to construct or operate any Coal Easement Facilities on, over, under or through the Real Property or any portion of the Real Property without the prior written consent of Grantor, which consent Grantor may grant, withhold, condition or delay in its sole discretion. Notwithstanding the foregoing, Grantor shall not unreasonably withhold, condition or delay its consent to any proposed exercise or grant of rights for rehabilitating, improving, constructing, operating and maintaining new and existing rail tracks and facilities for purposes other than hauling, stockpiling, transferring, processing, or storing coal ("**Subsequent Encumbrances**"), provided such Subsequent Encumbrances do not materially interfere with Grantor's Exclusive Use. In no event shall Grantor's consent be deemed to have been granted, nor shall Grantor's authority to

grant, withhold, condition or delay such consent be deemed to have been waived, except in writing by Grantor.

3. Unobstructed Access. Subject to any Existing Encumbrances and Subsequent Encumbrances, the Haulage Agreement and any other agreements between Grantor and Grantee, Grantor shall have rights to access, ingress and egress over and across the Real Property to the extent necessary to access the Coal Easement Facilities for the purpose of rehabilitating, improving, altering, relocating, constructing, installing, inspecting, maintaining, repairing, replacing or removing any Coal Easement Facilities (including any improvements to the Railroad Facilities or Grantee's lines incidental to the Coal Easement Facilities, **"Coal Facilities Work"**), including emergency maintenance and repairs, for the purpose of planning and designing Coal Facilities Work, or any other purpose consistent with the terms of this Easement, provided that Grantor (a) shall comply with any additional requirements set forth in other provisions of this Easement, (b) shall provide Grantee with at least five (5) business' days written notice (except in the event of an emergency) before entering onto the Real Property, (c) shall not unreasonably interfere with Grantee's use of the Real Property for railroad purposes, or any other purpose for which the Real Property may be used, including, without limitation, Grantee's common carrier rail operations, (d) shall not unreasonably interfere with the rights of any third parties under any Existing Encumbrances or any Subsequent Encumbrances, (e) shall use its best efforts not to disturb or damage any railbed, track, ties, pipe or any other improvements, structures or facilities or personal property located upon or under the Real Property (the "Railroad Facilities"), and shall restore, at Grantor's sole cost and expense, any Railroad Facilities Grantor does disturb or damage, (f) at Grantor's sole cost and expense, after completion, remove from the Real Property all personal property and equipment used in the construction, maintenance or repair work and

restore the Real Property to at least the condition that existed prior to such construction, maintenance or repairs, and (g) shall comply with Grantee's standard requirements for entry onto its property, including entering into Grantee's customary right of entry form and any other customary undertakings in connection therewith, and the provision of insurance.

4. Construction and Alteration of Coal Easement Facilities. Grantor shall have the right, at its sole cost and expense, to undertake Coal Facilities Work that shall not unreasonably interfere with Grantee's use of the Real Property for railroad purposes or any other purpose for which the Real Property may be used and shall not unreasonably interfere with the rights of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise, as follows:

(a) Grantor shall notify Grantee in writing, with preliminary plans and specifications for the proposed Coal Facilities Work.

(b) At Grantor's expense, Grantor and Grantee shall cooperate in developing final plans and specifications, a budget, and a schedule for completion of the proposed Coal Facilities Work that are reasonably acceptable to Grantor and Grantee.

(c) Grantor shall perform or contract for performance of such Coal Facilities Work, on the terms Grantor would perform the work on its own behalf on its own property, with its own forces or through solicitation of proposals or bids from third parties reasonably acceptable to Grantee.

(d) Before Grantor commences any Coal Facility Work, Grantor shall provide Grantee with reasonable evidence that Grantor has made financial arrangements to complete such work in accordance with the approved plans and schedule.

(e) Grantor will reimburse Grantee for reasonable costs and expenses incurred by Grantee in connection with Grantee's design, construction and monitoring of Coal Facility Work or Grantee's cooperation with Grantor in connection with Grantor's design, construction and monitoring of Coal Facility Work.

Except to the extent required by law, regulation or court order, Grantee shall not disclose or furnish to any third party (other than its representatives or any regulatory body or other governmental authority) any copy of any plans for any Coal Easement Facilities without the consent of Grantor, which consent will not be unreasonably withheld, conditioned or delayed.

Grantor and Grantee shall reasonably cooperate with each other in structuring any expenditures on improvements to the Property pursuant to this Section 4 to minimize any adverse tax consequences to Grantee or Grantor or any reimbursement therefore. If Grantee is ever required to include for purposes of federal or state income tax or any other tax (including property and ad valorem taxes) the value of, or any income or gain attributable to, all or any portion of the Coal Easement Facilities, then Grantor shall pay Grantee an amount equal to the additional taxes resulting therefrom.

5. Ownership of Coal Easement Facilities. All Coal Easement Facilities (but not any incidental improvements to the Railroad Facilities or Grantee's lines and not any real property acquired by Grantor in connection with the Exclusive Uses) will be the sole property of Grantor during the term of this Easement. Any real property acquired and paid for by Grantor in connection with the Exclusive Uses will be owned by Grantee during and following expiration of the term of this Easement. Upon expiration of this Easement (at the end of the term or earlier termination of this Easement by Grantor), Grantor shall advise Grantee of the depreciated net book value of the Coal Easement Facilities other than real property acquired by Grantor during

the Term and incidental improvements to the Railroad Facilities or Grantee's lines. To the extent the depreciated net book value of the Coal Easement Facilities (other than real property) at the time of such expiration (including any extension thereto) or termination is no more than \$10.00, Grantee shall not be obligated to pay Grantor any amount for such Coal Easement Facilities, and the Easement will terminate. To the extent the depreciated net book value of the Coal Easement Facilities (other than real property) is more than \$10.00, Grantee shall have the option to either extend the term of the Easement (until the time that such value is no more than \$10.00) or purchase the Coal Easement Facilities for an amount equal to the depreciated net book value (other than real property) thereof. If Grantee elects to extend the term of the Easement, it shall be permitted at any time thereafter to terminate the Easement by providing written notice to Grantor of such termination and paying Grantor an amount equal to the depreciated net book value at the time such termination notice is provided. "Depreciated net book value" means an amount equal to any expenditures on the Coal Easement Facilities, reduced, for purposes of this Easement, by depreciation calculated based on Grantor's GAAP accounting treatment at the time the construction occurs, from the date of the expenditure to the date of expiration or termination.

Grantor and Grantee shall reasonably cooperate with each other in structuring any reimbursement pursuant to this Section 5 to minimize any adverse tax consequences to Grantee or Grantor or any reimbursement therefore. If Grantee is ever required to include for purposes of federal or state income tax or any other tax (including property and ad valorem taxes) the value of, or any income or gain attributable to, all or any portion of the Coal Easement Facilities, then Grantor shall pay Grantee an amount equal to the additional taxes resulting therefrom.

Grantee shall pay Grantor any such amounts within 30 days after Grantee exercises any right that would require payment pursuant to the preceding paragraph of this Section 5. Such 30

day period, however, shall be freely extended as reasonably necessary to resolve any dispute or ambiguity in the amount to be paid or method of payment

Upon payment in full, Grantor shall quit claim (and take any other action necessary to transfer ownership of) its interests in the Coal Easement Facilities to Grantee.

6. Maintenance of Coal Easement Facilities. After completion of any construction described in Section 4, at Grantee's sole cost and expense, Grantee shall maintain and repair all Coal Easement Facilities (including any additions thereto pursuant to Section 4 and any improvements to the Railroad Facilities incidental to the Coal Easement Facilities) in good condition and repair and in accordance with all applicable laws, regulations or ordinances, and with the specifications and standards established by Grantee for its railroad facilities.

7. Mechanic's and Other Liens. Grantor shall not suffer any mechanic's or other lien or encumbrance to be filed against the Real Property by reason of any work, labor, services or materials performed or furnished at Grantor's, its successors', assigns' or licensees' request or otherwise on behalf of or for the benefit of Grantor, its successors, assigns or licensees or any third party, including without limitation any financing source, in connection with construction, operation, or maintenance of the Coal Easement Facilities or otherwise. If such lien or encumbrance shall at any time be filed, Grantor shall forthwith, at Grantor's sole cost and expense, promptly cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, in a manner acceptable to Grantee, but Grantor shall have the right to contest any and all such liens or encumbrances, provided that Grantor, at Grantor's sole cost and expense, shall first deposit with Grantee a bond or other security satisfactory to Grantee in such amounts as Grantee shall require and provided further, that Grantor shall thereafter diligently and continuously proceed to cause such lien or encumbrance to be removed

and discharged. If Grantor shall fail to cause such lien or encumbrance to be discharged within thirty (30) days after being notified of the filing thereof, Grantee may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Grantee, and the amount so paid by Grantee and all costs and expenses incurred by Grantee in procuring the discharge of such lien or encumbrance, including reasonable attorney's fees and fees and expenses of other agents, shall be reimbursed by Grantor to Grantee on demand.

8. Use of Real Property by Grantee. Grantee shall have the right to use the Real Property in any manner not inconsistent with this Easement. Grantor expressly agrees it will not, through its use of the privileges and authority granted herein, unreasonably interfere with Grantee's operations on the Real Property or the operations of third parties using the Real Property, or any portion thereof or without Grantee's permission, unreasonably interfere with the rights or privileges of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise. Nothing herein shall be construed to limit the right of Grantee to make repairs, alterations, changes, improvements, or additions determined by Grantee to be in its interests; provided such repairs, alterations, changes, improvements or additions do not unreasonably interfere with Grantor's use of the Coal Easement Facilities.

Grantee may at any time, for any reason, and in its sole discretion, seek Surface Transportation Board ("STB") authority (or an exemption therefrom) to abandon freight service, over all of, or any segment of, the Real Property. Grantor agrees to cooperate with, and not to directly or indirectly oppose, Grantee's abandonment efforts, and to seek abandonment or discontinuance authority for any common carrier or trackage rights applicable to the line for which Grantee is seeking abandonment or discontinuance. Grantor shall have the option to

purchase any segment for which Grantee is seeking abandonment, either through the STB's offer of financial assistance procedures or outside of such procedures, for net liquidation value as determined under the standards applied by the STB at that time. In connection with such purchase, Grantor shall be responsible for compliance with applicable STB requirements.

9. Indemnification. Grantor does hereby indemnify and hold harmless Grantee and Grantee's owners, officers, directors, managers, employees, contractors, agents, representatives, licensees and invitees from and against any and all liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments arising from, in connection with or relating to, acts or omissions of, or use of the Real Property by, Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees related to the Coal Easement Facilities or Railroad Facilities or otherwise related to the Real Property, including but not limited to, costs related to any personal injury, death or property damage occurring as a result of such acts or omissions or use and tax liabilities or obligations to the extent arising from Grantor's repairs, alterations, changes, improvements, or additions related to the Real Property, except to the extent such liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments relate to or arise from the willful misconduct or gross negligence of Grantee or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees, provided Grantor shall not be required to provide indemnification for any of the foregoing if settled or compromised by Grantee without Grantor's prior written consent (not to be unreasonably withheld).

Grantee does hereby indemnify and hold harmless Grantor and Grantor's officers, directors, managers and employees from and against any and all liabilities, damages, costs,

expenses, losses, actions, causes of action, suits, claims or judgments to the extent arising from, in connection with or relating to, grossly negligent acts or omissions of Grantee or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees (other than, for the avoidance of doubt, Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees) related to the Coal Easement Facilities, including but not limited to, costs related to any personal injury, death or property damage occurring as a result of such gross negligence, except to the extent such liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments relate to or arise from the willful misconduct or negligence of Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees. Grantee shall be entitled to assume the defense of any of the foregoing, and Grantee shall not be required to provide indemnification for any of the foregoing if settled or compromised by Grantor without Grantee's prior written consent (not to be unreasonably withheld).

Notwithstanding the foregoing, the parties mutually waive any claims for indirect, consequential, punitive or exemplary damages, including loss of profits or income.

10. Restrictive Covenants. Grantee for itself and its successor and assigns, covenants and agrees that prior to the expiration of the Term, except pursuant to the Haulage Agreement – Coal, this Reserved Coal Service Rights and Easements and the other agreements entered into in connection herewith, Grantee shall not (i) directly or indirectly take any action which results in any Milestone Payment becoming due and payable, (ii) hold itself out as a “transferee, successor or assign” of Grantor or SOO Line Holding Company, as those terms are used in the DM&E Merger Agreement, or make any public statement or take any position in litigation that Grantee

and its successors and assigns or any of their Affiliates is such a “transferee, successor or assign” of Grantor or SOO Line Holding Company or (iii) take any action in violation of Section 5.08 of the Transaction Agreement. “**Milestone Payments**” means “Construction Milestone Payments” and “Coal Milestone Payments” that may be due under, and as such terms are defined in the DM&E Merger Agreement and similar payments that may be due under the Amended and Restated Dakota, Minnesota & Eastern Railroad Corporation Warrant dated November 4, 2005 and Effective October 3, 2007 between Grantor and Kevin V. Schieffer (as in effect on January 2, 2014) and the First Amendment to the Dakota, Minnesota & Eastern Railroad Corporation Director Change In Control Agreement (as in effect on January 2, 2014) entered into in connection with the DM&E Merger Agreement. “**DM&E Merger Agreement**” means the Agreement and Plan of Merger dated as of September 4, 2007 among Soo Line Holding Company, Soo Line Properties Company, Canadian Pacific Railway Company and Grantor as in effect on January 2, 2014.

11. Enforcement of Restrictive Covenants. Grantee acknowledges and agrees that Grantor would suffer irreparable damage in the event that Grantee failed to observe, perform or enforce any of the Restrictive Covenants, or any other covenants, restrictions and agreements of this Easement in accordance with their specific terms. Grantee accordingly agrees that Grantor and its Affiliates shall be entitled to seek an injunction or injunctions to specifically enforce the performance of this Easement in accordance with its terms. In addition to the right to seek specific performance of this Easement, Grantor and its Affiliates shall have the right to seek any of its direct damages and reasonable attorney fees, including without limitation, any amounts paid or due and owing by Grantor to any third party as a result of a breach of the Restrictive Covenants or any other covenants, restrictions and agreements of this Easement, including

without limitation (a) Milestone Payments which become due as a result of Grantee's breach of this Easement and (b) 100% of all linehaul revenue received by Grantee derived from transporting coal by rail to, from or over the Real Property in violation of this Easement, or any other revenue received by Grantee derived from an Exclusive Use in violation of this Easement at any time during the term of this Easement. For the avoidance of doubt, any actions taken directly or indirectly by Grantor that result in any Milestone Payment becoming due and payable shall not be a breach of this Easement by Grantee.

12. Default. In the event either party believes that the other party has breached any of the covenants or agreements contained herein, the party asserting the default shall notify the other party of said breach in writing. Should a party fail to correct any breach or condition, other than the prohibition against use of the Real Property for Exclusive Uses or any Restrictive Covenant, within 10 days after receiving written notice of default, then the non-defaulting party may pursue any remedy available at law or equity other than termination; provided, however, in the case of a condition violated, other than the prohibition against use of the Real Property for Exclusive Uses or any Restrictive Covenant, that cannot be cured with due diligence within said 10 day period, the defaulting party shall be entitled to such additional time to correct the condition as may be reasonably necessary, but no more than 60 additional days, provided that the defaulting party gives the other party written notice of its need for additional time, prior to the expiration of the initial 10 day period, and provided that the defaulting party shall not be entitled to the benefit of the additional 60 day period if the default unreasonably interferes with the use of the Real Property for railroad purposes or unreasonably interferes with rights of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise.

Notwithstanding the foregoing, if the event of default consists of Grantee using or allowing others to use the Real Property for Exclusive Uses or a breach of any Restrictive Covenant, Grantee shall be deemed to be in default immediately on occurrence of the breach, and Grantor shall be entitled to exercise any remedy available at law or in equity immediately upon discovery of the breach.

In all events of default, the party asserting the default shall have available all rights and remedies provided at law or in equity (provided Grantee shall not have the right to terminate this Easement under any circumstances), and defaulting party shall not interpose the defense that specific performance should not be available on the basis of the availability of an adequate remedy at law.

13. Grantee's Covenants Run With Land. This Easement constitutes an easement in gross. The burdens imposed on the Grantee, as owner of the fee interest in the Real Property, shall run with the land and be binding upon future owners of the Real Property or any interest therein for the Term of this Easement. The rights and obligations of Grantor shall be binding on Grantor and its successors and permitted assigns. Grantor shall not assign this Easement or its rights or obligations under this Easement without any necessary regulatory approvals. Subject to such regulatory approvals, Grantor may assign its rights and obligations under this Easement to an entity controlled by, controlling or under common control with Grantor, provided that Grantor shall provide Grantee with written notice of any such assignment within five (5) days after such assignment occurs; provided, no such assignment by Grantor shall relieve Grantor of any of its obligations under this Easement.

14. Notices. All notices, requests, demands, consents and other communications required or permitted under this Easement shall be in writing and shall be deemed to have been

duly and properly given on the date of service if delivered personally, or, if mailed, on the third business day after such notice is deposited in a receptacle of the United States Postal Service, registered or certified mail, first class postage prepaid, return receipt requested, or on the first business day following deposit with a nationally recognized overnight courier service (e.g., FedEx), postage prepaid, in any event addressed appropriately as follows:

If to Grantee: Rapid City, Pierre & Eastern Railroad, Inc.
 c/o Genessee & Wyoming Inc.
 20 West Avenue
 Darien, Connecticut
 Attention: General Counsel
 Facsimile: (203) 656-1148

If to Grantor: Dakota, Minnesota & Eastern Railroad Corporation
 Suite 700, 120 S. 6th Street
 Minneapolis, MN 55402
 Facsimile No.: 612 904 5981

With a copy to: James Clements, AVP Commercial Performance
 Canadian Pacific Railway
 Building 1
 7550 Ogden Dale Road SE
 Calgary, AB T2C 4X9 Canada

with a copy to:

Paul Guthrie, Esq.
Canadian Pacific Railway
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9 Canada

with a copy to:

Real Estate Department
Canadian Pacific Railway
900 Canadian Pacific Plaza
120 South Sixth Street
Minneapolis, Minnesota 55402
Tele: (612) 904-6143
Real Estate - US@cpr.ca

Either party may change its address for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

15. Amendment. This Easement shall not be amended except by written agreement executed by Grantor and Grantee, or their successors and permitted assigns, which agreement shall be duly recorded in the land records where the Real Property is located.

16. No Dedication. The provisions of this Easement shall not be deemed to constitute a dedication for public use or to create any right in the general public.

17. Counterparts. This Easement may be executed in counterparts, each of which may be deemed an original but together shall constitute but one and the same instrument.

18. Entire Agreement. This Easement, together with the agreements referenced herein, constitutes the entire agreement between the Parties relating to its subject matter and, except as provided herein, no other representations, warranties or agreements, oral or written, will be binding on the Parties with respect to such subject matter.

[signatures on next page]

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION d/b/a CANADIAN
PACIFIC RAILWAY, a Delaware corporation

By _____
(signature)

(printed name)

Its _____

(title)

State of _____)
_____) ss.
County of _____)

This instrument was acknowledged before me, a Notary Public in and for said County and State, by _____, in his/her capacity as the _____ of Dakota, Minnesota & Eastern Railroad Corporation (d/b/a Canadian Pacific Railway), a Delaware corporation, who before me personally appeared who acknowledged the execution of the foregoing instrument for and on behalf of said entity and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this _____ day of _____, _____.

(SEAL)

(signature)

(printed name) Notary Public

My Commission Expires: _____ My County of Residence: _____

This Instrument was prepared by:

Eric Galatz
Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

EXHIBIT D

SHIPPERS SUBJECT TO INTERCHANGE COMMITMENT

American Colloid Co.

Bentonite Performance Materials LLC

EXHIBIT E

**CERTIFICATION OF COMPLIANCE WITH
REGULATIONS RELATING TO
NOTICE OF INTENT TO DM&E EMPLOYEES**

CLARK HILL | THORP REED

Eric M. Hocky
T 215.640.8523
F 215.640.8501
Email: ehocky@clarkhill.com

235362
ENTERED
Office of Proceedings
January 28, 2014
Part of
Public Record

January 28, 2014

Clark Hill Thorp Reed
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103
T 215.640.8500
F 215.640.8501

clarkhillthorpreed.com

VIA ELECTRONIC FILING

Cynthia T. Brown
Chief, Section of Administration - Office of
Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

**Re: Rapid City, Pierre & Eastern Railroad, Inc. -
Acquisition and Operation Exemption -
Dakota, Minnesota & Eastern Railroad Corporation
STB Docket No. FD 35799
Certificate of Compliance with 49 CFR 1150.32(e)
*(contains color images)***

Dear Ms. Brown:

Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E") hereby certifies that as of January 27, 2014, the enclosed Notice was posted at the workplaces of the employees on the DM&E West Lines that RCP&E intends to acquire from Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"). A certificate of DM&E evidencing the posting and the locations posted is also enclosed.

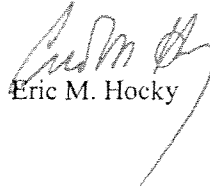
RCP&E also certifies that it has served a copy of this letter, including the Notice, on the national offices of all labor unions with employees on the DM&E West Lines as shown on the attached certificate of service.

Cynthia T. Brown
January 28, 2014
Page 2

Please let me know if you have any questions regarding this filing. Thank you for your assistance.

Respectfully,

CLARK HILL PLC

A handwritten signature in black ink, appearing to read "Eric M. Hocky", with a long, sweeping underline that extends to the right.

EMH/dml

Encls.

cc: All persons on the attached certificate of service

Cynthia T. Brown
January 28, 2014
Page 3

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2014, copies of the foregoing letter, certificate of posting and Notice were served on the following persons by the method indicated:

By U.S. mail, postage prepaid:

Malcom B. Futhey, Jr
International President
United Transportation Union
24950 Country Club Blvd., Ste. 340
North Olmsted, OH 44070-5333

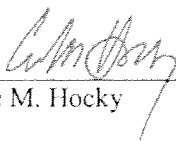
Dan Pickett
President
Brotherhood of Railroad Signalmen
917 Shenandoah Shores Road
Front Royal, VA 22630

Freddie N. Simpson
President
Brotherhood of Maintenance of Way
Employees Division of the IBT
41475 Gardenbrook Road
Novi, MI 48375-1328

R. Thomas Buffenbarger
International President
The International Association of Machinists and Aerospace Workers
9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

By electronic mail:

Terence M. Hynes
Sidley Austin LLP
1501 K Street, NW
Washington DC 20005
thynes@sidley.com


Eric M. Hocky

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35799

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION -
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

**NOTICE OF INTENT DIRECTED TO EMPLOYEES OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

Pursuant to the regulations of the Surface Transportation Board (the "Board") at 49 CFR §1150.32(e), Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E"), a newly formed subsidiary of Genesee & Wyoming Inc. ("GWI"), hereby gives notice of its intent to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific ("DM&E"), approximately 670 miles of railroad representing all of DM&E's rail lines west of Tracy, MN, together with incidental trackage rights, all as more fully described on Exhibit A attached hereto. On or after February 10, 2014, RCP&E intends to file a notice of intent to seek an exemption to acquire the lines pursuant to 49 CFR § 1152.35. RCP&E anticipates commencing operations as early as the second or third week of April, 2014, subject to the receipt of all necessary regulatory approvals and satisfaction of the other conditions of closing.

As a result of the transaction, RCP&E preliminarily estimates that it will be hiring for the positions shown on the list attached as Exhibit B. The number and types of positions listed represent RCP&E's current good faith estimate of the positions it expects to have available. The number of positions may change.

RCP&E employees will be provided with railroad retirement, medical insurance, holidays, vacation and other benefits consistent with the benefits currently provided to employees of other railroad subsidiaries of GWI.

RCP&E is an equal opportunity employer. RCP&E employees will be selected based upon their experience and suitability of the jobs that may be offered. Successful applicants will be required to pass a standard background check, pre-employment drug and alcohol screen, complete a medical questionnaire, and take a physical exam. Employees subject to Federal Railroad Administration certification qualifications will be required to provide proof that their certifications are current.

Any DM&E employee interested in obtaining further information concerning positions that RCP&E may have available, should contact Matthew Adams, HR Director, at RCPEapplications@gwrr.com.

Applications for employment should be made by sending a cover letter and resume stating the applicant's experience, in chronological order, and providing references for any employment held during the last five (5) years and any rail industry employment held at any time. The applicant may apply for multiple job opportunities and must be sure to list those job opportunities, in order of interest, in his/her cover letter. The applicant must be available to start work by the seventh day prior to the effective date of the acquisition.

Cover letters and resumes should be sent by regular or electronic mail to Rapid City, Pierre & Eastern Railroad, Inc. as follows:

Matthew Adams
HR Director
Rapid City, Pierre & Eastern Railroad, Inc.
166 E. 14000 Street, Suite 140
Draper, UT 84020
RCPEapplications@gwrr.com

RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.

Dated: January 23, 2014

By: _____

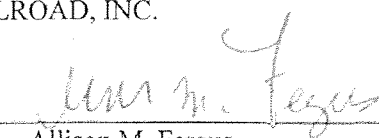

Allison M. Fergus
Secretary

EXHIBIT A
DM&E WEST LINES

DM&E West Lines

1. Acquired Lines

(a) Huron Subdivision

Between Tracy, MN MP 231.5 and Huron¹ MP 362.7, a distance of 131.2 miles

(b) Pierre Subdivision

Between Huron MP 362.7 and Ft. Pierre MP 484.4, a distance of 121.7 miles

(c) PRC Subdivision

Between Ft. Pierre MP 484.4 and Pressler Jct. MP 649.2, a distance of 164.8 miles

(d) Black Hills Subdivision

Between Dakota Jct., NE MP 0.4 and Bentonite/Colony, WY MP 174.7, a distance of 174.3 miles

(e) Crawford Subdivision²

Between Dakota Jct., NE MP 411.72± and Crawford, NE MP 432.5±, a distance of 20.78 miles

(f) Onida Subdivision

Between Onida MP 97.5 and Blunt MP 115.1, a distance of 17.6 miles

(g) Mansfield Subdivision

Between Redfield MP 39.7 and Mansfield MP 66.9, a distance of 27.2 miles

(h) Yale Spur³

Between Yale MP 145.0 and Huron MP 160.3±, a distance of 15.3 miles

2. Incidental Trackage Rights

(a) Over lines owned and operated of DM&E

Between Tracy, MN MP 231.5 and Mankato, MN MP 142.4, a distance of 89.1 miles

(b) Over lines operated by BNSF (as operator for State of South Dakota, as successor to Chicago, Milwaukee, St. Paul and Pacific Railroad Company), being assigned to RCP&E by DM&E, as successor to Chicago and Northwestern Transportation Company

Between Wolsey MP 70.50 and Aberdeen MP 777.04, a distance of 72.04 miles

(c) Over lines owned and operated by BNSF, being assigned to RCP&E by DM&E

Between Yale MP 148.5 and Watertown MP 90.72, and yard trackage at Huron MP 160.33 to the end of track, a distance of 58.65 miles

¹ All end points are located in South Dakota unless otherwise noted.

² Leased to NNW.

³ Subleased from East Central Railroad Authority; sublease being assigned by DM&E.

EXHIBIT B
ESTIMATED POSITIONS AVAILABLE

RCPE Job List

Dept	New Job Title	Total by Job	Huron	Rapid City	Pierre	Brookings	Philip	Belle Fourche	Wall	Miller	Draper	FLSA	Grade	Min\$	Mid\$	Max\$	Bonus
G&A	General Manager II	1		1								E	12	\$78,000	\$109,200	\$140,400	20%
G&A	Director, Sales & Marketing	1		1								E	11	\$66,700	\$93,300	\$120,100	15%
G&A	Director, Engineering	1		1								E	11	\$66,700	\$93,300	\$120,100	15%
G&A	Director, Safety & Compliance	1		1								E	11	\$66,700	\$93,300	\$120,100	15%
G&A	Assistant General Manager	1	1									E	10	\$57,000	\$79,700	\$102,600	12%
G&A	Manager, Sales & Marketing	1	1									E	10	\$57,000	\$79,700	\$102,600	12%
G&A	Manager, Human Resources	1									1	E	10	\$57,000	\$79,700	\$102,600	12%
G&A	Manager, Training	1	1									E	9	\$48,700	\$68,100	\$87,700	10%
G&A	Accountant	1		1								E	8	\$42,000	\$58,700	\$75,600	5%
G&A	IT Support Technician	1		1								E	7	\$37,500	\$50,600	\$63,800	5%
G&A	Office Manager	1		1								E	7	\$37,500	\$50,600	\$63,800	5%
G&A	Clerk	2	1	1								NE	5	\$13.85	\$18.65	\$23.56	5%
	13		4	2	0	0	0	0	0	0	1						
Trans	Trainmaster	6	3	3								E	9	\$48,700	\$68,100	\$87,700	10%
Trans	Engineer	41	20	16	5							NE	7	\$18.03	\$24.33	\$30.67	5%
Trans	Conductor	42	21	16	5							NE	6	\$15.82	\$21.30	\$26.92	5%
	89		44	35	10	0	0	0	0	0	0						
MoW	Roadmaster	2		1		1						E	9	\$48,700	\$68,100	\$87,700	10%
MoW	Supervisor, Signals	1		1								E	9	\$48,700	\$68,100	\$87,700	10%
MoW	Supervisor, Structures	1				1						E	9	\$48,700	\$68,100	\$87,700	10%
MoW	Signal Maintainer	5	1	2		1	1					NE	7	\$18.03	\$24.33	\$30.67	5%
MoW	Foreman, MOW	10	1	1	1	2	1	1	2	1		NE	7	\$18.03	\$24.33	\$30.67	5%
MoW	Track Inspector	7	2	2	1	1	1					NE	6	\$15.82	\$21.30	\$26.92	5%
MoW	Track Machine Operator	4				2			2			NE	6	\$15.82	\$21.30	\$26.92	5%
MoW	Welder	2	2									NE	6	\$15.82	\$21.30	\$26.92	5%
MoW	Track Laborer	17	2	4	2	3	2	1	2	1		NE	5	\$13.85	\$18.65	\$23.56	5%
MoW	Bridge Foreman	1		1								NE	5	\$13.85	\$18.65	\$23.56	5%
MoW	Bridge Laborer	3		3								NE	5	\$13.85	\$18.65	\$23.56	5%
	53		8	15	4	11	5	2	6	2	0						
Mech	Manager, Mechanical	1	1									E	9	\$48,700	\$68,100	\$87,700	10%
Mech	Supervisor, Mechanical	3	2	1								NE	8	\$18.03	\$24.33	\$30.67	5%
Mech	Mechanical Foreman	2	2									NE	7	\$18.03	\$24.33	\$30.67	5%
Mech	Mechanic	7	6	1								NE	6	\$15.82	\$21.30	\$26.92	5%
Mech	Electrician	5	4	1								NE	6	\$15.82	\$21.30	\$26.92	5%
	18		15	3	0	0	0	0	0	0	0						
Car	Mechanical Foreman	1		1								NE	7	\$18.03	\$24.33	\$30.67	5%
Car	Car Repairman	6	4	2								NE	6	\$15.82	\$21.30	\$26.92	5%
	7		4	3	0	0	0	0	0	0	0						
	Total Headcount	180	75	64	14	11	5	2	6	2							

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35799

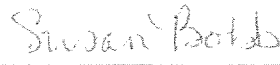
**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION -
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

CERTIFICATE OF POSTING

The attached Notice of Intent Directed to Employees was posted at Rapid City, South Dakota, Huron, South Dakota, Pierre, South Dakota, Miller, South Dakota, Belle Fourche, South Dakota, Brookings, South Dakota and Tracy, Minnesota.

I, Susan C. Bobb, Managing Director, Human Resources, U.S. of Dakota, Minnesota & Eastern Railroad Corporation, certify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on January 27, 2014.



Susan C. Bobb

CONFIDENTIAL APPENDIX
INFORMATION REGARDING INTERCHANGE COMMITMENT

[PURSUANT TO 49 C.F.R. §1150.33(h)(1), THE INFORMATION AND DOCUMENTS CONTAINED HEREIN ARE TO BE KEPT CONFIDENTIAL WITHOUT THE NEED FOR THE FILING OF A MOTION FOR A PROTECTIVE ORDER UNDER 49 C.F.R. §1104.14(a). THE CONFIDENTIAL APPENDIX IS BEING FILED UNDER SEPARATE COVER.]

CONFIDENTIAL APPENDIX
INFORMATION REGARDING INTERCHANGE COMMITMENT

[PURSUANT TO 49 C.F.R. §1150.33(h)(1), THE INFORMATION AND DOCUMENTS CONTAINED HEREIN ARE TO BE KEPT CONFIDENTIAL WITHOUT THE NEED FOR THE FILING OF A MOTION FOR A PROTECTIVE ORDER UNDER 49 C.F.R. §1104.14(a). THE CONFIDENTIAL APPENDIX IS BEING FILED UNDER SEPARATE COVER.]

EXHIBIT G

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Docket No. FD 35799

RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
-- ACQUISITION AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E"), a non-carrier, has filed a notice of exemption to acquire from Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") approximately 670 miles of rail line, including incidental trackage rights (the "DM&E West Lines") as follows:

1. Acquired Lines

- (a) Between Tracy, MN, MP 231.5 and Huron, SD, MP 362.7, a distance of 131.2 miles;
- (b) Between Huron, SD, MP 362.7 and Ft. Pierre, SD, MP 484.4, a distance of 121.7 miles;
- (c) Between Ft. Pierre, SD, MP 484.4 and Pressler Jct., SD, MP 649.2, a distance of 164.8 miles;
- (d) Between Dakota Jct., NE, MP 0.4 and Bentonite/Colony, WY, MP 174.7, a distance of 174.3 miles;
- (e) Between Dakota Jct., NE, MP 411.72± and Crawford, NE, MP 432.5±, a distance of 20.78 miles (leased to and operated by Nebraska Northwestern Railroad, Inc.);
- (f) Between Onida, SD, MP 97.5 and Blunt, SD, MP 115.1, a distance of 17.6 miles;
- (g) Between Redfield, SD, MP 39.7 and Mansfield, SD, MP 66.9, a distance of 27.2 miles; and
- (h) Between Yale MP 145.0 and Huron MP 160.3±, a distance of 15.3 miles (subleased from East Central Railroad Authority; sublease being assigned by DM&E).

2. Incidental Trackage Rights

(a) Between Tracy, MN MP 231.5 and Mankato, MN MP 142.4, a distance of 89.1 miles (over lines owned and operated of DM&E);

(b) Between Wolsey MP 70.50 and Aberdeen MP 777.04, a distance of 72.04 miles (over lines operated by BNSF (as operator for State of South Dakota, as successor to Chicago, Milwaukee, St. Paul and Pacific Railroad Company), being assigned to RCP&E by DM&E, as successor to Chicago and Northwestern Transportation Company); and

(c) Between Yale MP 148.5 and Watertown MP 90.72, and yard trackage at Huron MP 160.33 to the end of track, a distance of 58.65 miles (over lines owned and operated by BNSF, being assigned to RCP&E by DM&E).

Comments must be filed with the Board and served on Eric M. Hocky, Clark Hill, PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500. This notice is related to the notice of exemption being filed in *Genesee & Wyoming Inc. – Continuance in Control Exemption – Rapid City, Pierre & Eastern Railroad, Inc.*, STB Docket No. FD 35800.

The notice is filed under 49 C.F.R. §§1150.31 and 1150.35. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35799

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
-- ACQUISITION AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1150.35**

(contains color images)

APPENDIX

Volume 2 of 2

ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: March 10, 2014

Attorneys for
Rapid City, Pierre & Eastern Railroad, Inc.

TRANSACTION AGREEMENT

dated as of January 2, 2014

between

Rapid City, Pierre & Eastern Railroad, Inc.,

and

Dakota, Minnesota & Eastern Railroad Corporation
d/b/a CANADIAN PACIFIC RAILWAY,

TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS	1
1.01 Defined Terms	1
1.02 Other Definitional Provisions.....	17
II. SALE AND PURCHASE OF TRANSACTION ASSETS.....	17
2.01 Sale and Purchase of Transaction Assets.	17
2.02 Excluded Assets.....	21
2.03 Closing Payments.	21
2.04 Allocation of Purchase Price	30
III. CLOSING	31
3.01 Closing Date and Place.....	31
3.02 Deliveries by DM&E.....	31
3.03 Deliveries by Buyer	32
IV. ACCESS TO INFORMATION; CERTAIN RESTRICTIONS	33
4.01 Buyer's Investigation.....	33
4.02 Confidentiality of Information.....	34
V. ADDITIONAL UNDERTAKINGS AND AGREEMENTS.....	34
5.01 Removal of Excluded Assets; Proprietary Locks; Emergency Information.....	34
5.02 Post-Closing Access to Certain Records	35
5.03 WARN Act	36
5.04 Employee Hiring Rights	38
5.05 Labor Protection	38
5.06 Condition of Property.	39
5.07 PRC Subdivision.....	43
5.08 Powder River Basin.....	43
5.09 Trademarks and Logos.	46
5.10 Buyer Net Worth	47
5.11 Local Trackage Rights.....	47
5.12 Notification of Certain Matters; Cooperation.....	47
5.13 Positive Train Control	49
5.14 Pipe and Wire Crossing	49
5.15 Overlap Contracts.....	50

5.16	Colony Line Arbitration	50
VI.	DM&E'S REPRESENTATIONS AND WARRANTIES	51
6.01	Organization and Authority	52
6.02	No Conflicts; Consents of Third Parties.....	53
6.03	Licenses and Permits	54
6.04	Title to Transaction Assets	54
6.05	Employment and Employee Benefit Matters.....	55
6.06	Litigation	57
6.07	Compliance with Law.....	57
6.08	Absence of Certain Changes.....	57
6.09	List of Agreements	58
6.10	Status of Agreements.....	59
6.11	Taxes and Assessments.	60
6.12	Hazardous Materials.....	61
6.13	Real Property	62
VII.	BUYER'S REPRESENTATIONS AND WARRANTIES	62
7.01	Organization and Authority	62
7.02	No Conflicts; Consents of Third Parties.....	63
7.03	Litigation	64
7.04	Information Provided.....	64
7.05	Financing	64
7.06	Continued Operation.....	65
7.07	Net Worth	65
7.08	PRB.....	65
VIII.	DM&E'S PRECLOSING COVENANTS	65
8.01	Negative Covenants.....	65
8.02	Affirmative Covenants	66
IX.	CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE.....	67
9.01	Representations and Warranties	67
9.02	STB Conditions	68
9.03	Documents at Closing.....	68
9.04	No Governmental Action or Legal Proceedings.....	68
9.05	Contractual Consents	68
9.06	Interchange Agreement.....	68

X.	CONDITIONS PRECEDENT TO DM&E’S OBLIGATION TO CLOSE	69
10.01	Representations and Warranties	69
10.02	STB Conditions	69
10.03	Documents at Closing.....	69
10.04	No Governmental Action or Legal Proceedings.....	69
XI.	RISK OF LOSS; DEFAULT; TERMINATION	70
11.01	Risk of Loss	70
11.02	Termination By DM&E.....	70
11.03	Termination By Buyer	71
11.04	Failure of STB to Approve	72
11.05	Mutual Agreement.....	72
11.06	Effect of Termination	72
XII.	SURVIVAL; INDEMNIFICATION	72
12.01	Survival of Warranties and Covenants; Limitations.....	72
12.02	Indemnification by DM&E.....	74
12.03	Indemnification by Buyer.....	75
12.04	Conditions of Indemnification.....	76
12.05	Other Indemnity Matters	78
12.06	Certain Environmental Matters.	79
XIII.	MISCELLANEOUS.....	83
13.01	Consents and Filings.....	83
13.02	Additional Actions and Documents.....	84
13.03	Brokers.....	85
13.04	Expenses	85
13.05	Waiver	85
13.06	Successors and Assigns	86
13.07	Assignment	86
13.08	Notices	86
13.09	Announcements	87
13.10	Entire Agreement.....	88
13.11	Headings	88
13.12	Conflicting Terms.....	88
13.13	Limitation on Benefits	89
13.14	Severability.....	89

13.15	Intentionally Omitted.....	89
13.16	Execution.....	89
13.17	Governing Law; Jurisdiction.	90
13.18	Specific Performance.....	91

TRANSACTION AGREEMENT

THIS TRANSACTION AGREEMENT, dated as of the 2nd day of January, 2014, between Rapid City, Pierre & Eastern Railroad, Inc., a Delaware corporation ("Buyer") and Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a CANADIAN PACIFIC RAILWAY ("DM&E").

RECITALS:

A. DM&E owns, controls, operates or uses certain railroad properties, rights and facilities relating to a rail line known as the DM&E West End comprised of the Black Hills Subdivision, the PRC Subdivision, the Pierre Subdivision, the Huron Subdivision, the Onida Subdivision, the Mansfield Subdivision, the Yale Spur and the Crawford Subdivision and all origination points, termination points, connection points and interchange points to which DM&E has access in connection with such rail lines and such branch lines and the side tracks, spur tracks, connections and other rail properties associated therewith, all as more specifically shown on the map and set forth in the description attached as Exhibit A. The foregoing shall for purposes of this Agreement be referred to as the "Main System".

B. Subject to the terms and conditions of this Agreement, DM&E desires to sell and Buyer desires to purchase DM&E's interest in the Main System and Third Party Rights. Buyer's obligations hereunder are fully and unconditionally guaranteed by Guarantor.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties hereto hereby agree as follows:

I. DEFINITIONS

1.01 Defined Terms. As used herein, the following terms shall have the meanings specified in this Section 1.01 as follows:

“Affiliates” – As defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended.

“Agreement” – This Transaction Agreement as the same may be amended or supplemented in accordance with the terms hereof.

“Allocation” – As defined in Section 2.04.

“Assignment and Assumption Agreement” – The assignment and assumption agreement in the form of Exhibit B hereto.

“Assumed Contracts” means Third Party Rights, Shipper Contracts, Immaterial Contracts, Overlap Contracts, Equipment Leases, Shipper Contracts, Facilities Services Agreements and other Contracts, in each case, to the extent included in the Transaction Assets.

“Assumed Obligations” – As defined in Section 2.03(b).

“Best Efforts” – Means, as to any party, an undertaking by such party to perform or satisfy an obligation or duty or otherwise act in a manner reasonably calculated to obtain the intended result by action or expenditure not disproportionate or burdensome in the circumstances, which means, among other things, that such party shall not be required to (i) expend funds other than for payment of the reasonable and customary costs and expenses of employees, counsel, consultants, representatives, agents or lenders of such party and typical loan documentation and due diligence costs in connection with the performance or satisfaction of such obligation or duty or other action (provided that the foregoing shall not require a party to institute litigation or arbitration as a part of its Best Efforts) or (ii) suffer any economic or commercial disadvantage or detriment as a condition to achieving a satisfactory result.

“Bill of Sale” – The bill of sale in the form of Exhibit C hereto.

“Black Hills Subdivision” – The line from Bentonite, WY to Dakota Junction, NE via Rapid City, SD.

“Buyer” – Rapid City, Pierre & Eastern Railroad, Inc., or any permitted assignee pursuant to Section 13.07.

“Buyer Releasing Parties” – As defined in Section 5.06(c).

“Claims” – As defined in Section 12.02.

“Closing” – As defined in Section 3.01.

“Closing Date” – As defined in Section 3.01.

“CNW Conveyance Documents” – Conveyances deeds dated April 16, 1986 by Chicago and North Western Transportation Company to DM&E and the Asset Purchase Agreement dated July 2, 1986 between Chicago and North Western Transportation Company and DM&E.

“Code” – The Internal Revenue Code of 1986, as amended.

“Colony Line Agreements” – The Asset Purchase Agreement dated February 9, 1996 between DM&E and Union Pacific Railroad Company, the Colony Line Car Supply, Services and Divisions Agreement dated May 3, 1996 and related deeds.

“Colony Line Assumption Agreements” – Documents sufficient to assume the rights, obligations and liabilities of DM&E arising from and after, and attributable to the period commencing on and after, 12:01 a.m. Chicago time on the day immediately following the Closing Date as required under the Colony Line Agreements, including in recordable form where necessary, pursuant to the terms and conditions of the Colony Line Agreements, and the Colony Line Award.

“Colony Line Award” –

“Confidentiality Agreement” –

“Contracts” – Contracts, agreements, easements, franchises, rights-of-way, licenses, leases, commitments, and understandings (excluding Shipper Contracts and car hire agreements).

“Crawford Subdivision” – The line from Dakota Junction, NE to Crawford, NE.

“Deed” – One or more quit claim deeds in the form of Exhibit D hereto.

“Disclosed Environmental Conditions” means surface and subsurface environmental conditions affecting portions of the Real Property as described, and more specifically disclosed in the reports and other documents listed, on Schedule 6.12(x).

“DM&E” – Dakota, Minnesota & Eastern Railroad Corporation.

“DM&E Merger Agreement” – The Agreement and Plan of Merger dated as of September 4, 2007 among Soo Line Holding Company, Soo Line Properties Company, Canadian Pacific Railway Company and DM&E as in effect on the date hereof and set forth on Exhibit E-1 hereto.

“DM&E Released Parties” – As defined in Section 5.06(c).

“Drop Dead Date” –

“Equipment, Supply and Services Agreement” – The equipment, supply and services agreement in the form attached hereto as Exhibit F.

“Encumbrances” – Any mortgage, pledge, lien, option, claim, security interest, agreement, easement, equitable interest, restriction, license, lease, right of reverter, right of entry, encumbrance or charge.

“Environmental Claims Period” – As defined in Section 12.06.

“Environmental Covenants and Release” – The Grantee Acknowledgement, Environmental Covenants and Release included as Exhibit C to the Deed.

“Environmental Laws” – Any existing or future Laws relating to (i) the injury to, or the pollution or protection of, the environment (including any surface or subsurface physical medium or natural resource such as air, land, soil, surface waters, ground waters, stream and river sediments, and biota), (ii) the use, generation, storage, treatment, disposal, processing, transportation, handling, release, emission or remediation of harmful or deleterious substances, or (iii) impacts on human health and safety resulting from any of the foregoing, including the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 330f et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq. and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.

“Environmental Liabilities” – Claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities, Encumbrances, liens, violations, costs and expenses (including

attorneys' fees) of investigation, remediation, clean-up, corrective action, monitoring, or defense of any matter arising under any Environmental Laws (whether at law or in equity) or in any way relating to (i) the degradation of the environment (including any surface or subsurface physical medium or natural resource such as air, land, soil, surface waters, ground waters, stream and river sediments, and biota), (ii) the use, generation, storage, treatment, disposal, processing, transportation, handling, release, emission or remediation of Hazardous Substances or (iii) impacts on human health and safety resulting from the foregoing, of whatever kind or nature by any party, entity, or authority, whether or not resulting from the violation or noncompliance with any Environmental Laws.

“Equipment Leases” – As defined in Section 2.01(b).

“ERISA” – The Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations issued thereunder.

“ERISA Affiliate” – Any subsidiary or any trade or business (whether or not incorporated) under common control (as defined in Section 4001(b)(1) of ERISA) with the party in question.

“Excluded Assets” – All assets set forth on Exhibit G.

“Excluded Shipper Contracts” – Any contracts for the movement of traffic which is not a Shipper Contract.

“Final Statement” – As defined in Section 2.03(e).

“Facilities Services Agreements” – As defined in Section 2.01(a)(vii).

“FRA” – Federal Railroad Administration.

“Furniture and Small Tools” – Small tools and building furniture located in facilities on the Main System.

“GAAP” – United States generally accepted accounting principles.

“Governmental Authority” – Any government, agency, board, bureau, court, commission, department, instrumentality or administration of the United States or any foreign government, any state government or any local or other governmental body in a state, territory or possession of the United States or the District of Columbia or any foreign jurisdiction or other regulatory or taxing authority, with jurisdiction over the applicable subject matter.

“Guarantor” –

“Haulage Agreement – between Brookings and Wolsey and Tracy” – The haulage agreement in the form of Exhibit H.

“Haulage Agreement – Coal” – A haulage agreement in the form of Exhibit I.

“Hazardous Substances” – All hazardous or toxic materials (including Toxic Substances), substances, wastes, pollutants, contaminants, constituents or solid wastes, or terms of similar meaning, defined as such or subject to regulation under any Environmental Law.

“Huron Subdivision” – The line from Huron, SD to the Tracy End Point.

“Immaterial Contracts” –

“Indemnified Party” – As defined in Section 12.04(a).

“Indemnifying Party” – As defined in Section 12.04(a).

“Independent Accountant” –

“Interchange Agreement” – The interchange agreement in the form of Exhibit J hereto.

“Inventories” – The engineering and mechanical inventories of the type set forth on Exhibit K as of December 5, 2013 together with vendor managed inventories.

“Knowledge”, “knowledge”; “know” and the like – [REDACTED]

[REDACTED]

“Labor Protection” – [REDACTED]

[REDACTED]

“Law” – Any constitution, law (including common law), statute, ordinance, rule, regulation, regulatory requirement, code, by-law, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by any Governmental Authority.

“Main System” – As defined in Recital A.

“Mansfield Subdivision” – The line from Redfield, SD to Mansfield, SD.

“Marketing and Divisions Agreement” – The marketing and divisions agreement in the form of Exhibit L.

“Master Locomotive Agreement” – The master locomotive agreement in the form of Exhibit M.

“Material Adverse Effect” –

[REDACTED]

“Milestone Payments” –

[REDACTED]

[REDACTED]

“New Construction” –

“NNW Agreements” -- The NNW Lease, the NNW Purchase Agreement and the NNW Haulage Agreement.

“NNW Haulage Agreement”—The Haulage Services Agreement dated as of December 15, 2009 between Nebraska Northwestern Railroad Inc. and DM&E.

“NNW Lease” – The Track Lease Agreement dated December 15, 2009 between DM&E and Nebraska Northwestern Railroad Inc.

“NNW Purchase Agreement” means the Asset Purchase Agreement dated as of December 15, 2009 between Nebraska Northwestern Railroad, Inc. and DM&E and the first amendment thereto dated as of December 26, 2013.

“On-Line Employees” – Those employees (other than management employees) of DM&E who on the date hereof are solely engaged in operation or maintenance of the Main System, including the employees listed on Schedule 1.1 hereto to the extent they are still actively employed in connection with the operation of the Main System on the Closing Date.

“Onida Subdivision” – The line from Blunt, SD to Onida, SD.

“Operative Documents” – The Bill of Sale the Deed(s) (including the Environmental Covenants and Release and the Reserved Coal Service Rights and Easements), the Assignment and Assumption Agreement, the Equipment, Supply and Services Agreement, Haulage Agreement – between Brookings and Wolsey and Tracy, Haulage Agreement – Coal; Interchange Agreement, Marketing and Divisions Agreement, Master Locomotive Agreement, Trackage Rights Agreement – between Tracy and Florence, Trackage Rights Agreement –

between Tracy and Mankato, Right of First Refusal Agreement, the Colony Line Assumption Agreements, and the certificates in the form attached hereto as Exhibits S and T.

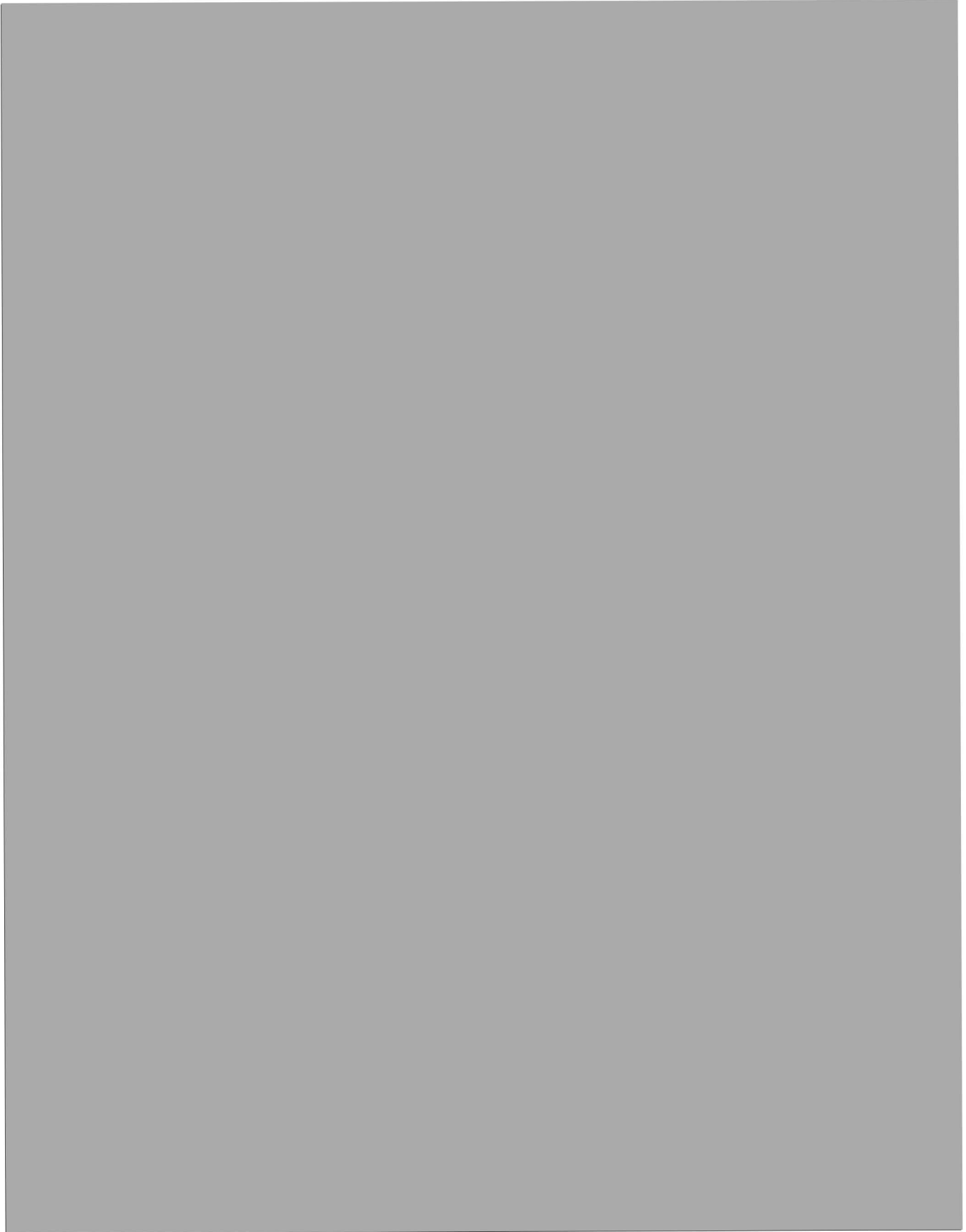
“Other Personal Property Value” – The aggregate amounts set forth on Schedules 2.01(b)(i), (ii) and (iii).

“Order” – The order, decision or notice issued by the STB approving, exempting, conditioning, or otherwise disposing of the various transactions contemplated by this Agreement; provided, however, that if more than one order is issued in connection with such contemplated transactions, all such orders shall for purposes of this Agreement, unless otherwise indicated, be referred to collectively as the “Order”.

“Overlap Contracts” – Contracts other than Shipper Contracts that relate to the rail operations conducted on the Transaction Assets but also relate to other assets of DM&E unrelated to the Transaction Assets (but excluding contracts related to general corporate, administrative, sales, dispatch and like functions).

“Permitted Encumbrances” –







“Permitted Transferee” – 



“Permitted Use Period” – As defined in Section 5.09.

“Person” - An association, a corporation, an individual, a partnership, a limited liability company, a trust, or any other entity or organization, including a Governmental Authority.

“Pierre Subdivision” – The line from Fort Pierre, SD to Huron, SD.

“Pipe and Wire Crossing Agreements” – Cell tower and antennae leases, bill board agreements easements and all longitudinal usages, other than railroad, including water, gas, sanitary sewer, storm sewer, roadways, pipelines, conduits, laterals, drains, ditches, irrigation, conveyors, telephone, radio, radar or laser transmission systems, wire, fiber, fiber optics, utility, electric and energy transmission lines and all other longitudinal occupations of every kind and character.

“Plan” – Any employee pension benefit plan (as defined in Section 3(2) of ERISA) maintained or contributed to by DM&E or any ERISA Affiliate of DM&E and insured by the Pension Benefit Guaranty Corporation under Title IV of ERISA.

“PRB Expansion” –

“PRB Resolutions” –

“PRC Subdivision” – (Pierre – Rapid City Subdivision) being the line from Fort Pierre, SD to Pressler Junction in Rapid City.

“Preliminary Inventory Value” – means the aggregate amount set forth on Exhibit K (including for the vendor managed inventory).

“Pre-Closing Tax Period” – All taxable periods ending on or before the Closing Date, and the portion of the Straddle Period ending on the Closing Date.

“Purchase Price” –

“Real Property” – the real property (including Real Property Interests) on or that constitute the Main System.

“Real Property Interests” – Leases, easements, licenses, permits, rights-of-way, and all other interests in real property other than fee simple title.

“Real Property Lease” – As defined in Section 6.13.

“Reserved Coal Service Rights and Easements” -- The reserved coal service rights and easements in the form attached as Exhibit D to the Deed.

“Right of First Refusal Agreement” – A right of first refusal agreement in the form of Exhibit N.

“Shipper Contracts” –



“STB” – Surface Transportation Board.

“STB Approval” – The receipt from the STB of an Order authorizing the parties to consummate the transactions contemplated hereby.

“Straddle Period” – Any taxable period that includes, but does not end on, the Closing Date.

“Taxes” – All United States federal, state, local or foreign taxes (except for taxes based in whole or in part on the income or revenue of DM&E or Buyer, as the case may be), charges,

fees, levies, assessments, and other similar charges, general, special, ad valorem, ordinary or extraordinary, whether the same have been paid prior to the Closing Date, are then due or are payable thereafter (in installments or otherwise), together with any interest, penalties, fines, related liabilities or additions to tax attributable to such taxes, charges, fees, levies, assessments or similar charges.

“Tax Returns” – Any return, declaration, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including any information return, claim or refund, amended return and declaration of estimated Tax.

“Third Party Claims” – As defined in Section 12.01(e).

“Third Party Rights” – As defined in Section 2.01(a).

“Toxic Substances” means any materials which are subject to regulation under the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 et seq., or any other applicable Federal, state or other laws now in force relating to toxic substances. The term “Toxic Substances” includes but is not limited to asbestos, petroleum and derivative products, polychlorinated biphenyls (PCBs), Toxic-By-Inhalation chemicals and lead-based paints.

“Trackage Rights Agreement – between Tracy and Florence” – The Trackage Rights Agreement in the form attached hereto as Exhibit O.

“Trackage Rights Agreement – between Tracy and Mankato” – The Trackage Rights Agreement in the form attached hereto as Exhibit P.

“Tracy End Point” – Mile post 231.5+/- near Tracy, MN.

“Trademarks and Logos” – As defined in Section 5.08.

“Transaction Assets” – As defined in Section 2.01(a).

“Transferred Personal Property” – As defined in Section 2.01(b).

“WARN Act” – Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et. Seq. and similar state and local Laws.

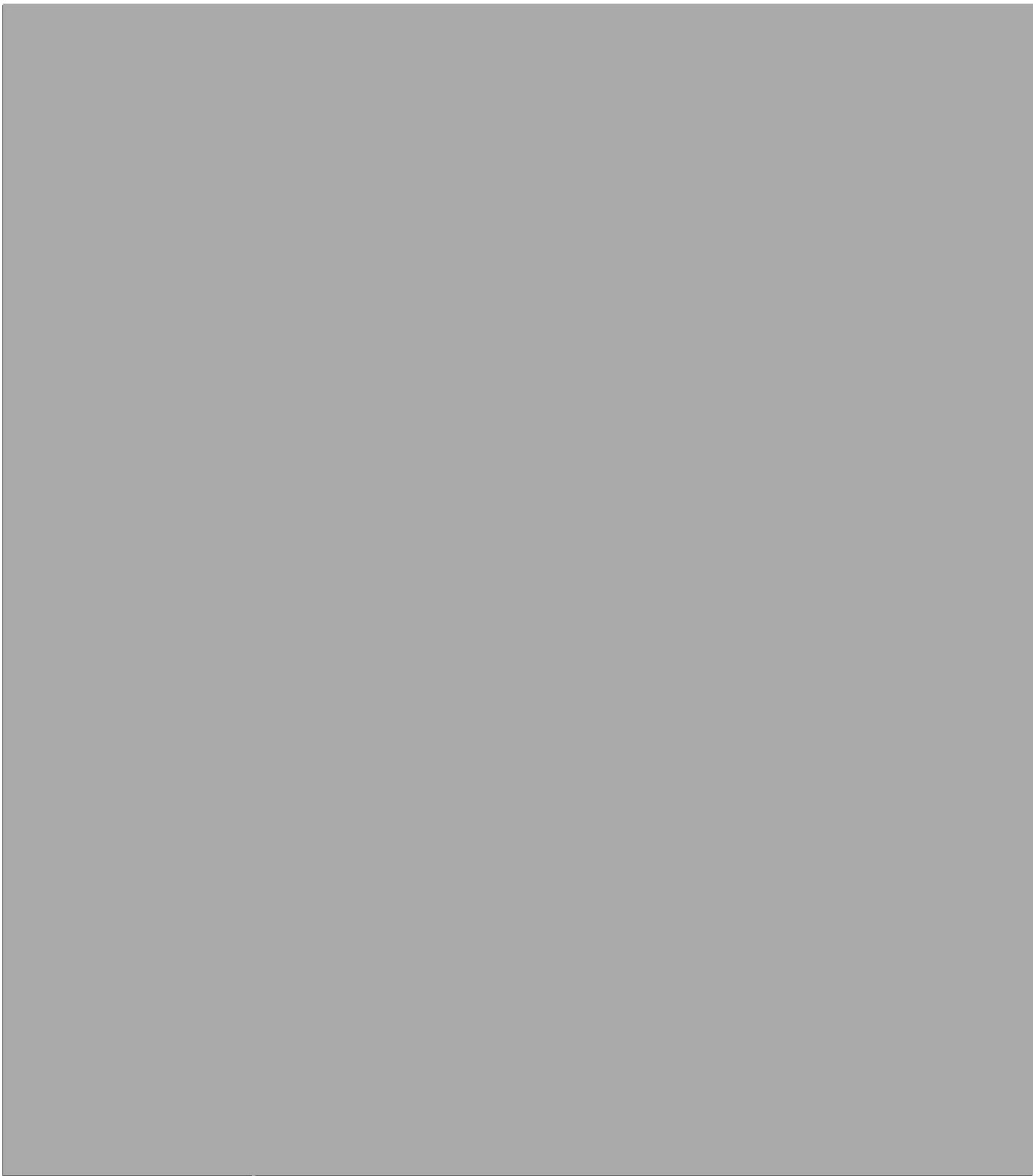
“Yale Spur” – Rights to operate the line from Huron, SD to Yale, SD under the existing sublease thereto.

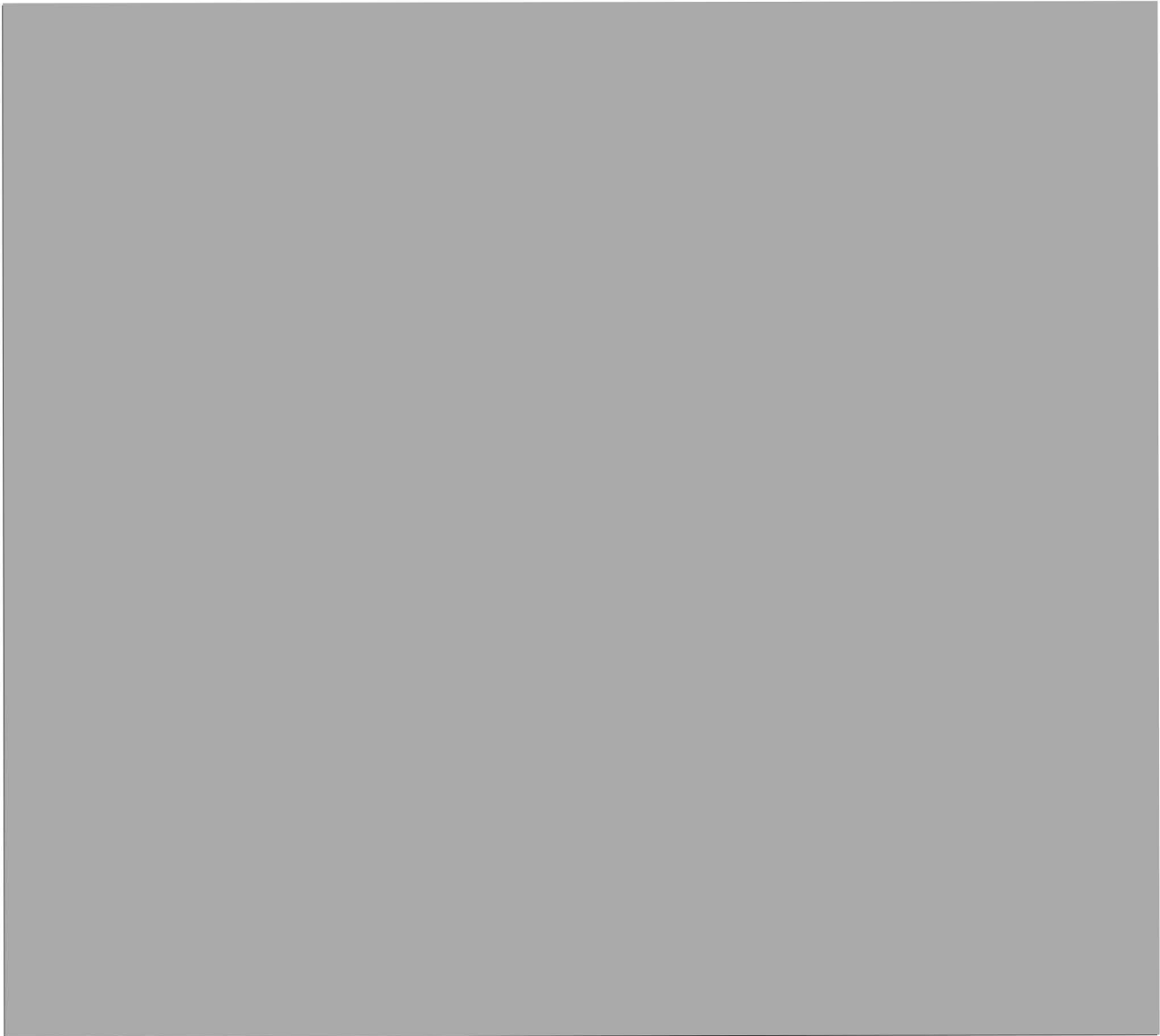
1.02 Other Definitional Provisions. Unless otherwise stated, terms, phrases and expressions used in this Agreement (whether or not capitalized) which pertain to railroad operations and service shall have the meaning commonly given such terms under common usage and practice of the railroad industry in 2013. All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein”, “hereof”, “hereby”, “hereunder” and “hereinafter” refer to this Agreement as a whole and not to the particular sentence, paragraph or Section where they appear, unless the context otherwise requires. The term “including” shall mean, and shall be interpreted as though such term were, the phrase “including, without limitation,” in each place where such term appears whether or not “without limitation” or a similar phrase appears in each case. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections and paragraphs of such Section, unless the reference is expressly made to a particular subsection or paragraph of such Section.

II. SALE AND PURCHASE OF TRANSACTION ASSETS.

2.01 Sale and Purchase of Transaction Assets.

(a) Sale and Purchase of Transaction Assets.





(b) Transferred Personal Property.



[REDACTED]

(c) Consents; Cooperation.

[REDACTED]

[REDACTED]

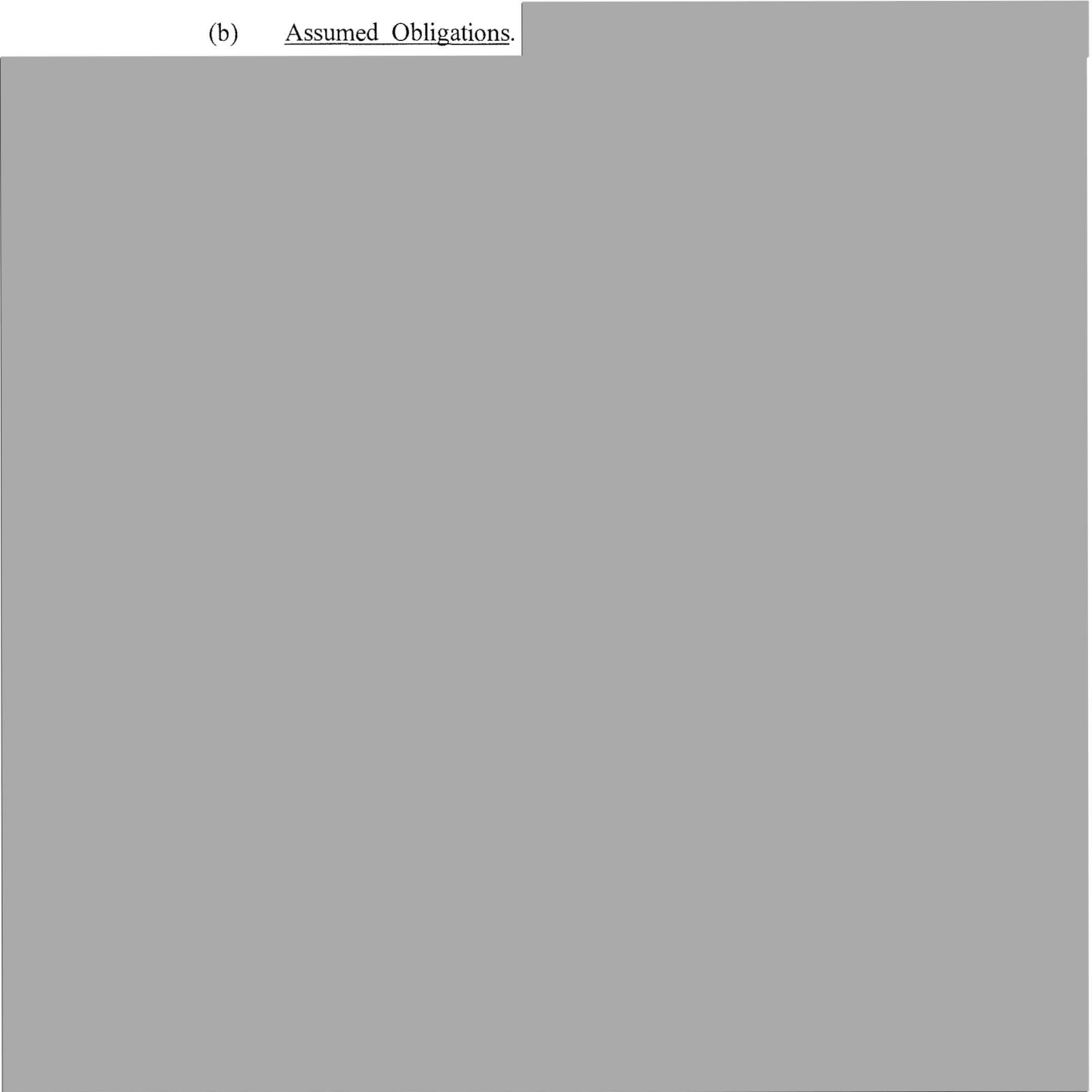


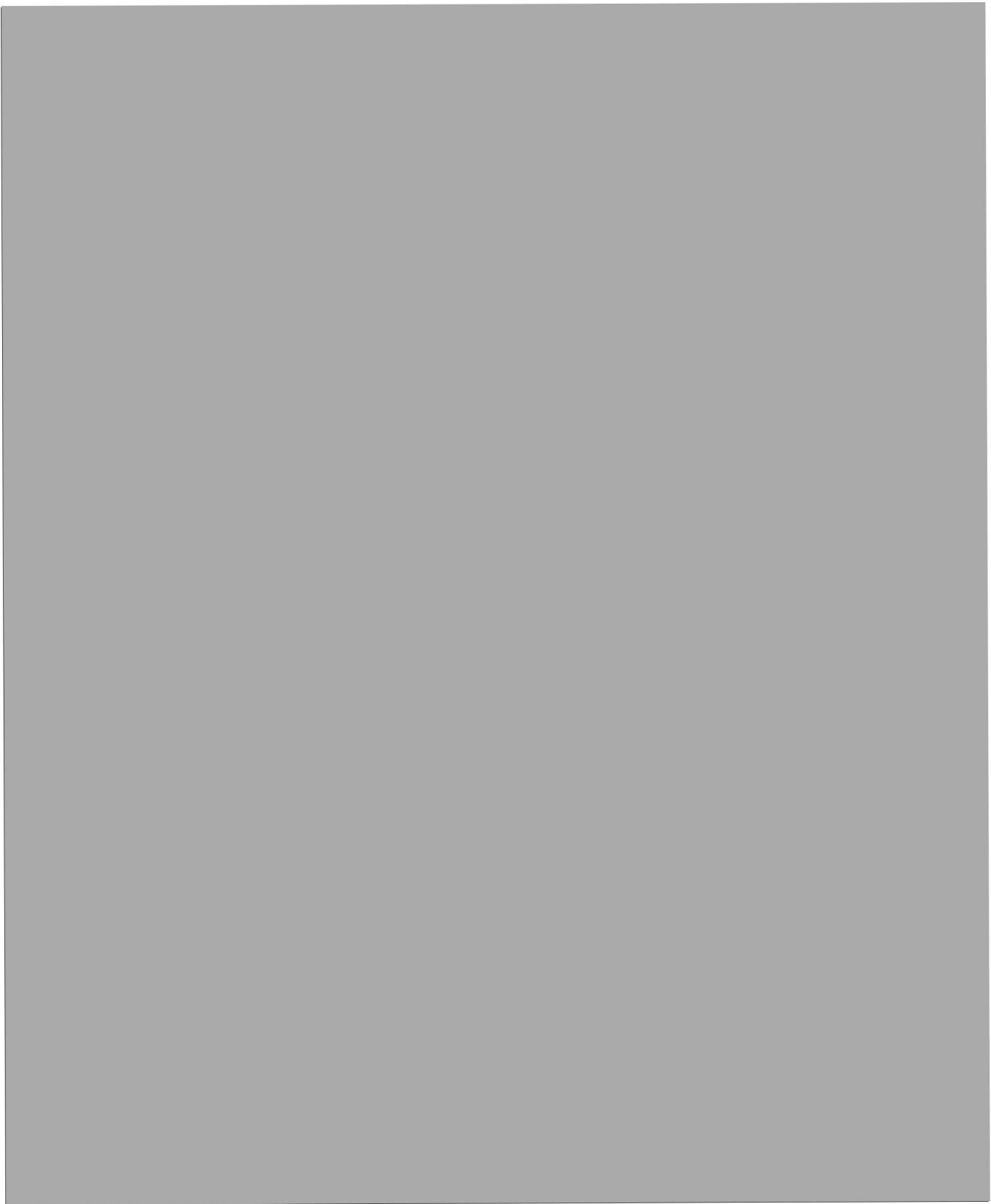
2.02 Excluded Assets. It is expressly understood and agreed that the Transaction Assets shall exclude the Excluded Assets.

2.03 Closing Payments.

(a) Closing Payments. The Purchase Price for the Transaction Assets shall be payable from Buyer to DM&E at Closing by wire transfer of immediately available funds to a bank account, which account shall be designated in writing by DM&E to Buyer not less than three (3) business days prior to Closing.

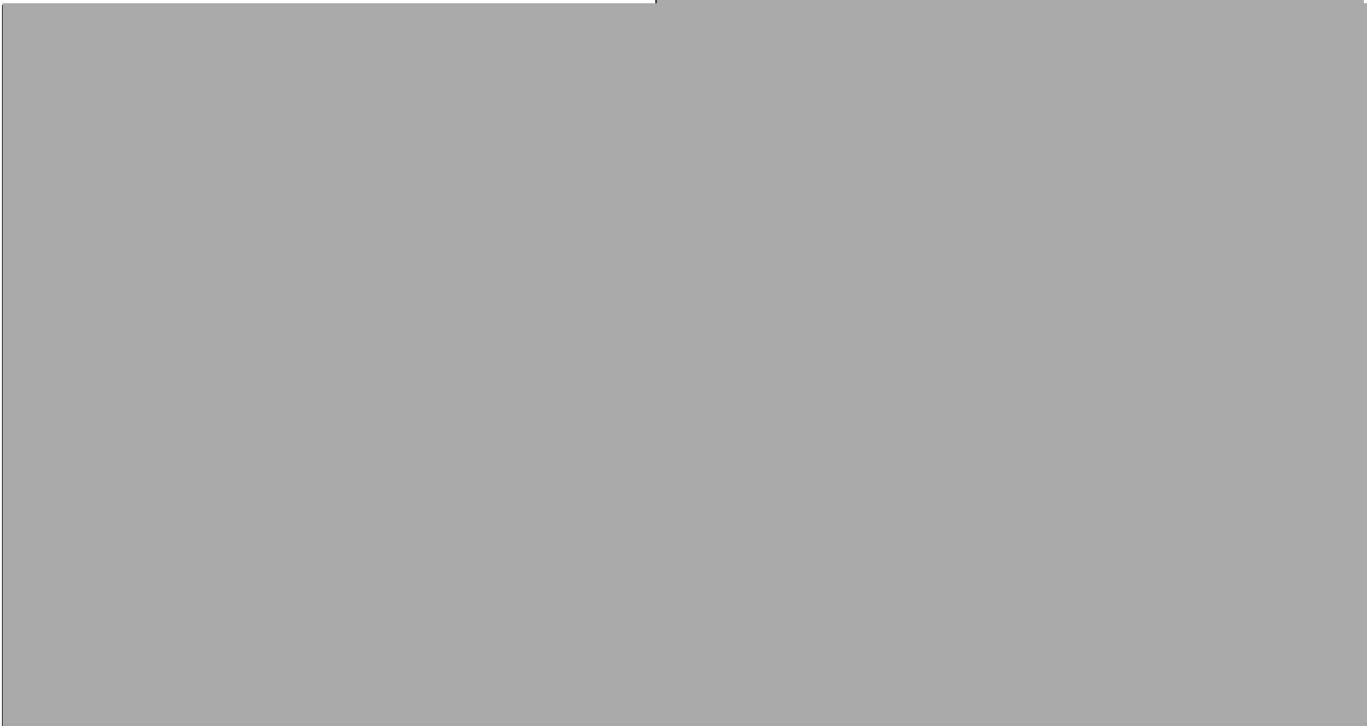
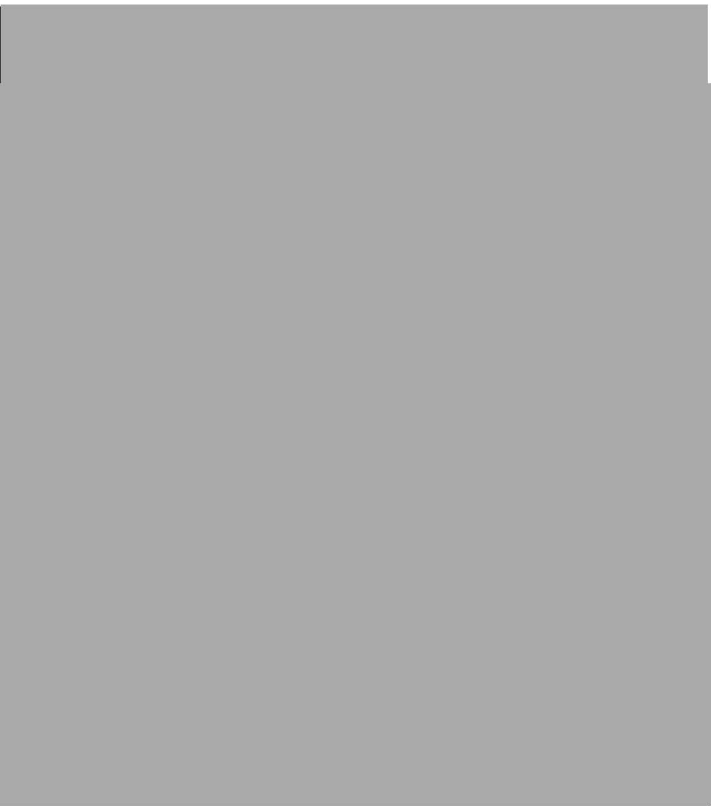
(b) Assumed Obligations.

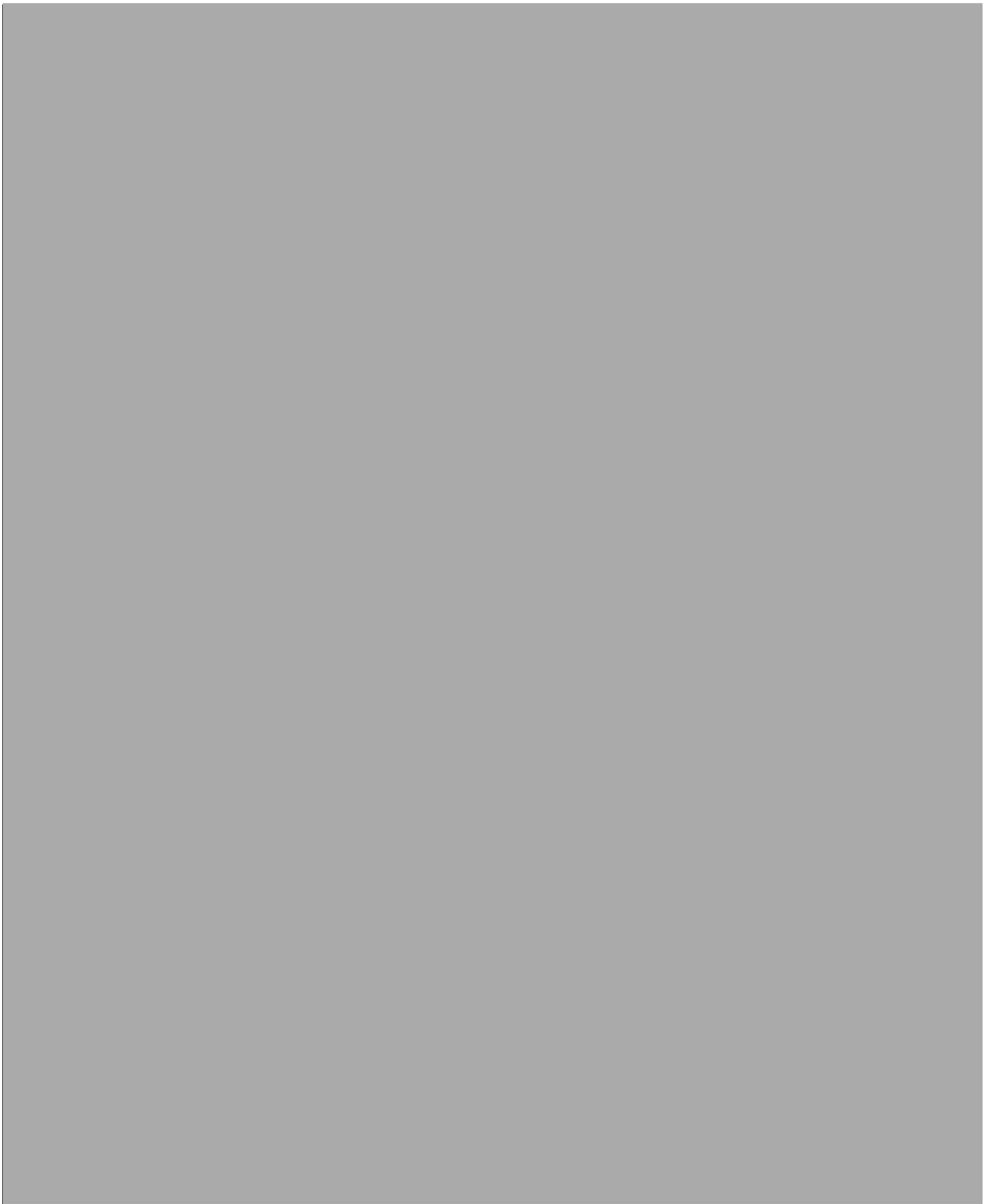






(c) Excluded Obligations.

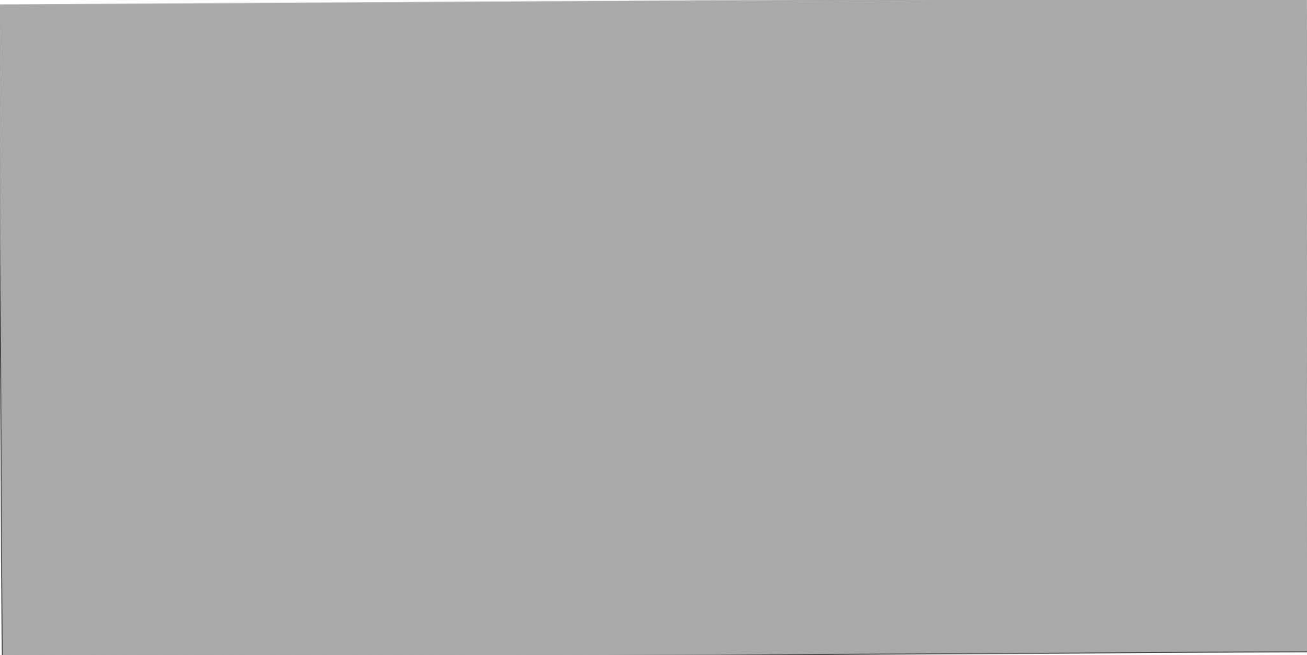




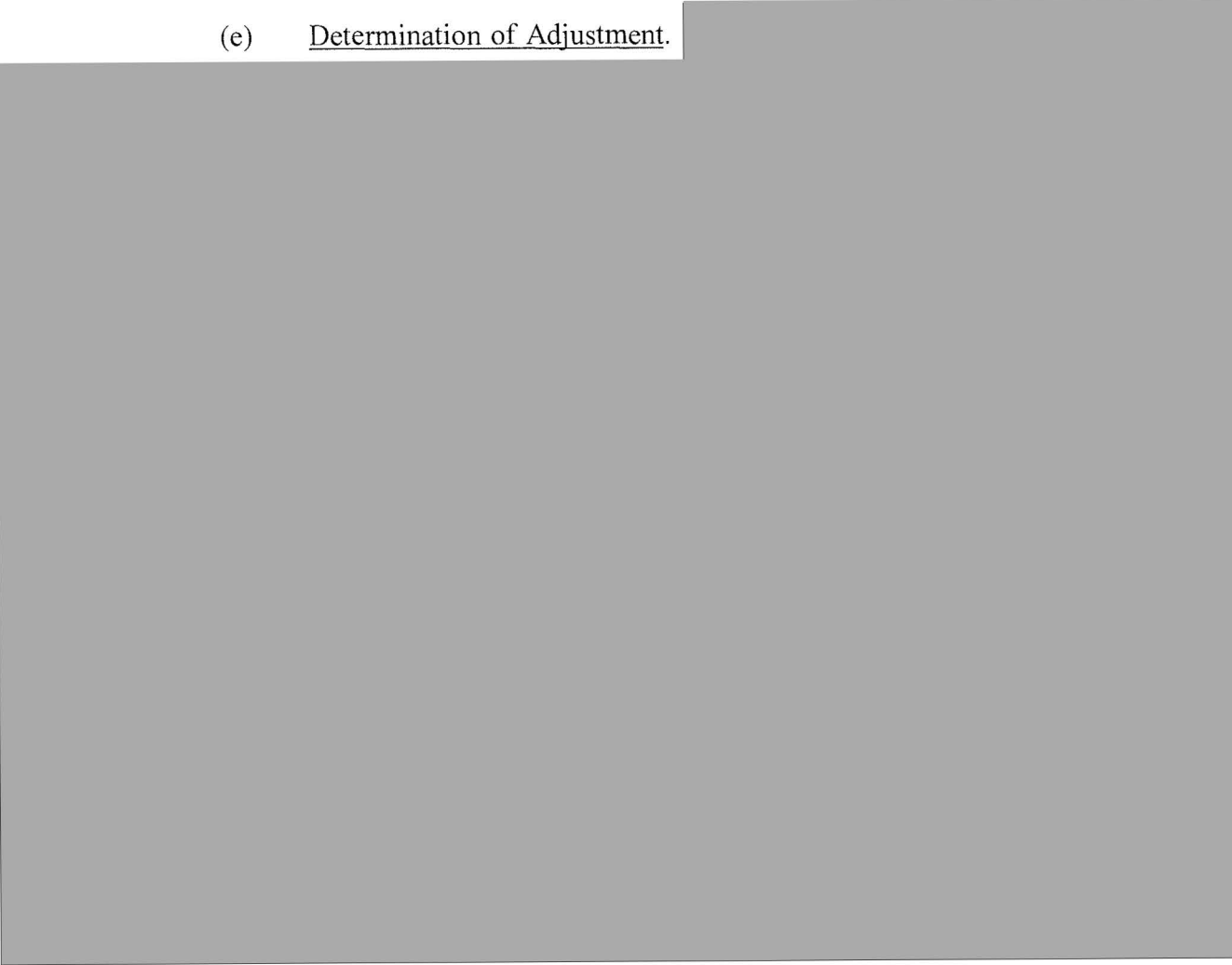


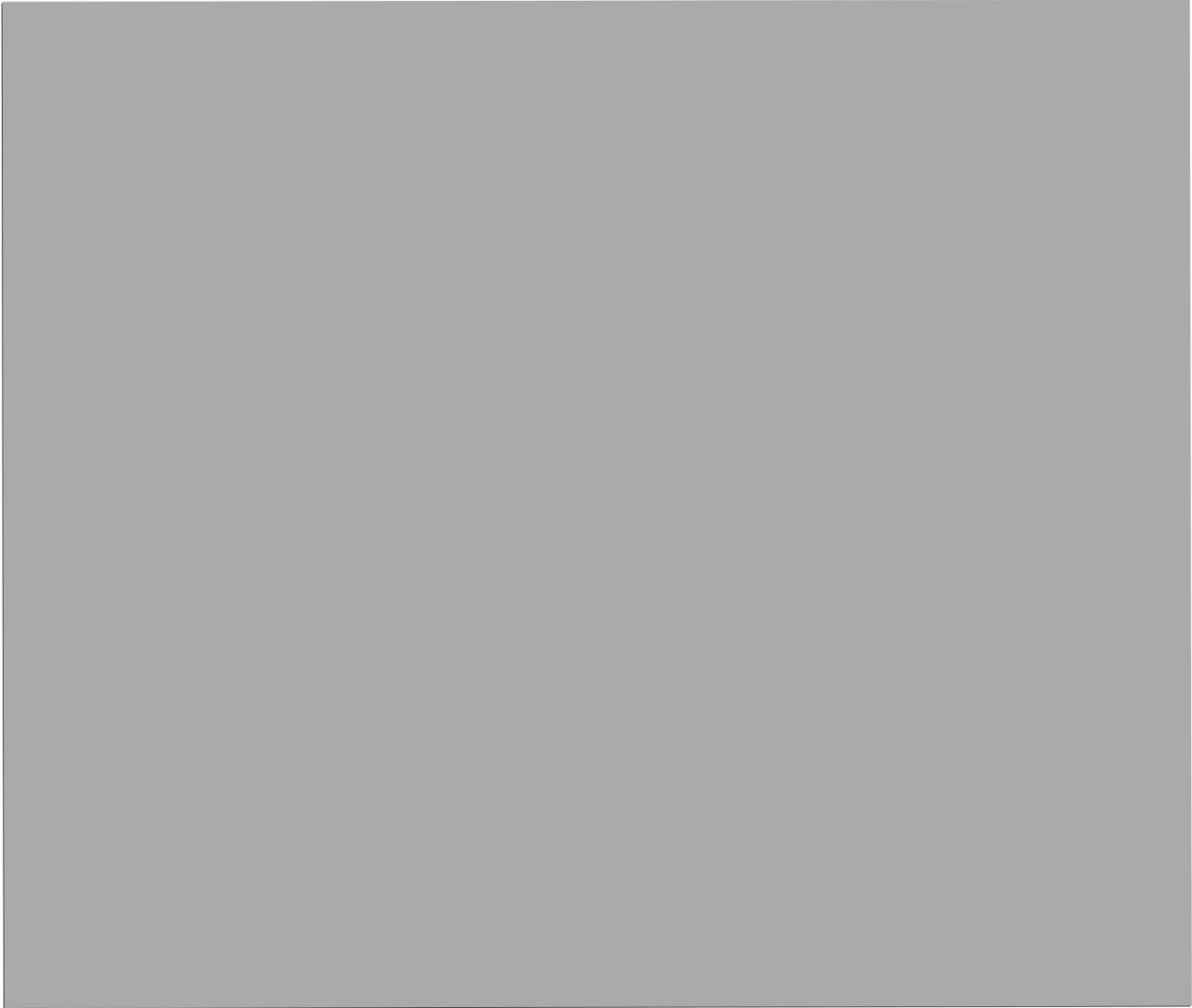
Adjustments and Prorations.

(d) Items Subject to Adjustment.



(e) Determination of Adjustment.





(f) Real Property Taxes.





(g) Adjustment for Fuel Inventory.



2.04 Allocation of Purchase Price.



III. CLOSING

3.01 Closing Date and Place.

3.02 Deliveries by DM&E. At or prior to the Closing, DM&E shall deliver to Buyer the following, with all instruments being duly executed:

- (i) Bill of Sale.
- (ii) Assignment and Assumption Agreement.
- (iii) Deed or Deeds for all real property, easements, rights-of-way and other similar interests in real property being conveyed in substantially the form of Exhibit D

hereto (including the Environmental Covenants and Release and Reserved Coal Service Rights and Easements), and the related sales disclosure forms.

- (iv) Equipment, Supply and Services Agreement.
- (v) Haulage Agreement – between Brookings and Wolsey and Tracy.
- (vi) Trackage Rights Agreement – between Tracy and Mankato.
- (vii) Interchange Agreement.
- (viii) Marketing and Divisions Agreement.
- (ix) Trackage Rights Agreement – between Tracy and Florence.
- (x) Master Locomotive Agreement.
- (xi) Haulage Agreement – Coal.
- (xii) Right of First Refusal Agreement.
- (xiii) a duly executed certificate that meets the requirements of Treasury

Regulation § 1.1445-2(b)(2) certifying that DM&E is not a “foreign person” for purposes of Section 1445 of the Code.

- (xiv) Vehicle titles for vehicles included in the Transaction Assets.

3.03 Deliveries by Buyer. At the Closing, Buyer shall deliver to DM&E the following, with all instruments being duly executed:

- (i) the Purchase Price in the manner provided by Section 2.03(a), subject to adjustment as required by Section 2.03.
- (ii) Assignment and Assumption Agreement; which includes the Colony Line Assumption Agreements to the extent not included in the Deed.
- (iii) Environmental Covenants and Release and Reserved Coal Service Rights and Easements included as an exhibit to the Deed or Deeds.

- (iv) Equipment, Supply and Services Agreement.
- (v) Haulage Agreement – between Brookings and Wolsey and Tracy.
- (vi) Trackage Rights Agreement – between Tracy and Mankato.
- (vii) Interchange Agreement.
- (viii) Marketing and Divisions Agreement.
- (ix) Trackage Rights Agreement – between Tracy and Florence.
- (x) Master Locomotive Agreement.
- (xi) Haulage Agreement – Coal.
- (xii) Right of First Refusal Agreement.

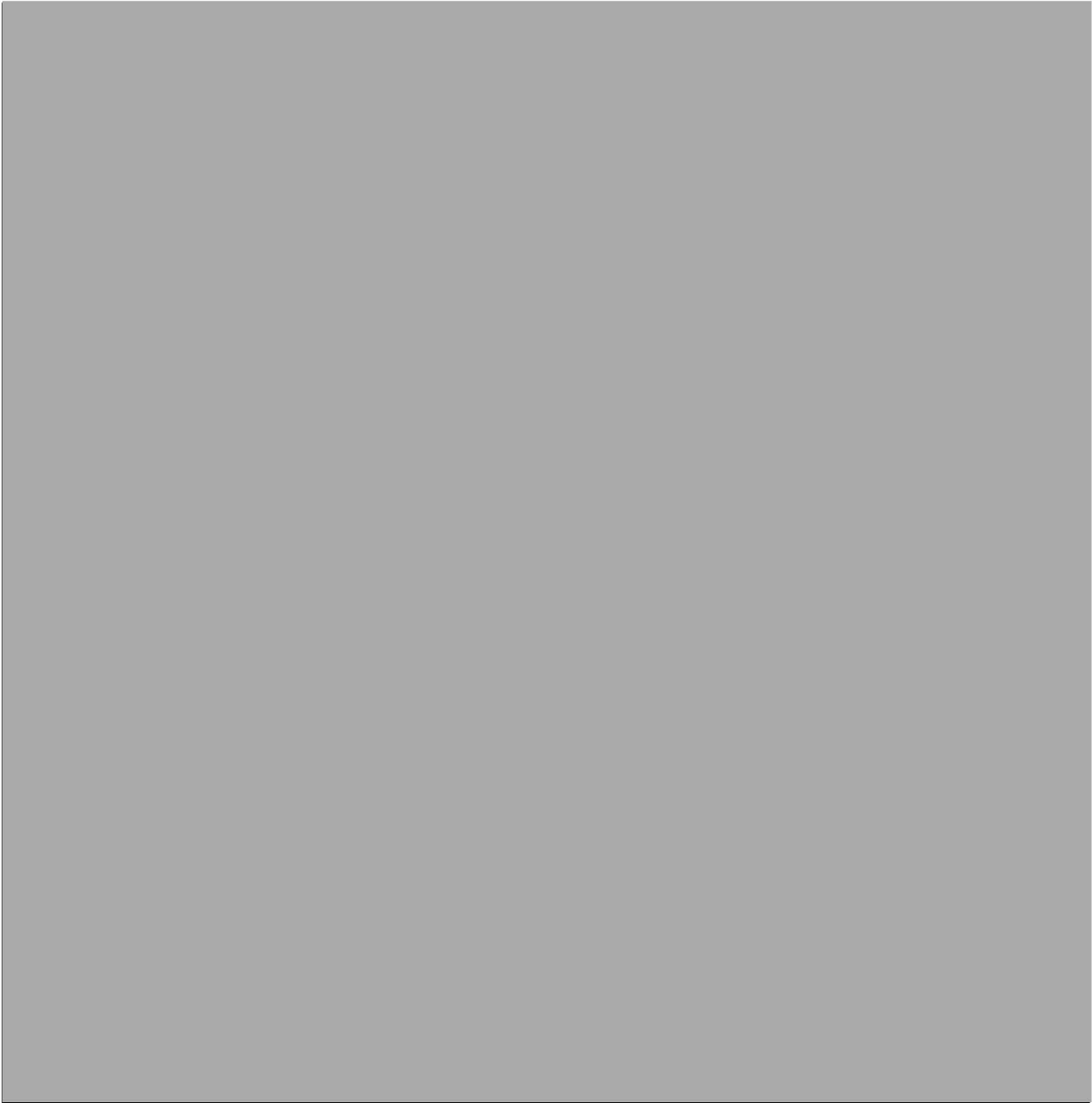
IV. ACCESS TO INFORMATION; CERTAIN RESTRICTIONS

4.01 Buyer's Investigation.

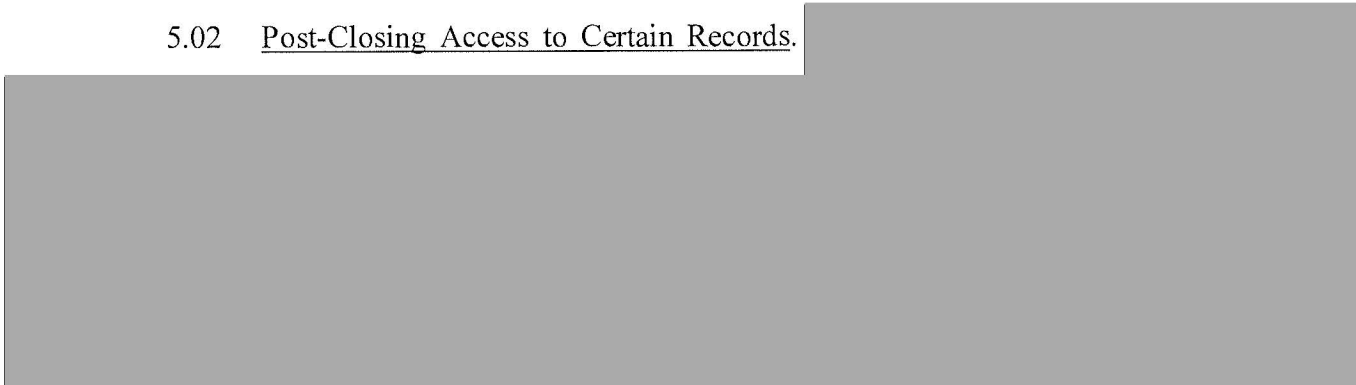
4.02 Confidentiality of Information.

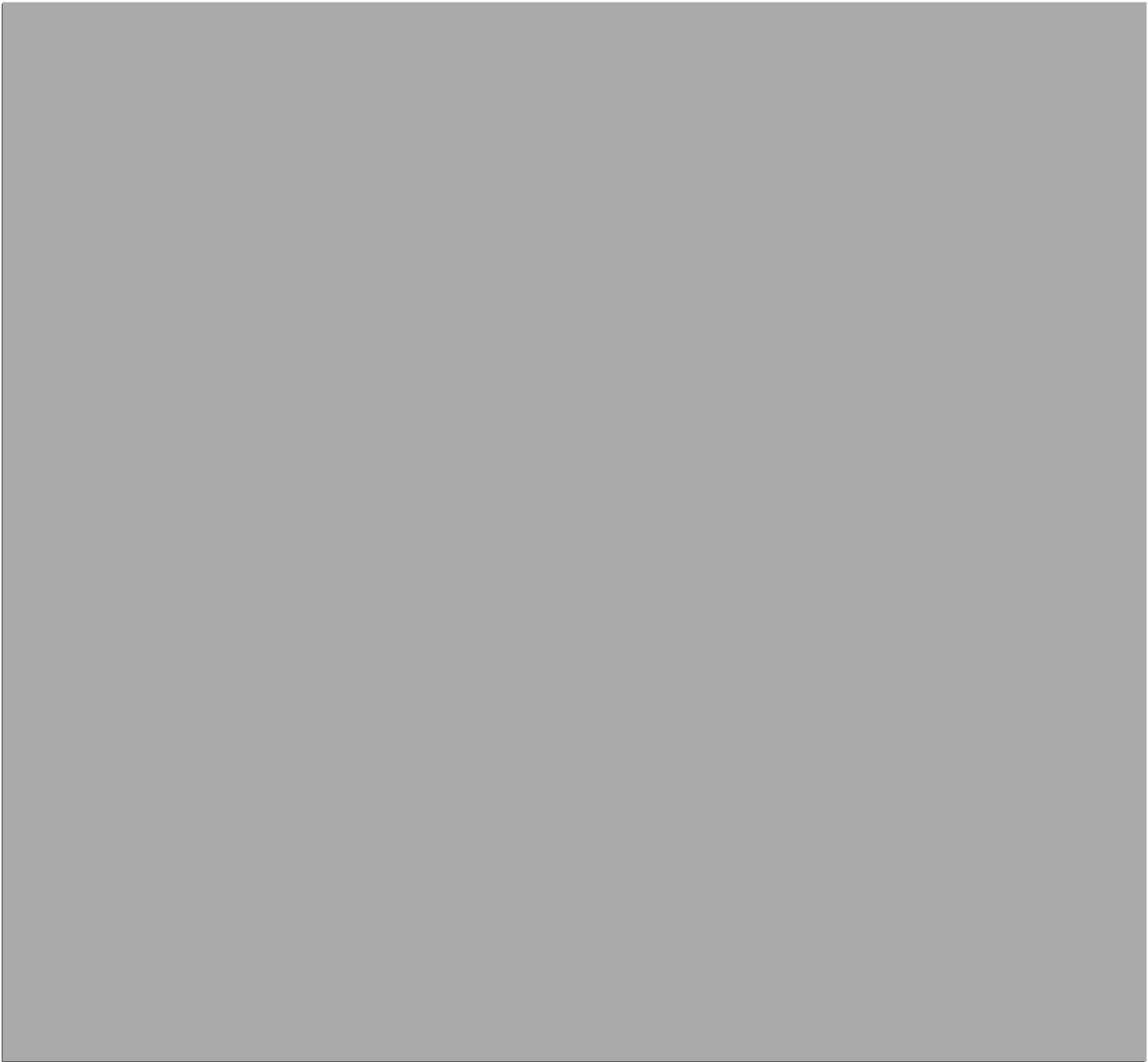
V. ADDITIONAL UNDERTAKINGS AND AGREEMENTS

5.01 Removal of Excluded Assets; Proprietary Locks; Emergency Information.



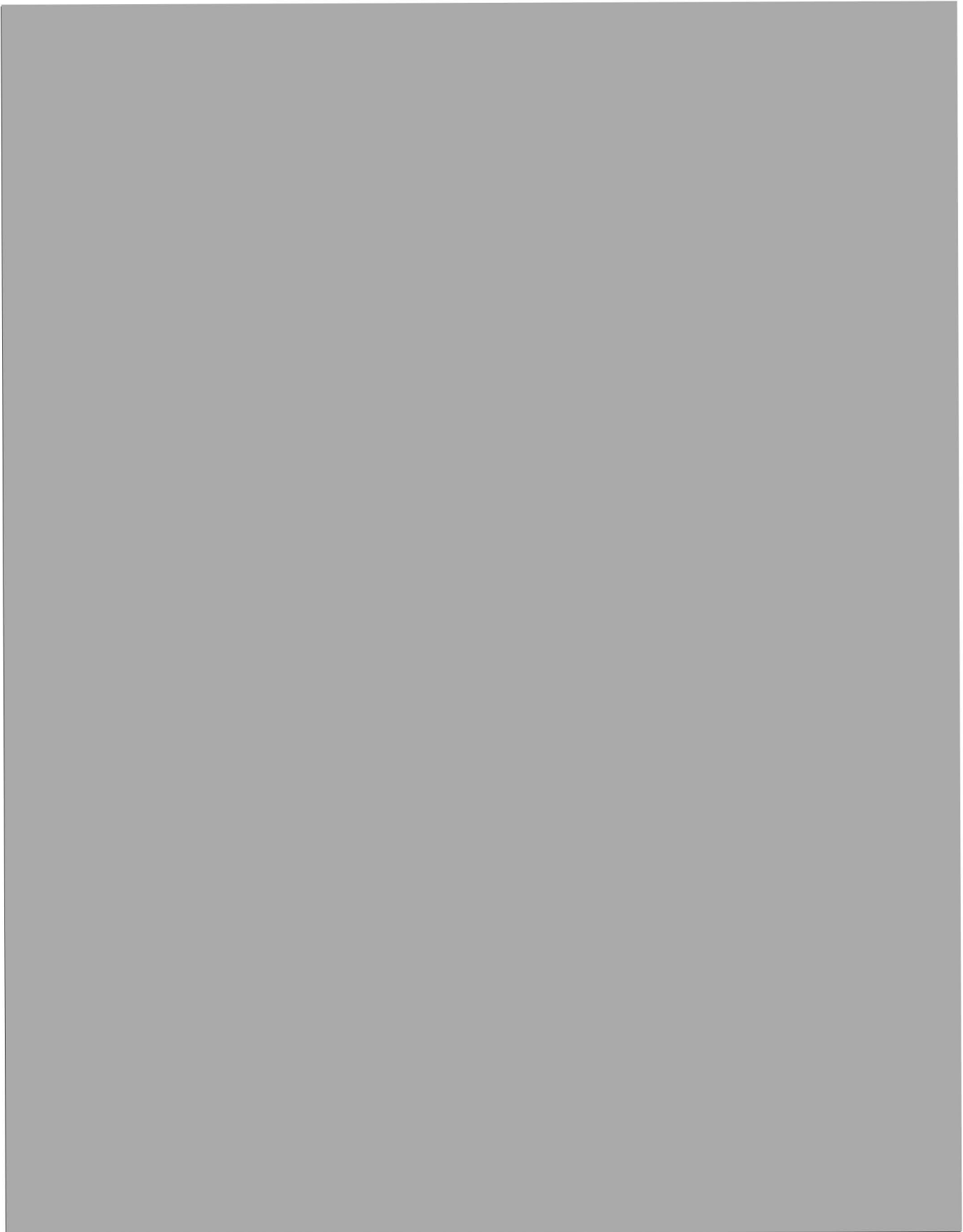
5.02 Post-Closing Access to Certain Records.





5.03 WARN Act.



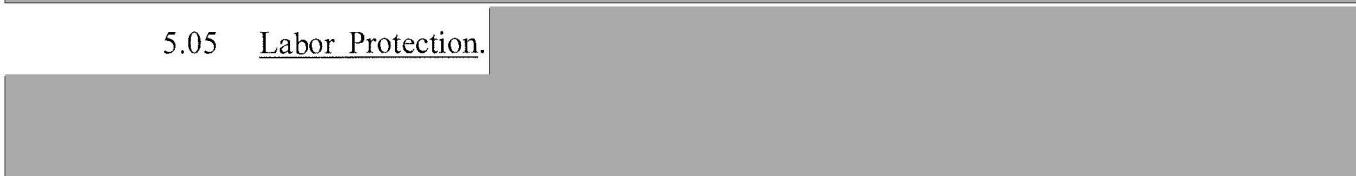


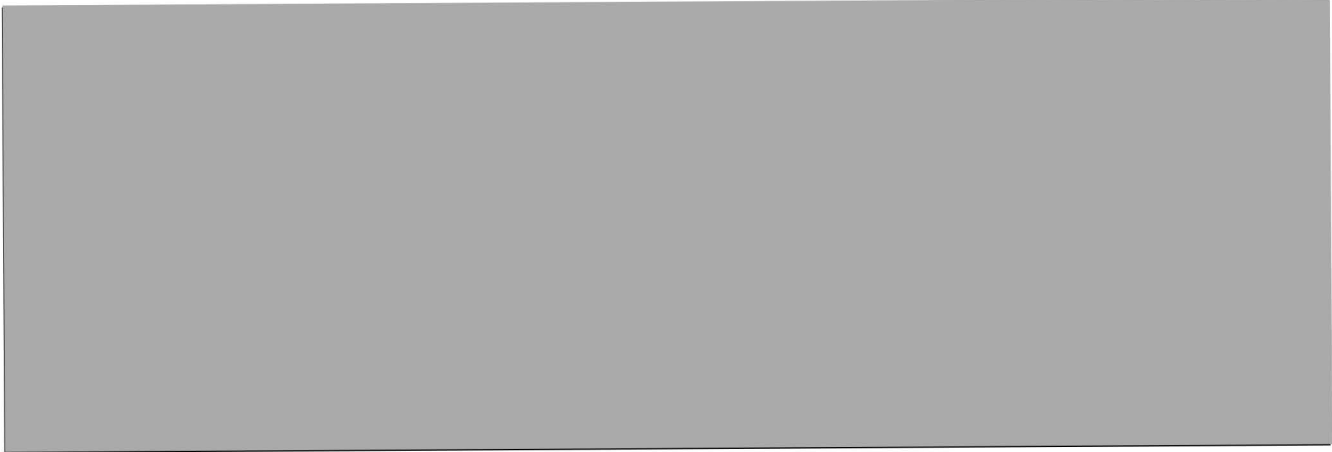


5.04 Employee Hiring Rights.

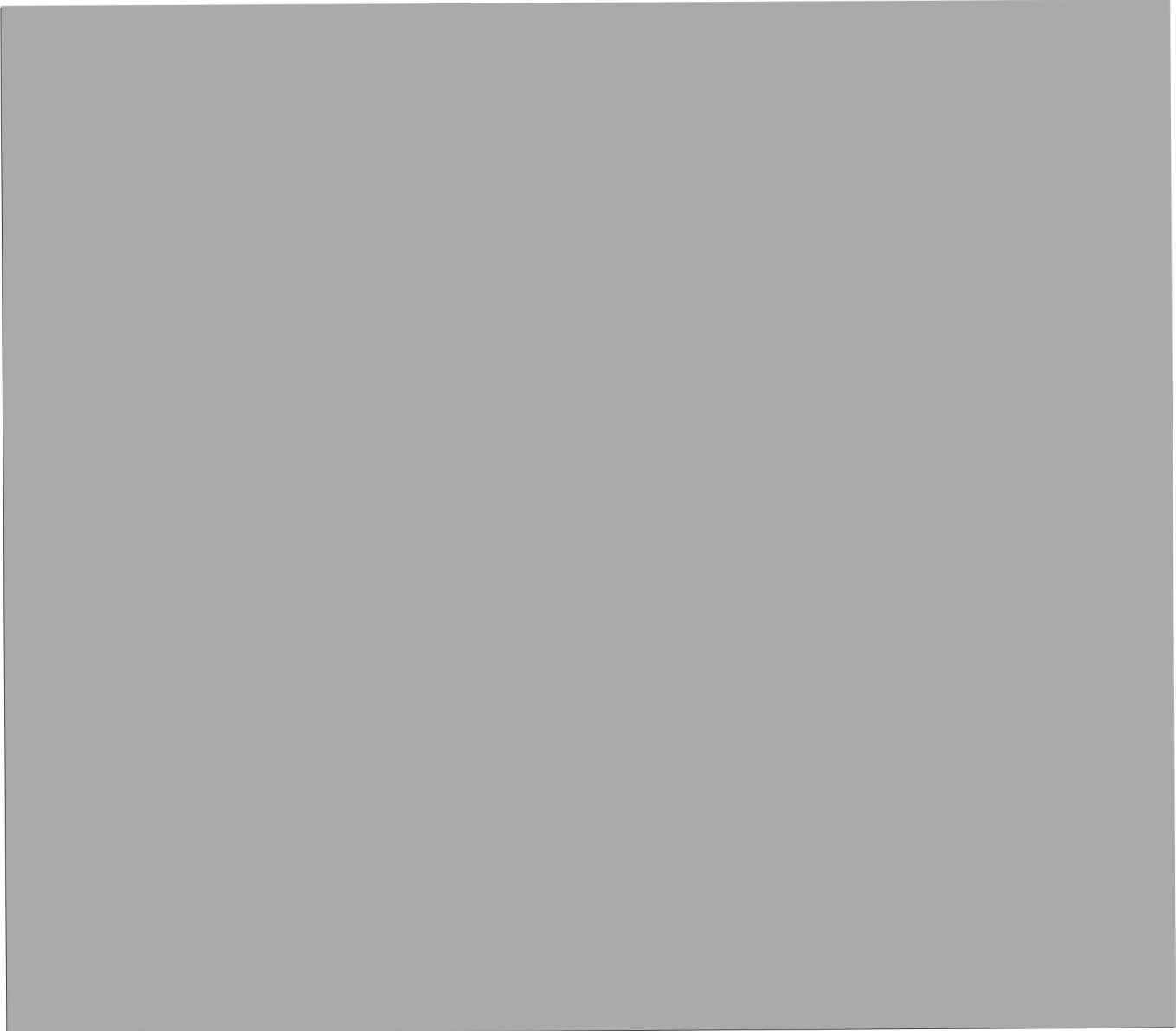


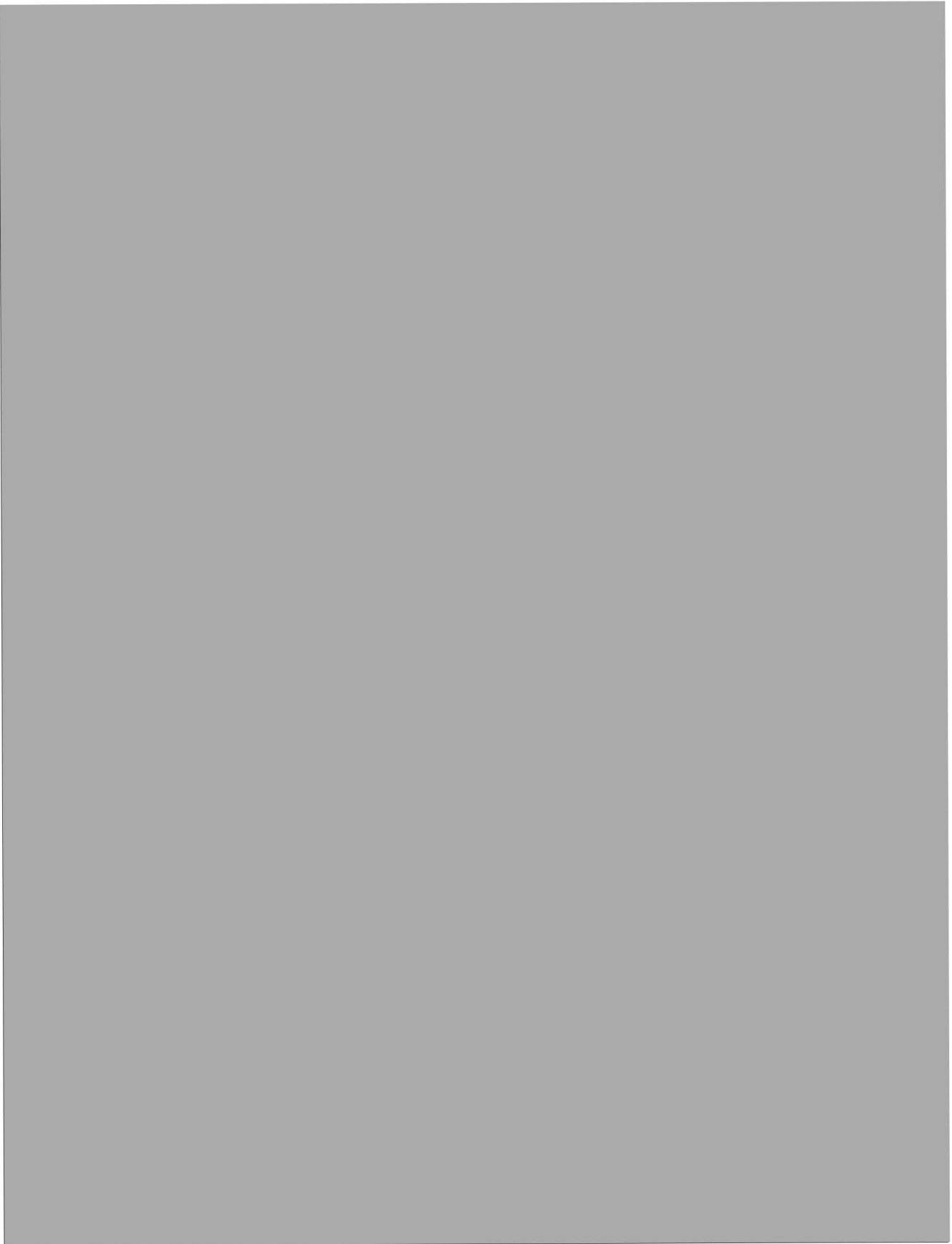
5.05 Labor Protection.

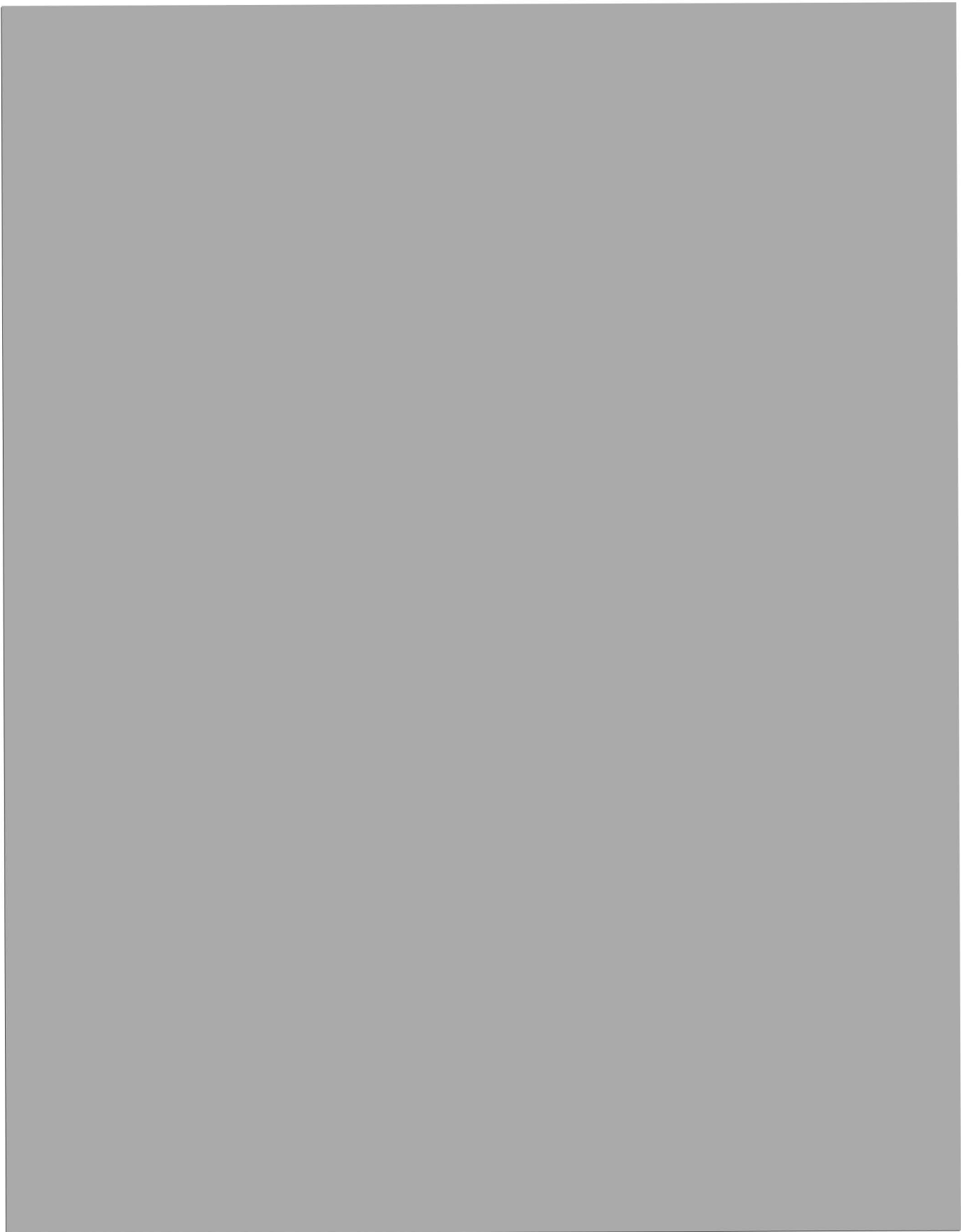


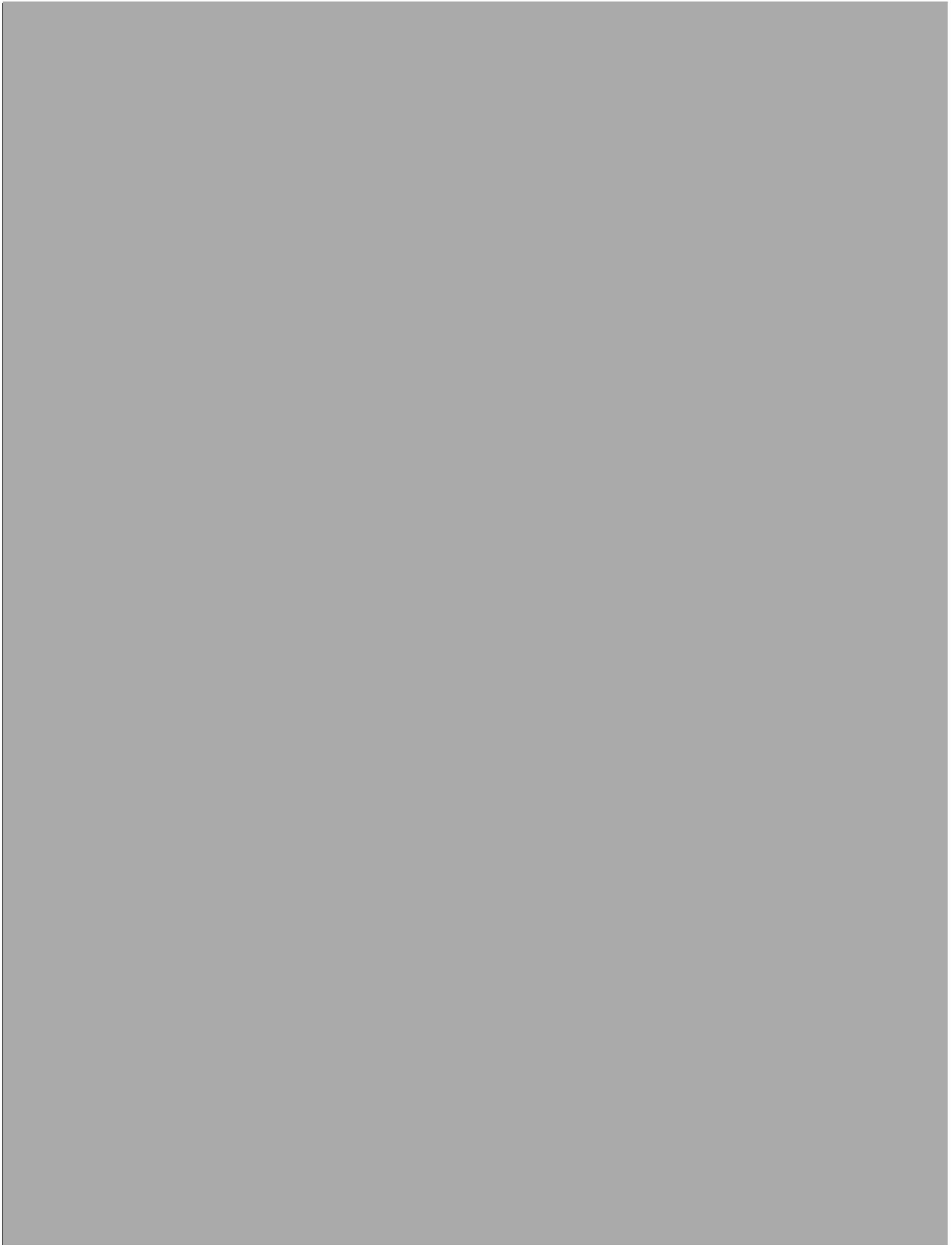


5.06 Condition of Property.









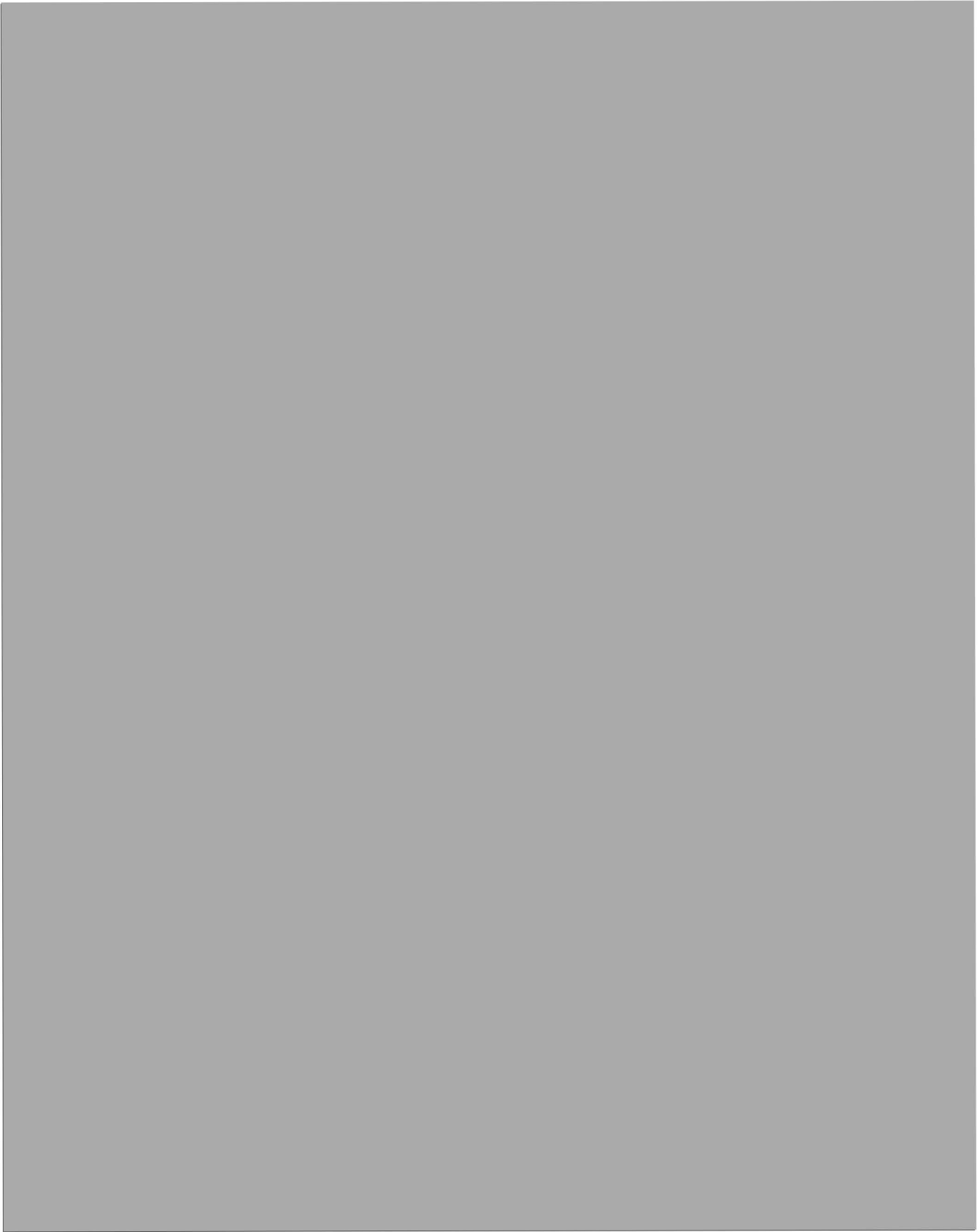


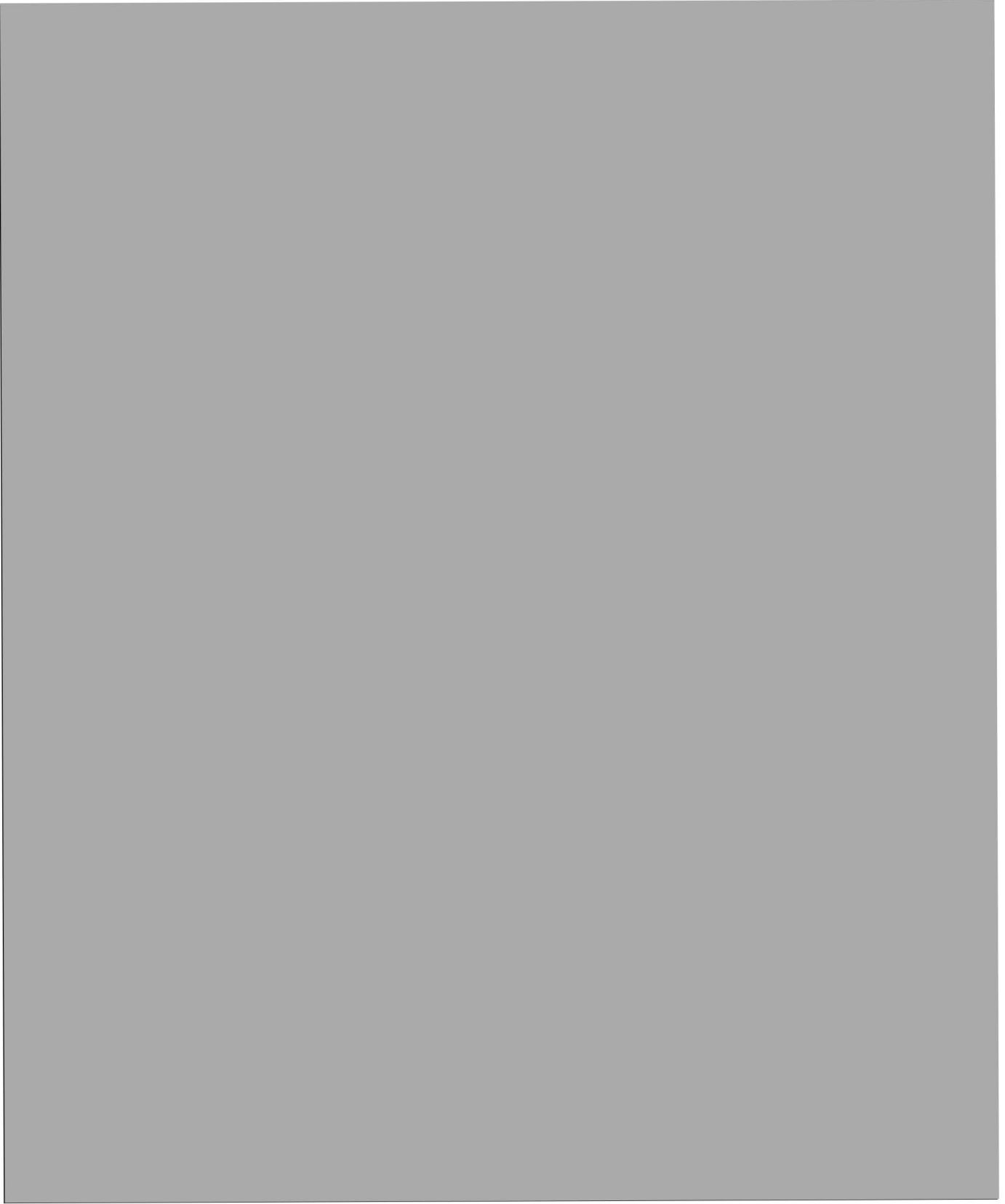
5.07 PRC Subdivision



5.08 Powder River Basin.







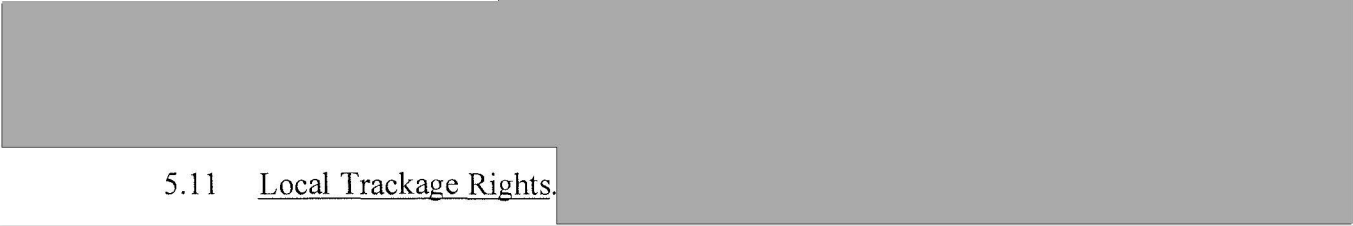


5.09 Trademarks and Logos.





5.10 Buyer Net Worth.



5.11 Local Trackage Rights.



5.12 Notification of Certain Matters; Cooperation.

(a) DM&E shall give prompt notice to Buyer, and Buyer shall give prompt notice to DM&E, of the occurrence or non-occurrence of any event the occurrence or

non-occurrence of which results in any representation or warranty contained in this Agreement or any certificate delivered pursuant hereto being untrue or inaccurate in any material respect (or, in the case of any representation or warranty qualified by its terms by materiality, then untrue or inaccurate in any respect) and any failure of DM&E or Buyer, as the case may be, to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 5.12 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(b) Each of DM&E and Buyer shall give prompt notice to the other of (i) any notice or other communication from any Person alleging that the approval of such Person is or may be required in connection with this Agreement or the consummation of the transactions contemplated hereby, (ii) any notice or other communication from any Governmental Authority in connection with this Agreement or the consummation of the transactions contemplated hereby, (iii) any claim relating to or involving or otherwise affecting such party that relates to this Agreement or the consummation of the transactions contemplated hereby or (iv) any fact, event, change, development, circumstance, condition or effect that is likely to delay or impede the ability of such party to consummate the transactions contemplated hereby or to fulfill their respective related obligations.

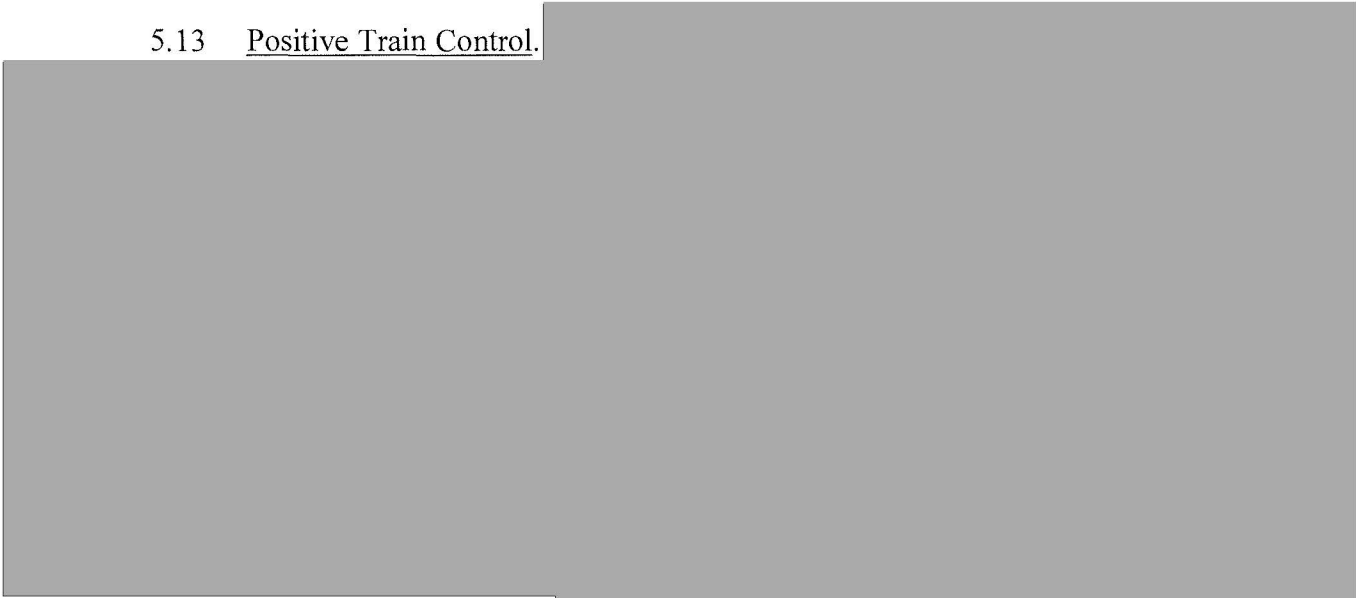
(c) DM&E shall give prompt notice to Buyer of the occurrence of a default or event that, with notice or lapse of time or both, would become a default under any Assumed Contract.

(d) Each party shall promptly advise the other parties hereto in writing of the occurrence of any claim of any Person that, if adversely determined, would reasonably be

expected to restrain, enjoin or otherwise prohibit the consummation of the transactions contemplated hereby and of any other matter or circumstance that would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby.

(e) The parties will use commercially reasonable efforts to mitigate, reduce or eliminate any deed taxes, transfer taxes, sales taxes, use taxes, excise taxes and similar charges in connection with the transactions contemplated hereunder and to cooperate with the other party in providing any information and documentation that may be necessary to obtain such exemptions. Without limiting the foregoing, on or prior to the Closing Date, the parties will make all necessary filings and take any other steps necessary to claim exemption under any applicable “bulk sales” laws.

5.13 Positive Train Control.



5.14 Pipe and Wire Crossing



[Redacted]

5.15 Overlap Contracts.

[Redacted]

5.16 Colony Line Arbitration.

[Redacted]

[Redacted]

VI. DM&E'S REPRESENTATIONS AND WARRANTIES



Except as set forth in the corresponding section of the disclosure schedule delivered by DM&E to Buyer concurrently herewith (the “Schedules”), DM&E represents and warrants to Buyer as of the date hereof and as of the Closing Date as follows:

6.01 Organization and Authority.

(a) DM&E is a corporation duly organized and existing and in good standing under the Laws of the State of Delaware. DM&E is duly qualified to do business in, and is in good standing under the Laws of, each other state in which the ownership or lease of its property or the nature or conduct of its business or both makes such qualification necessary, except where the failure to be so qualified would not have a Material Adverse Effect.

(b) DM&E has the corporate power and authority to own, lease and operate the Transaction Assets, to carry on its business related thereto as now conducted.

(c) The execution, delivery and performance by DM&E of this Agreement and of all other agreements and instruments called for hereunder, and the consummation by DM&E of the transactions contemplated by this Agreement, and all such other agreements and instruments called for hereunder, have been duly and validly authorized by all necessary action of the board of directors of DM&E and by any other necessary corporate or shareholder action of DM&E under applicable Law, the articles of incorporation and bylaws of DM&E and otherwise

(none of which actions have been modified or rescinded, and all of which actions are in full force and effect). This Agreement constitutes, and upon execution and delivery each other agreement and instrument called for hereunder will constitute, the legal, valid and binding obligation of DM&E, enforceable against DM&E in accordance with their respective terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.02 No Conflicts; Consents of Third Parties.

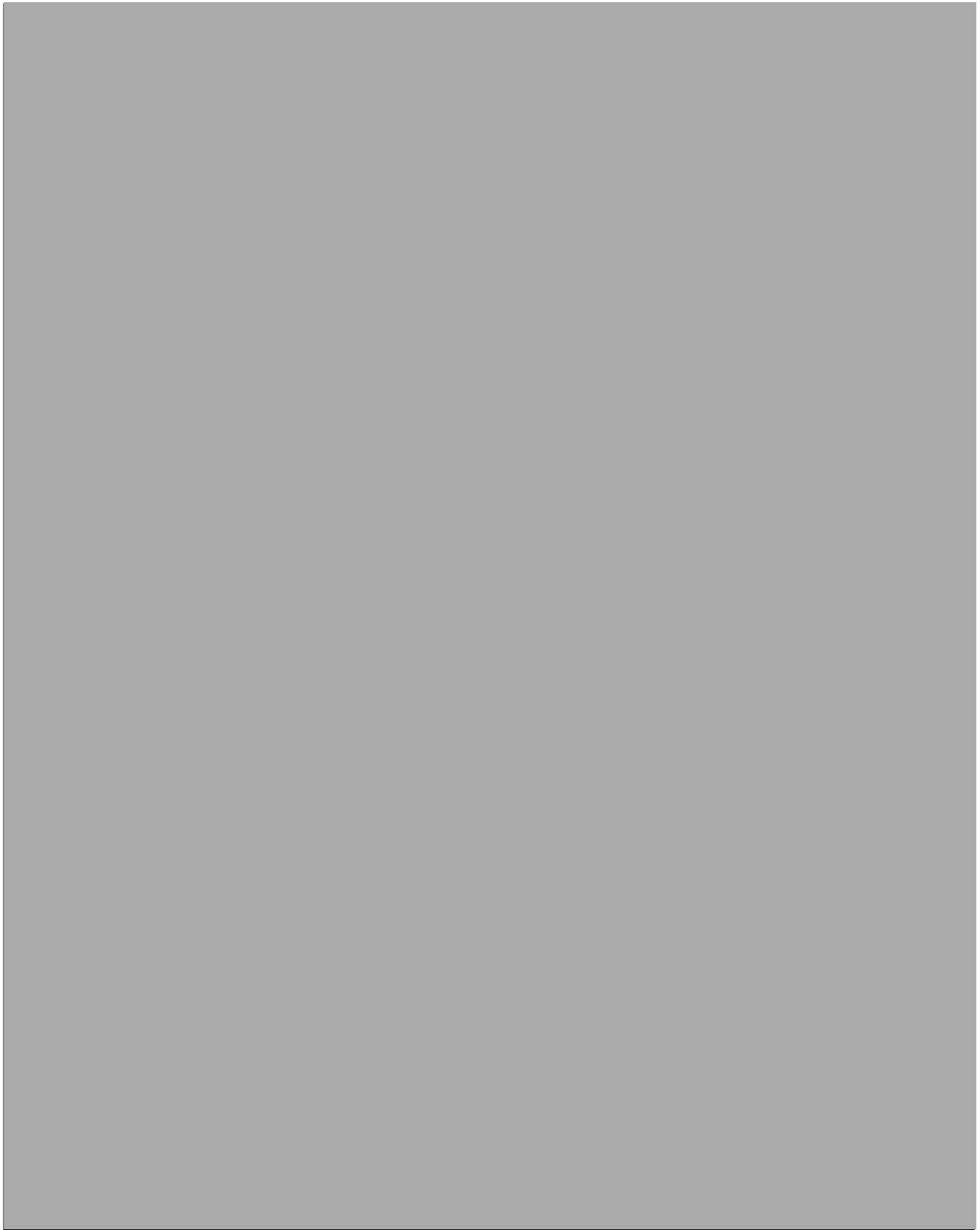
6.03 Licenses and Permits.

6.04 Title to Transaction Assets.



6.05 Employment and Employee Benefit Matters.





6.06 Litigation.



6.07 Compliance with Law.



6.08 Absence of Certain Changes.



6.09 List of Agreements

6.10 Status of Agreements.

6.11 Taxes and Assessments.

6.12 Hazardous Materials.

6.13 Real Property.

VII. BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to DM&E as of the date hereof and as of the Closing Date as follows:

7.01 Organization and Authority.

(a) Buyer is a Delaware corporation duly organized and validly existing and in good standing under the Laws of the State of Delaware. Buyer is duly qualified to do business in, and is in good standing under the Laws of, each other state in which the ownership or lease of

its property or the nature or conduct of its business or both makes such qualification necessary, except where the failure to be so qualified would not have a Material Adverse Effect on Buyer.

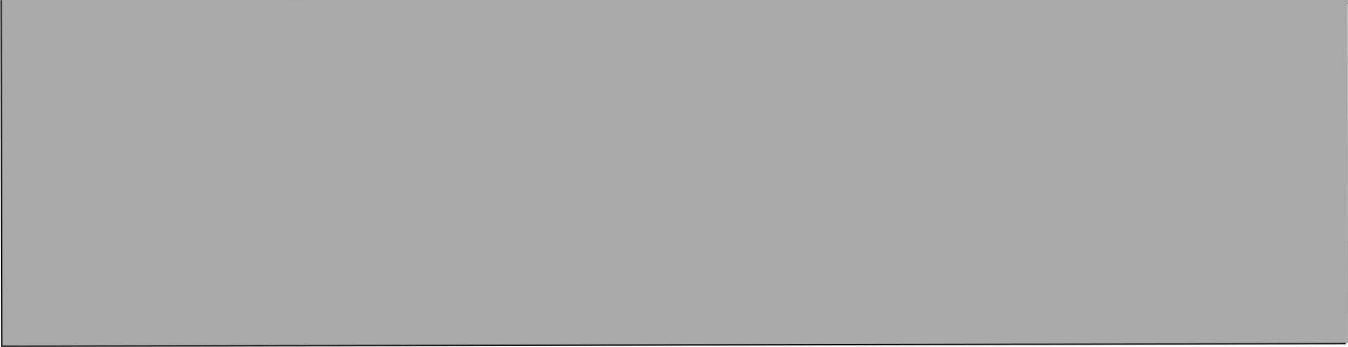
(b) Buyer has the corporate power and authority to own, lease and operate the Transaction Assets and to carry on its business as now conducted.

(c) The execution, delivery and performance by Buyer of this Agreement and of all other agreements and instruments called for hereunder, and the consummation by Buyer of the transactions contemplated by this Agreement, and all such other agreements and instruments called for hereunder, have been duly and validly authorized by all necessary action of Buyer and by any other necessary corporate action of Buyer under applicable Law, the certificate of incorporation and bylaws of Buyer and otherwise (none of which actions have been modified or rescinded, and all of which actions are in full force and effect). This Agreement constitutes, and upon execution and delivery each other agreement and instrument called for hereunder will constitute, the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

7.02 No Conflicts; Consents of Third Parties.



7.03 Litigation.



7.04 Information Provided.



7.05 Financing. Buyer will have as of the Closing sufficient funds necessary to pay the Purchase Price and to consummate the transactions contemplated by this Agreement.

7.06 Continued Operation. Buyer is purchasing the line for continued railway operation and to provide common carrier freight rail service (other than for coal) to customers on the Main System so long as such railway operations and services are commercially practical.

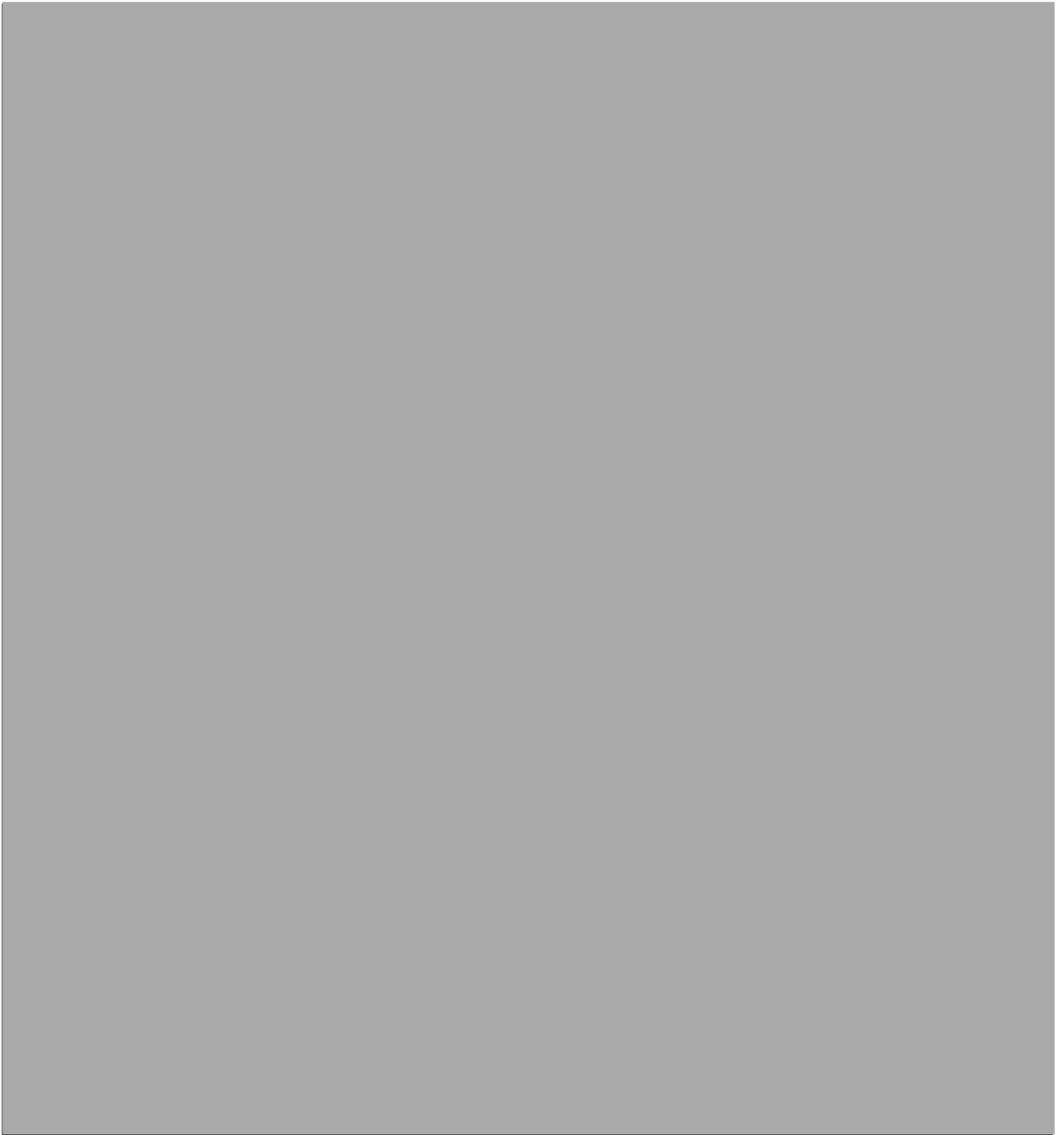
7.07 Net Worth. [REDACTED]

7.08 PRB. [REDACTED]

VIII. DM&E'S PRECLOSING COVENANTS

DM&E covenants and agrees with Buyer as follows:

8.01 Negative Covenants. From the date of this Agreement until the Closing, without limiting DM&E's obligations in Section 8.02, DM&E will not, without the prior written approval of Buyer, such approval not to be unreasonably delayed or withheld, do or agree to do any of the following:



8.02 Affirmative Covenants. Pending and prior to the Closing Date, DM&E will:

IX. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE

The obligations of Buyer to purchase the Transaction Assets and to effect the Closing are subject, at the option of Buyer, to the satisfaction or waiver at or prior to the Closing of each of the following conditions:

9.01 Representations and Warranties.

9.02 STB Conditions.

9.03 Documents at Closing.

9.04 No Governmental Action or Legal Proceedings.

9.05 Contractual Consents.

9.06 Interchange Agreement.

X. CONDITIONS PRECEDENT TO DM&E'S OBLIGATION TO CLOSE

The obligations of DM&E to sell, transfer, convey and deliver the Transaction Assets and to effect the Closing are subject, at the option of DM&E, to the satisfaction or waiver at or prior to the Closing of each of the following conditions:

10.01 Representations and Warranties.

10.02 STB Conditions.

10.03 Documents at Closing.

10.04 No Governmental Action or Legal Proceedings.

XI. RISK OF LOSS; DEFAULT; TERMINATION

11.01 Risk of Loss.

11.02 Termination By DM&E.

11.03 Termination By Buyer.

[REDACTED]

11.04 Failure of STB to Approve. [REDACTED]

[REDACTED]

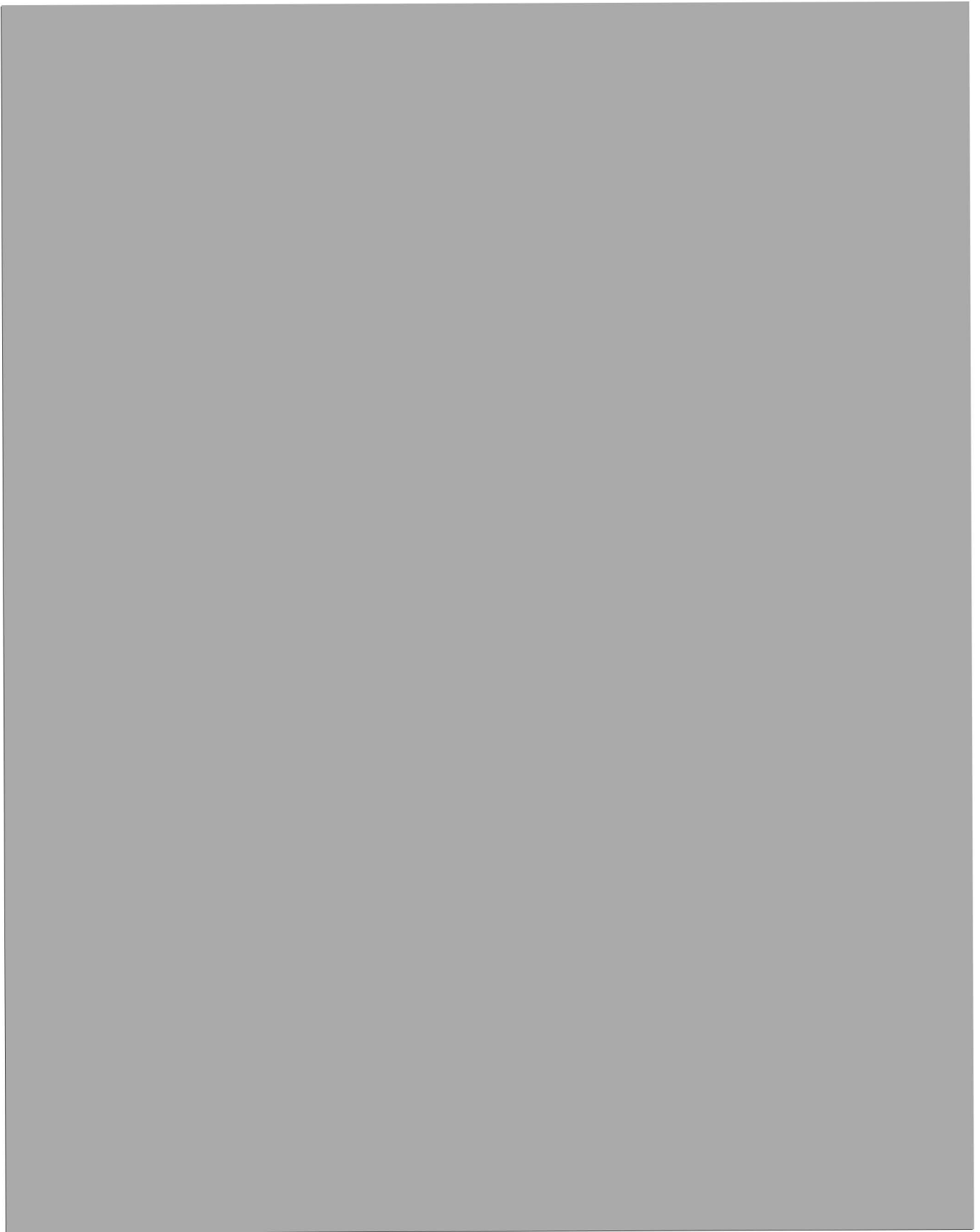
11.05 Mutual Agreement. This Agreement may be terminated at any time prior to the Closing Date upon the mutual written agreement of Buyer and DM&E.

11.06 Effect of Termination. [REDACTED]

[REDACTED]

XII. SURVIVAL; INDEMNIFICATION

12.01 Survival of Warranties and Covenants; Limitations.



[Redacted content]

12.02 Indemnification by DM&E.

[Redacted content]

[Redacted content]

[REDACTED]

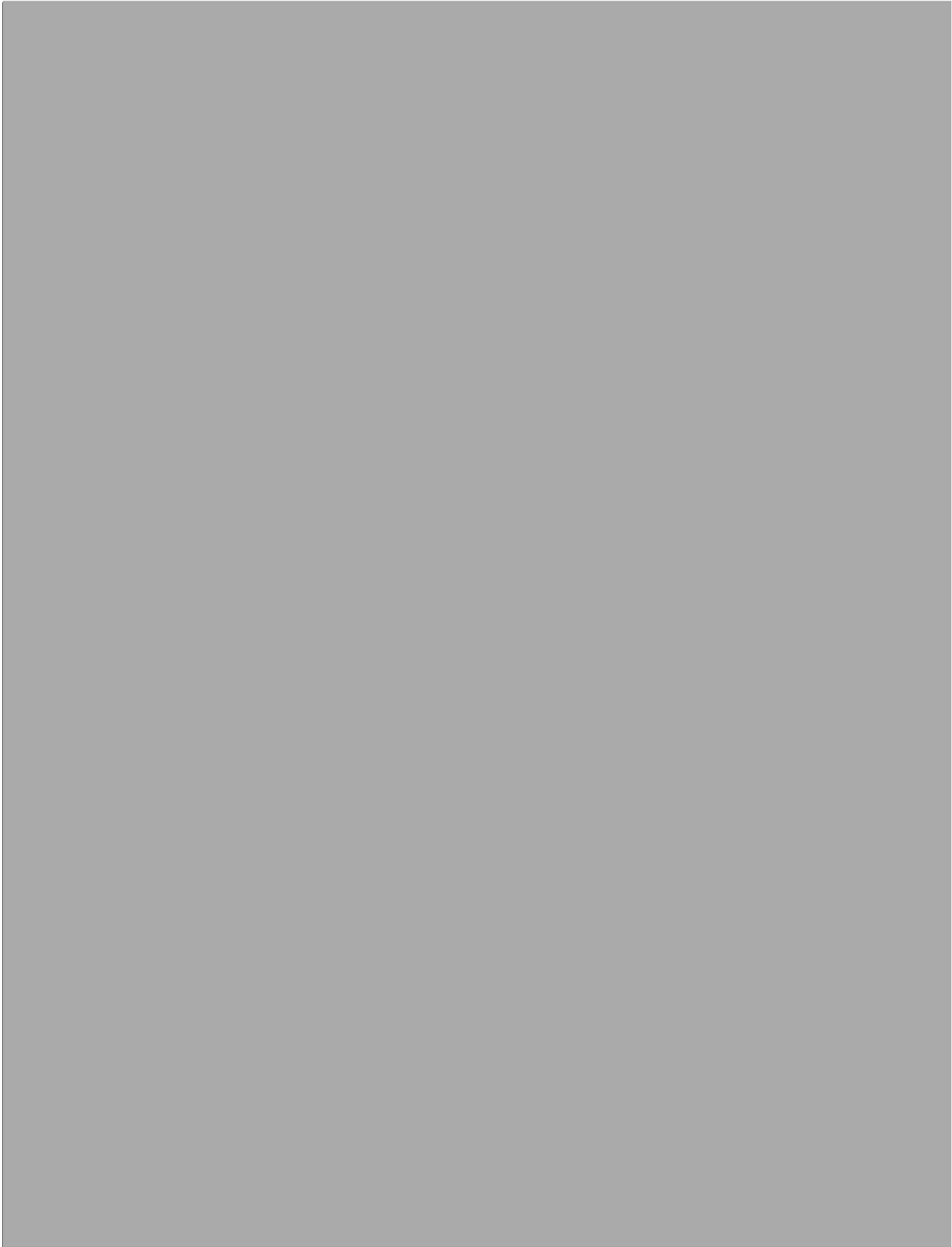
12.03 Indemnification by Buyer.

[REDACTED]



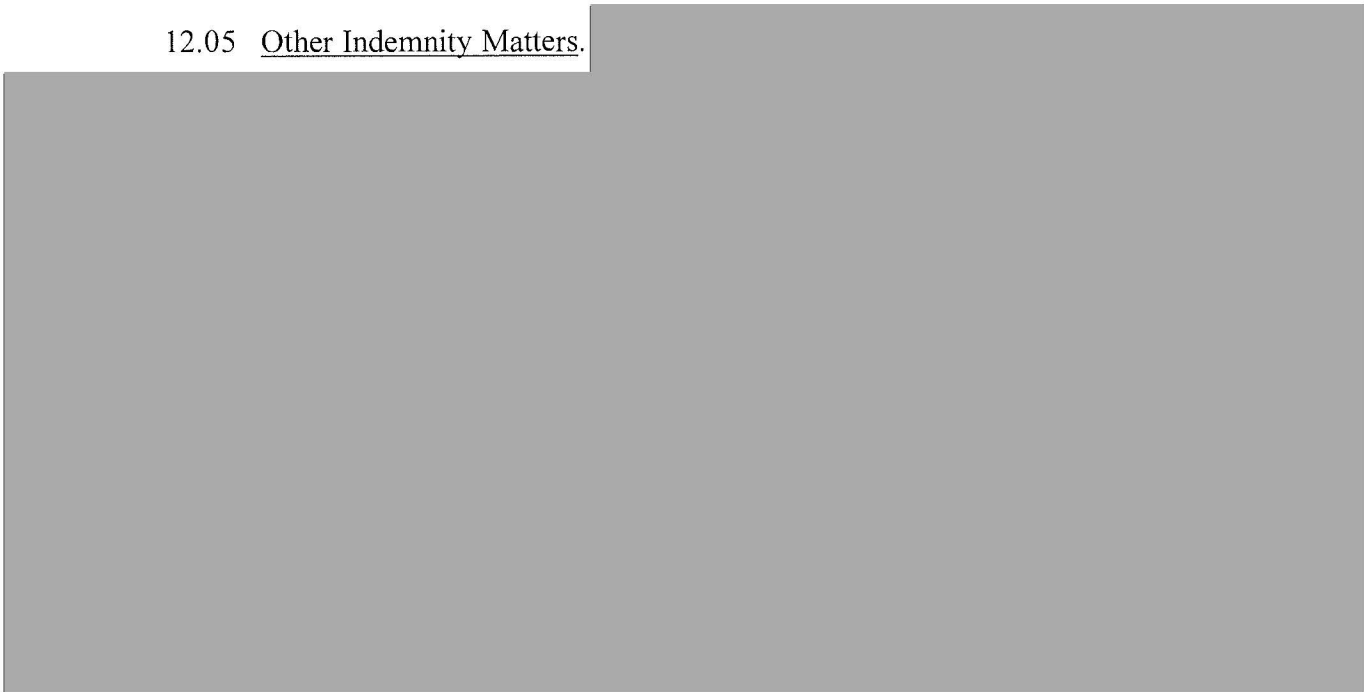
12.04 Conditions of Indemnification.





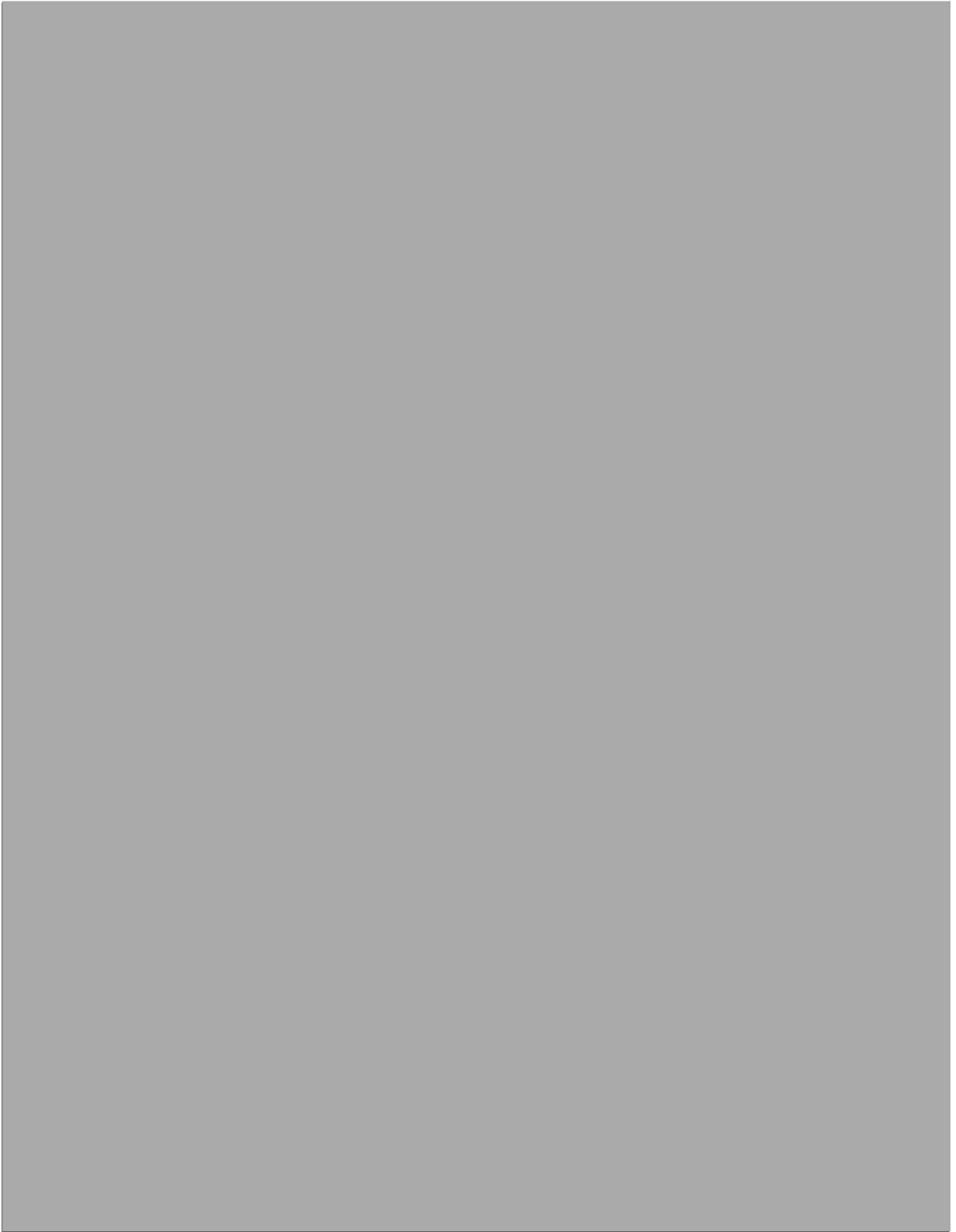


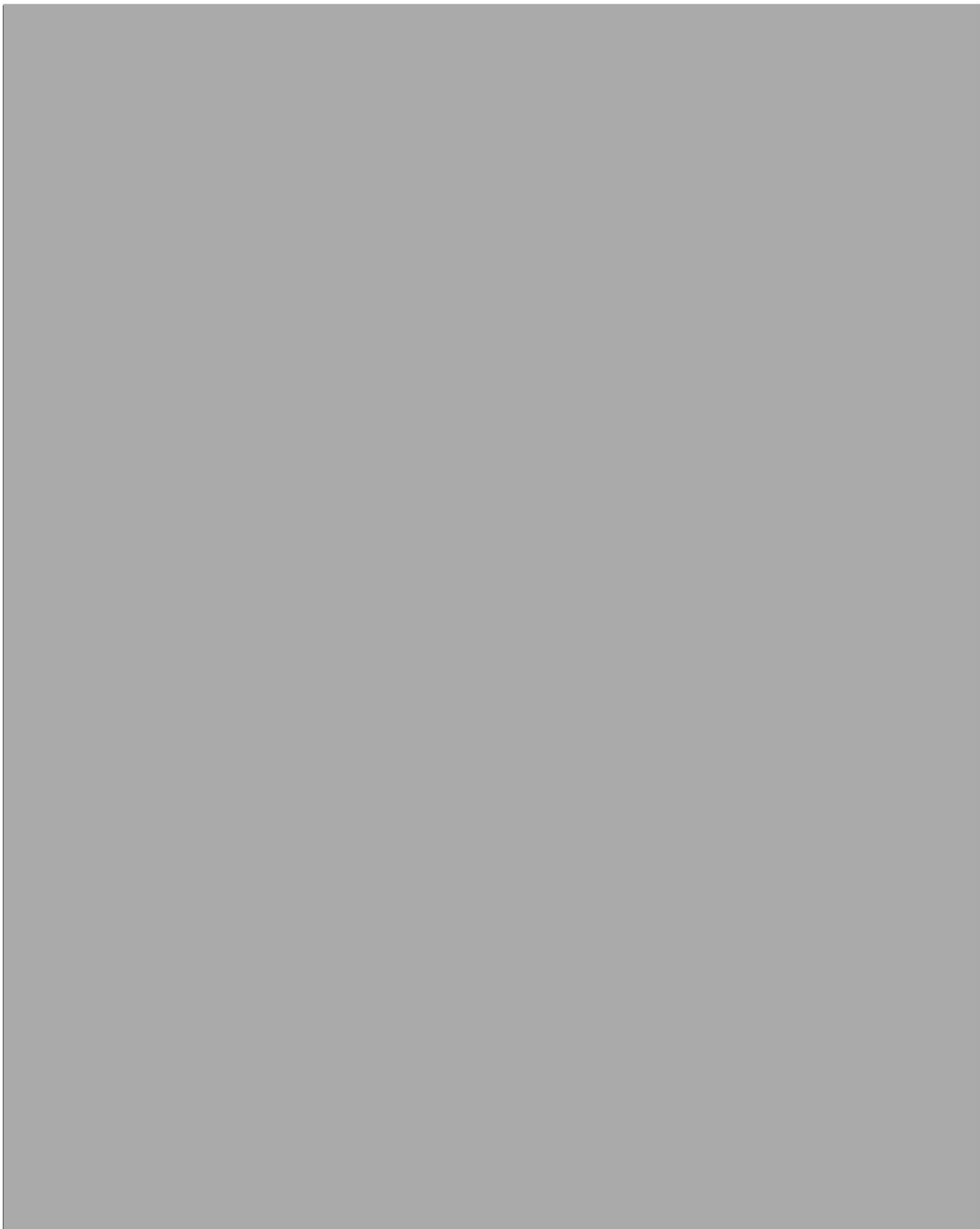
12.05 Other Indemnity Matters.

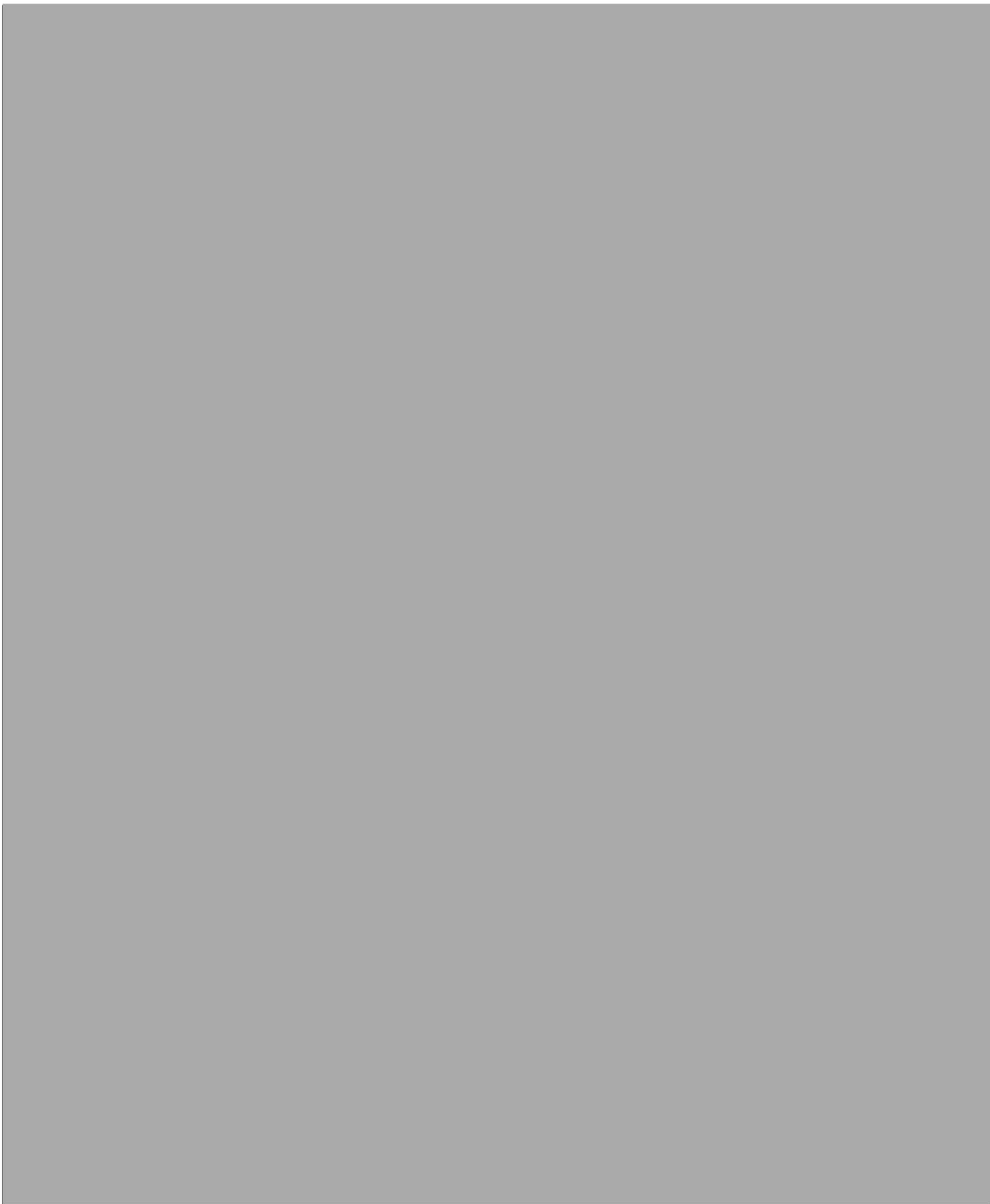


12.06 Certain Environmental Matters.



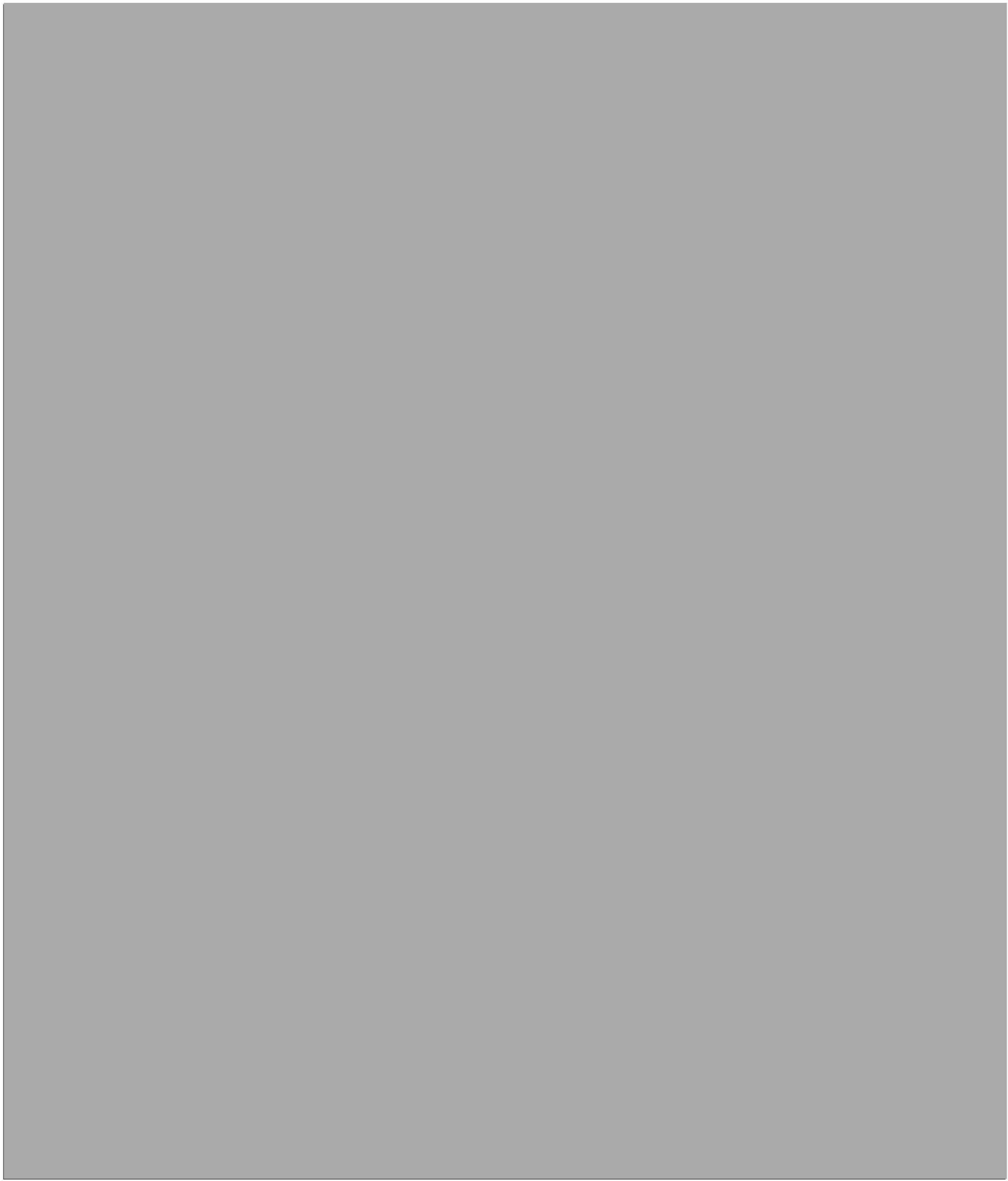






XIII. MISCELLANEOUS

13.01 Consents and Filings.



13.02 Additional Actions and Documents. At or after the Closing, and without further consideration, DM&E and Buyer will execute and deliver such further instruments of

conveyance, assignment and transfer and take such other reasonable actions as Buyer may reasonably request in order to convey, assign and transfer to Buyer any of the Transaction Assets and otherwise carry out the purpose of this Agreement.

13.03 Brokers.

13.04 Expenses.

13.05 Waiver. No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement, or under any other agreements or instruments

given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of default or any acquiescence therein.

13.06 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the respective successors and permitted assigns of the parties.

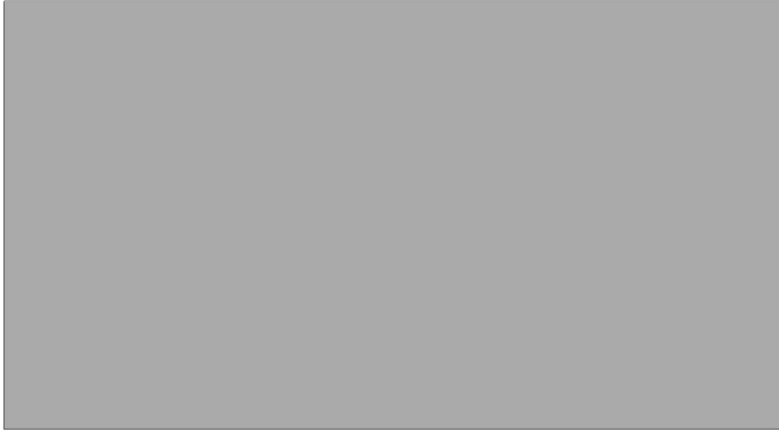
13.07 Assignment.

13.08 Notices. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be mailed by a recognized overnight courier service, by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, or telegram, or facsimile transmission, addressed as follows:

If to DM&E:

Dakota, Minnesota & Eastern Railroad Corporation
Suite 700, 120 S. 6th Street
Minneapolis, MN 55402
Facsimile No.: 612 904 5981

With a copy to:



(i) If to Buyer:

Rapid City, Pierre & Eastern Railroad, Inc.
c/o Genesee & Wyoming Inc.
20 West Avenue
Darien, Connecticut 06820
Attention: General Counsel
Facsimile: (203) 656-1148

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Anthony F. Vernace
Facsimile No.: 212-455-2502

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

13.09 Announcements.





13.10 Entire Agreement. This Agreement, including the Exhibits hereto and other instruments and documents referred to herein or delivered pursuant hereto or in connection herewith, and the Confidentiality Agreement represents the entire understanding of the parties hereto, supersedes all prior oral or written memoranda and agreements and understandings between the parties with respect to the subjects herein, and may not be supplemented or amended, except by a written instrument executed by and delivered to each of the parties hereto designating specifically the terms and provisions so supplemented and amended.

13.11 Headings. Article, section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

13.12 Conflicting Terms. In the event that any of the terms or provisions of this Agreement violate, conflict with or are inconsistent with any of the terms or provisions of any of the agreements and instruments referred to herein or delivered pursuant hereto or in connection therewith, the terms and provisions of this Agreements shall govern and control for all purposes thereunder and hereunder.

13.13 Limitation on Benefits. Except as provided in Article XII, nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth in this Agreement, and all other documents or instruments called for hereunder shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

13.14 Severability. If any clause or provision of this Agreement, or the performance of any action related thereto, at the time such fulfillment or performance shall be due, shall be deemed by a court of competent jurisdiction to be unlawful or otherwise invalid or unenforceable, or to exceed the limit of validity prescribed by Law, then the obligation to be fulfilled or performed shall be reduced to the limit of such validity; and if any clause or provision contained in this Agreement operates or would operate prospectively to invalidate any Agreement, in whole or in part, then such clause or provision only shall be held ineffective, as though not herein or therein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

13.15 Intentionally Omitted.

13.16 Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or the signatures of the persons required to bind any party, appear on one or more of the counterparts.

All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for any particular number of counterparts; but rather any number of counterparts shall be sufficient so long as those counterparts contain the respective signatures of, or on behalf of, all of the parties hereto. Signatures delivered by facsimile or PDF shall be binding to the same extent as an original.

13.17 Governing Law; Jurisdiction.



13.18 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to enforce specifically the performance of this Agreement in accordance with its terms. Except as otherwise provided in this Agreement, the foregoing is in addition to, and not in lieu of, any other rights a party hereto may have in respect of a breach of this Agreement, whether at law or in equity.

[Signatures on next page.]

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: [Signature]
Its: Chief Legal Officer

By: [Signature]
Its: VP CORPORATE AFFAIRS

RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.

By: _____
Its: _____

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____
Its: _____

By: _____
Its: _____

RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.

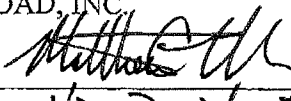
By:  _____
Its: Vice President

EXHIBIT INDEX Document	Exhibit Reference
Description of Main System	A
Assignment and Assumption Agreement	B
Bill of Sale	C
Deed(s) – Form	D
DM&E Merger Documents	E
Equipment, Supply and Services Agreement	F
Excluded Assets	G
Haulage Agreement – Brookings to Tracy MN	H
Haulage Agreement – Coal	I
Interchange Agreement	J
Inventories	K
Marketing and Divisions Agreement	L
Master Locomotive Agreement	M
Right of First Refusal Agreement	N
Trackage Rights Agreement – between Tracy and Florence	O
Trackage Rights Agreement – between Tracy and Mankato	P
Railcar and Locomotive Lease Transfer Procedures	Q
Proration Procedures	R
DM&E Officer's Certificate	S
Buyer Officer's Certificate	T

EXHIBIT A

Main System Map for APA

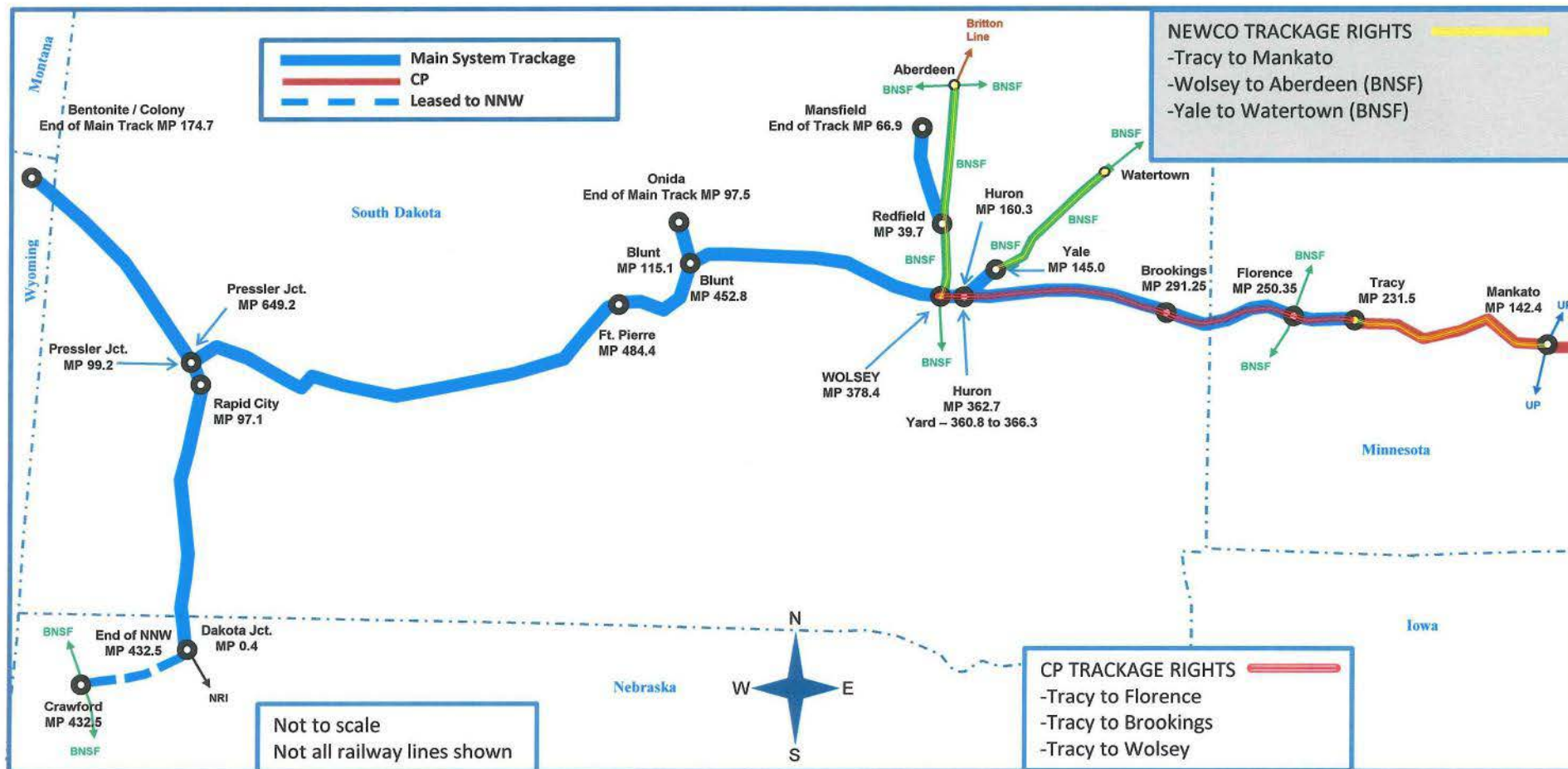


Exhibit A
Property Description

Segment MN-1
Lyon County, Minnesota

The following real property in **Lyon County, Minnesota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from a point westerly of Tracy, Minnesota being a line that is parallel with and 33 feet easterly of, as measured at right angle to, the centerline of 290th Street; said line also being described as a line parallel with and 33 feet easterly of, as measured at right angles to, the west line of Section 30, Township 109 North, Range 40 West of the fifth Principal Meridian, and then continuing westerly to the Minnesota/South Dakota State Line and a point on the Easterly line of Section 22, Township 109 North, Range 40 West of the Fifth Principal Meridian, distant 2,033 feet Northerly of the Southeast corner thereof traversing the following Sections:

Township 109 North, Range 40 West of the Fifth Principal Meridian,

That part of Section 30 lying West of a line parallel with, and 33 feet Easterly of, as measured at right angles to, the West Line of Section 30;

Township 109 North, Range 41 West of the Fifth Principal Meridian, Sections 25, 26, 27, 28, 29, 30 and 19;

Township 109 North, Range 42 West of the Fifth Principal Meridian, Sections 24, 23, 14, 15, 16, 9, 8 and 7;

Township 109 North, Range 43 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 8, 7 and 6,

to the Westerly line of said Section 6 and the Westerly line of Lyon County;

Further Including the following:

- (a) All property conveyed to the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 071104 dated July 16, 2004, and recorded as Document No. 155734 in the Office of County Recorder, Lyon County, Minnesota, on September 1, 2004, at 4:10 o'clock p.m. and described as:

LEGAL DESCRIPTION PARCEL 2

THAT PART OF THE NORTHWEST QUARTER OF SECTION 10,
TOWNSHIP 109 NORTH, RANGE 43 WEST, LYON COUNTY,
MINNESOTA, described as follows:

Exhibit A
Property Description

Segment MN-1
Lyon County, Minnesota

Commencing at the Northwest Corner of said Section 10; thence South 01 degree 01 minute 41 seconds West, an assumed bearing, along the west line of said Northwest Quarter of Section 10 a distance of 50.00 feet to the south right-of-way line of County Road No. 13 and the point of beginning; thence South 88 degrees 53 minutes 30 seconds East, along said south right-of-way line, 2,676.84 feet to the east line of said Northwest Quarter; thence South 01 degree 14 minutes 23 seconds West, along said east line, 99.9 feet, more or less to the northwesterly right-of-way line of the Burlington Northern Santa Fe Railroad, as now located; thence southwesterly along said northwesterly right-of-way line to the northerly right-of-way of the Dakota, Minnesota & Eastern Railroad Corporation as now located; thence northwesterly along said northerly right-of-way line of the Dakota, Minnesota & Eastern Railroad Corporation to said west line of Northwest Quarter; thence North 01 degree 01 minutes 41 seconds East, along said west line, 1006.13 feet, more or less to the point of beginning, containing 58.4 acres, more or less and being subject to easements of record in said county and state.

LEGAL DESCRIPTION PARCEL 3

THAT PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 109 NORTH, RANGE 43 WEST, LYON COUNTY, MINNESOTA, described as follows:

Commencing at the North Quarter Corner of said Section 10; thence South 0-1 degree 14 minutes 23 seconds West, an assumed bearing, along the east line of said Northwest Quarter a distance of 651.06 feet to the southeasterly right-of-way line of State Trunk Highway No. 23 and the point of beginning; thence continuing South 01 degrees 14 minutes 23 seconds West, along said east line 1,621.2 feet, more or less to the northerly right-of-way line of Dakota, Minnesota & Eastern Railroad Corporation as now located; thence Northwesterly along said northerly right-of-way of the Dakota, Minnesota & Eastern Railroad Corporation to the said southeasterly right-of-way line of State Trunk Highway No. 23; thence northeasterly, along said southeasterly right-of-way line of State Trunk Highway No. 23 to the point of beginning, containing 20.9 acres, more or less, and being subject to easements of record in said county and state.

LEGAL DESCRIPTION PARCEL 4

THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 109 NORTH, RANGE 43 WEST, LYON COUNTY, MINNESOTA, described as follows:

Commencing at the Northwest Corner of said Section 10; thence South 01 degree 01 minutes 41 seconds West, along the west line of said Northwest Quarter 1,107.13 feet to the southerly right-of-way line of the Dakota, Minnesota & Eastern Railroad Corporation as now located; thence southeasterly along said southerly right-of-way line of the Dakota, Minnesota & Eastern Railroad

Exhibit A
Property Description

Segment MN-1
Lyon County, Minnesota

Corporation to the northwesterly right-of-way line of the Burlington Northern Santa Fe Railroad as now located; thence southwesterly, along said northwesterly right-of-way line of the Burlington Northern Santa Fe Railroad, to said west line of the Northwest Quarter; thence North 01 degree 01 minute 41 seconds East, along said west line, 965.8 feet, more or less to the point of beginning, containing 14.5 acres, more or less, and being subject to easements of record in said county and state.

LEGAL DESCRIPTION PARCEL 5

THAT PART OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 109 NORTH, RANGE 43 WEST, LYON COUNTY, MINNESOTA, described as follows:

Beginning at the Center of said Section 10; thence North 88 degrees 51 minutes 59 seconds West, an assumed bearing, along the south line of said Northwest Quarter, a distance of 2,344.7 feet, more or less, to the southeasterly right-of-way line of State Trunk Highway No. 23; thence northeasterly along said southeasterly right-of-way line of the State Trunk Highway No. 23, to the southerly right-of-way line of the Dakota, Minnesota & Eastern Railroad Corporation as now located; thence southeasterly, along said southerly right-of-way line of the Dakota, Minnesota & Eastern Railroad Corporation to the east line of said Northwest Quarter; thence South 01 degree 14 minutes 23 seconds West, along said east line, 257.0 feet, more or less, to the point of beginning, containing 28.1 acres, more or less, and being subject to easements of record in said county and state.

- (b) All property conveyed to the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 071204 dated July 16, 2004, recorded as Document No. 155737 in the Office of County Recorder, Lyon County, Minnesota, on September 1, 2004, at 4:25 o'clock p.m. and described as:

LEGAL DESCRIPTION PARCEL 1

THAT PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 109 NORTH, RANGE 43 WEST, LYON COUNTY, MINNESOTA, described as follows:

Commencing at the Northeast Corner of said Section 9; thence South 01 degree 01 minutes 41 seconds West, an assumed bearing, along the east line of said Northeast Quarter of Section 9 a distance of 374.16 feet to the point of beginning; thence continuing South 01 degrees 01 minutes 41 seconds West, along said east line 681.97 feet, more or less to the northerly right-of-way line of the Dakota, Minnesota & Eastern Railroad Corporation as now located; thence westerly 157.23 feet, along said northerly right-of-way line, on a non-tangential curve concave to the south, having a radius of 2,914.93 feet, a central angle of 3 degrees

Exhibit A
Property Description

Segment MN-1
Lyon County, Minnesota

05 minutes 26 seconds and a chord of North 82 degrees 33 minutes 00 seconds West, 157.21 feet; thence North 84 degrees 05 minutes 43 seconds West, along said northerly right-of-way line, 1,052.99 feet; thence northeasterly 523.53 feet, along a non-tangential curve, concave to the north, having a radius of 800.00 feet, a central angle of 37 degrees 29 minutes 41 seconds and a chord of North 77 degrees 10 minutes 10 seconds East 514.24 feet; thence North 48 degrees 25 minutes 19 seconds East, 838.3 feet, more or less, to the point of beginning containing 7.5 acres, more or less, and being subject to easements of record in said county and state.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment MN-1
Lyon County, Minnesota

The following is expressly excluded from the real property in Lyon County, Minnesota described in Exhibit A:

- (a) All property conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 071304 dated July 15, 2004, described as:

LEGAL DESCRIPTION PARCEL 5

THAT PART OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 109 NORTH, RANGE 43 WEST, LYON COUNTY, MINNESOTA, described as follows:

Beginning at the Center of said Section 10; thence North 88 degrees 51 minutes 59 seconds West, an assumed bearing, along the south line of said Northwest Quarter, a distance of 2,344.7 feet, more or less, to the southeasterly right-of-way line of State Trunk Highway No. 23; thence northeasterly along said southeasterly right-of-way line of the State Trunk Highway No. 23, to the southerly right-of-way line of the Dakota, Minnesota & Eastern Railroad Corporation as now located; thence southeasterly, along said southerly right-of-way line of the Dakota, Minnesota & Eastern Railroad Corporation to the east line of said Northwest Quarter; thence South 01 degree 14 minutes 23 seconds West, along said east line, 257.0 feet, more or less, to the point of beginning, containing 28.1 acres, more or less, and being subject to easements of record in said county and state.

- (b) All property conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 071404 dated July 13, 2004, described as:

LEGAL DESCRIPTION PARCEL 3

THAT PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 109 NORTH, RANGE 43 WEST, LYON COUNTY, MINNESOTA, described as follows:

Commencing at the North Quarter Corner of said Section 10; thence South 0-1 degree 14 minutes 23 seconds West, an assumed bearing, along the east line of said Northwest Quarter a distance of 651.06 feet to the southeasterly right-of-way line of State Trunk Highway No. 23 and the point of beginning; thence continuing South 01 degrees 14 minutes 23 seconds West, along said east line 1,621.2 feet, more or less to the northerly right-of-way line of Dakota, Minnesota & Eastern Railroad Corporation as now located; thence Northwesterly along said northerly right-of-way of the Dakota, Minnesota & Eastern Railroad Corporation to the said southeasterly right-of-way line of State Trunk Highway No. 23; thence northeasterly, along said southeasterly right-of-way line of State Trunk Highway

Exhibit B
Property Exceptions

Segment MN-1
Lyon County, Minnesota

No. 23 to the point of beginning, containing 20.9 acres, more or less, and being subject to easements of record in said county and state.

Further Excluding and Excepting: that portion taken by the State of Minnesota by Condemnation Case No. CV861604 and recorded in Book 87 Misc., Page 55.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment MN-2
Lincoln County, Minnesota

The following real property in **Lincoln County, Minnesota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from Mankato, Minnesota to the Minnesota/South Dakota State Line and the Easterly line of Section 1, Township 109 North, Range 44 West of the Fifth Principal Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 109 North, Range 44 West of the Fifth Principal Meridian, Sections 1, 2, 3, 4, 5 and 6; excluding the portion thereof conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 081903 dated September 25, 2003, described as:

That part of the Northwest Quarter of the Southwest Quarter of Section 3, Township 109 North, Range 44 West, City of Tyler, Lincoln County, Minnesota, described as follows:

Commencing at the intersection of the northerly extension of the west line of Tyler Street and the northeasterly line of Lincoln Street; thence on an assumed bearing of North 0 degrees 02 minutes 30 seconds East, along the northerly extension of the west line of said Tyler Street, a distance of 64.14 feet to a point 53.50 feet southwesterly of, as measured at right angles from the centerline of a spur track, said point being the point of beginning of the track to be described; thence North 77 degrees 18 minutes 30 seconds West, parallel with said spur track, a distance of 120.00 feet; thence North 12 degrees 41 minutes 30 seconds East a distance of 45.00 feet to a point 8.50 feet southwesterly of, as measured at right angles from the centerline of said spur track; thence South 77 degrees 18 minutes 30 seconds East, parallel with said spur track, a distance of 109.90 feet to the northerly extension of the west line of said Tyler Street; thence South 0 degrees 02 minutes 30 seconds West, along the northerly extension of the west line of said Tyler Street, a distance of 46.12 feet to the point of beginning.

Township 109 North, Range 45 West of the Fifth Principal Meridian, Sections 1, 2, 3, 10, 9, 8, 17, 20, 19, 30 and 31;

Township 109 North, Range 46 West of the Fifth Principal Meridian, Sections 36, 35, 26, 27, 28, 29, 30 and 19;

Township 109 North, Range 47 West of the Fifth Principal Meridian, Section 24,

to the Westerly line of Government Lot 2 in said Section 24, said Westerly line being also the Westerly line of Lincoln County and the State of Minnesota, and there terminating; Including all of the CNW's abandoned Branch Line extending from Tyler, Minnesota to Hendricks, Minnesota in Section 4, Township 109 North, Range 44 West of the Fifth Principal Meridian

Exhibit A
Property Description

Segment MN-2
Lincoln County, Minnesota

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment MN-2
Lincoln County, Minnesota

The following is expressly excluded from the real property in Lincoln County, Minnesota described in Exhibit A:

Excluding and Excepting unto CNW, its successors and assigns, a permanent and perpetual easement for highway purposes over and across that part of Tract A described below:

Tract A. That part of Government Lots 5 and 8 of Section 8, Township 109 North, Range 45 West, Lincoln County, Minnesota, bounded as follows: On the East by the Easterly line of said Government Lots 5 and 8; On the North by the Southerly boundary of the plat of Matthews Addition to the Town (now City) of Lake Benton; On the West by the Northerly extension of the Easterly line of Center Street as shown on the plat of Railway Addition to said Town of Lake Benton as said Easterly line is extended Northeasterly to the Southerly line of the plat of Matthews Addition to said Town of Lake Benton; And on the South by a line drawn parallel with and distant 8.5 feet Southeasterly (as measured at right angles) from the center line of the Chicago and North Western Transportation Company Spur Track I.C.C. Number 23 as now located and established; which lies within a distance of 65 feet on each side of Line 1 described below:

Line 1. Beginning at a point on a line run parallel with and distant 33 feet East of the East line of Block 2 of Lakeview Addition to the City of Lake Benton and its Northerly extension, distant 657.9 feet North of its intersection with the Easterly extension of the South line of said Block 2; thence run Westerly at an angle of 86 degrees 48 minutes 00 seconds from said 33 foot parallel line (measured from South to West) for 577.1 feet; thence deflect to the left at an angle of 06 degrees 00 minutes 00 seconds for 1198.8 feet; thence deflect to the right at an angle of 66 degrees 44 minutes 00 seconds for 1124.2 feet and there terminating; together with that part of Tract A hereinbefore described, adjoining and Northeasterly of the above described strip, which lies Southeasterly of a line run parallel with and distant 85 feet Northeasterly of the following described line: Beginning at the point of termination of Line 1 described above; thence run Southeasterly along said Line 1 for 150 feet and there terminating;

ALSO:

Together with that part of Tract A hereinbefore described, adjoining and Southwesterly of the first above described strip, which lies Northwesterly of a line run parallel with and distant 100 feet Southwesterly of the following described line: Beginning at the point of termination of Line 1 described above; thence run Southwesterly along said Line 1 for 150 feet and there terminating;

ALSO:

Together with that part of Tract A hereinbefore described, adjoining and Southwesterly of the first above described strip, which lies Northeasterly of a line run parallel with and distant 100 feet Southwesterly of Line 1 described above and Southeasterly of a line run parallel with and distant 70 feet Northwesterly of the Northwesterly line of "Warehouse Lots" of the Town of Lake Benton;

ALSO:

Together with that part of Tract A hereinbefore described, adjoining and Northeasterly of the first above described strip, which lies Southeasterly of a line run parallel with and distant 70

Exhibit B
Property Exceptions

Segment MN-2
Lincoln County, Minnesota

feet Northwesterly of the Northwesterly line of "Warehouse Lots" of the Town of Lake Benton and Southwesterly of a line run parallel with and distant 33 feet Northeasterly of the Northwesterly extension of the Northeasterly line of Lot 20, said "Warehouse Lots"; containing 0.66 acre, more or less, in the unplatted portion;

ALSO:

A right to use the following described strips for highway purposes, which right shall cease on December 1, 1991 or on such earlier date upon which the Commissioner of Transportation determines by formal order that it is no longer needed for highway purposes: A strip being that part of Tract A hereinbefore described, adjoining and Northeasterly of the first and second above described strips, which lies Northwesterly of a line run parallel with and distant 87 feet Southeasterly of the Southeasterly line of said Matthews Addition and Southwesterly of a line run parallel with and distant 200 feet Northeasterly of Line 1 described above; A strip being that part of Tract A hereinbefore described, adjoining and Southwesterly of the first and third above described strips, which lies Northwesterly of a line run parallel with and distant 87 feet Southeasterly of the Southeasterly line of said Matthews Addition and Northeasterly of a line run parallel with and distant 210 feet Southwesterly of Line 1 described above; containing 0.53 acre, more or less;

ALSO:

A right to enter upon the following described strip for the purpose of removing or demolishing buildings therefrom, which right shall cease upon removal or demolition of said buildings or in any event no later than the 21st day of March, 1988; A strip being that part of Tract A hereinbefore described, which lies Southwesterly of a line run parallel with and distant 100 feet Southwesterly of Line 1 described above, Southeasterly of a line run parallel with and distant 25 feet Northwesterly of the Northwesterly lines of Lots 17 and 18, said "Warehouse Lots" and Northeasterly of a line run parallel with and distant 15 feet Southwesterly of the Northeasterly line of said Lot 17 and its Northwesterly extension; containing 0.01 acre, more or less,

Further Excluding and Excepting: that part of the North Half of Section 8, Township 109 North, Range 45 West of the Fifth Principal Meridian, City of Lake Benton, as conveyed by Deed No. 090195.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-1
Brookings County, South Dakota

The following real property in **Brookings County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the East line of Section 22, Township 109 North, Range 47 West of the Fifth Principal Meridian, said East line being the Easterly line of the State of South Dakota; thence Westerly along said main line track center line traversing the following Sections:

Township 109 North, Range 47 West of the Fifth Principal Meridian, Sections 22, 21, 20, 17 and 18;

Township 109 North, Range 48 West of the Fifth Principal Meridian, Sections 13, 14, 11, 10, 9, 8, 5 and 6;

Township 109 North, Range 49 West of the Fifth Principal Meridian, Sections 1 and 2;

Township 110 North, Range 49 West of the Fifth Principal Meridian, Sections 35, 34, 33, 32, 31 and 30;

Township 110 North, Range 50 West of the Fifth Principal Meridian, Sections 25, 26, 27, 22, 21, 20 and 19;

Township 110 North, Range 51 West of the Fifth Principal Meridian, Sections 24, 23, 22, 21, 16, 17, 18 and 7;

Township 110 North, Range 52 West of the Fifth Principal Meridian, Sections 13, 12, 11, 10, 9, 8, 7 and 6;

to the Westerly line of said Section 6 and the Westerly line of Brookings County, South Dakota; Excluding and Excepting all of the CNW's Sioux Valley Junction to Watertown Branch Line in Section 19, Township 110 North, Range 50 West of the Fifth Principal Meridian.

FURTHER INCLUDING THE FOLLOWING:

- (a) All property conveyed to the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 082305 dated September 9, 2005, and recorded at 11:30 o'clock a.m. in Book 139 of Decds at page 1033 described as Lot R-1 & Lot R-2 of the plat of Lot R-1, Lot R-2 and Lot R-3 in the N½ of the SE¼ of Section 33, Township 110 North, Range 49 West of the 5th P.M., Brookings County, South Dakota.

Exhibit A
Property Description

Segment SD-1
Brookings County, South Dakota

- (b) All property conveyed to the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 082605 dated September 26, 2005, and recorded at 11:30 o'clock a.m. in Book 139 of Deeds at page 1034 described as Lot R-4 of the plat of Lot R-4 in the S½ of the NE¼ of Section 33, Township 110 North, Range 49 West of the 5th P.M., Brookings County, South Dakota.
- (c) All property conveyed to the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 082505 dated August 26, 2005, described as Lot R-5 of the plat of Lot R-5 in the N½ of the SE¼ of Section 33, Township 110 North, Range 49 West of the 5th P.M., Brookings County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-1
Brookings County, South Dakota

The following is expressly excluded from the real property in Brookings County, South Dakota described in Exhibit A:

- (a) That certain real estate conveyed by the Dakota Minnesota & Eastern Railroad Corporation by Deed No. 082405 dated August 25, 2005, and recorded at 11:30 o'clock a.m. in Book 139 of Deeds at page 1031 described as Lot R-3 of the plat of Lot R-1, Lot R-2 and Lot R-3 in the N½ of the SE¼ of Section 33, Township 110 North, Range 49 West of the 5th P.M., Brookings County, South Dakota.
- (b) That certain real estate conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 020205 dated February 9, 2005, described as the southerly half of Front Street, vacated by Resolution No. 1828 dated November 30, 1976, filed December 10, 1976, at 10:05 a.m., and recorded in Book 92 of Miscellaneous, pages 106-107, that abuts and accrues to the West 142 feet Lot 2 in Block 8 of Skinner's Second Addition to the City of Brookings as appears on the attached drawing dated January 21, 2005. Said track contains 7,405 sq. ft. to within 50 feet of the centerline of the Dakota, Minnesota & Eastern Railroad. Being located in Section 26, Township 110 North, Range 50 West.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-2
Kingsbury County, South Dakota

The following real property in **Kingsbury County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the Easterly line of Section 1, Township 110 North, Range 53 West of the Fifth Principal Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 110 North, Range 53 West of the Fifth Principal Meridian, Section 1;

Township 111 North, Range 53 West of the Fifth Principal Meridian, Sections 36, 35, 34, 27, 28, 33, 32 and 31;

Township 111 North, Range 54 West of the Fifth Principal Meridian, Sections 36, 35 and 34;

Township 110 North, Range 54 West of the Fifth Principal Meridian, Sections 2, 3, 4, 5 and 6;

Township 110 North, Range 55 West of the Fifth Principal Meridian, Sections 1, 2 and 3;

Township 111 North, Range 55 West of the Fifth Principal Meridian, Sections 34, 33, 32 and 31;

Township 111 North, Range 56 West of the Fifth Principal Meridian, Sections 36, 25, 26, 27, 28, 29 and 30, excluding and excepting Les's Lumber Lot 2 to the City of DeSmet, South Dakota, located in the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 28, Township 111 North, Range 56 West of the 5th P.M. as conveyed by Deed No. 021495, and except Lots 1 and 2 Flood's Railroad Addition to the City of DeSmet, in SW $\frac{1}{4}$ Section 27, T111N, R56W, 5th P.M. as conveyed by Deed No. 111695;

Township 111 North, Range 57 West of the Fifth Principal Meridian, Sections 25, 36, 35, 34, 33, 32 and 31;

Township 110 North, Range 57 West of the Fifth Principal Meridian, Sections 5 and 6;

Township 110 North, Range 58 West of the Fifth Principal Meridian, Sections 1, 2, 3, 4, 5 and 6; Excluding and Excepting all of the CNW's former Branch Line extending from Iroquois, South Dakota to the Iowa State Line in Sections 5 and 6, Township 110 North, Range 58 West of the Fifth Principal Meridian;

Township 111 North, Range 58 West of the Fifth Principal Meridian, Sections 36, 35, 34, 33, 32 and 31,

Exhibit A
Property Description

Segment SD-2
Kingsbury County, South Dakota

to the Westerly line of said Section 31 and the Westerly line of Kingsbury County, South Dakota,

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-2
Kingsbury County, South Dakota

The following is expressly excluded from the real property in Kingsbury County, South Dakota described in Exhibit A:

General Wood Supply Outlot in the NE¼ of Section 1, Township 100 North, Range 55 West of the 5th P.M., Lake Preston, Kingsbury County, South Dakota, conveyed by Deed No. 032204 dated March 22, 2004.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-3
Beadle County, South Dakota

The following real property in **Beadle County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the Easterly line of Section 36, Township 111 North, Range 59 West of the Fifth Principal Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 111 North, Range 59 West of the Fifth Principal Meridian, Sections 36, 35 and 34;

Township 110 North, Range 59 West of the Fifth Principal Meridian, Sections 1, 2, 3, 4, 5 and 6;

Township 110 North, Range 60 West of the Fifth Principal Meridian, Sections 1, 2, 3, 4, 5 and 6;

Township 110 North, Range 61 West of the Fifth Principal Meridian, Sections 1, 2, 3, 4, 5 and 6; except Tompkins Outlot-A part of the SW¼ of the NW¼ of Section 6, Twp. 110 North, Range 61 West of the 5th P.M. as conveyed by Deed No. 060194; and except Brosnan Lot A, a part of the Southeast Quarter of the Northwest Quarter of Section 6, Township 110 North, Range 61 West of the 5th P.M., City of Huron, Beadle County, South Dakota, as conveyed by Deed No. 092205 dated September 11, 2005.

Township 110 North, Range 62 West of the Fifth Principal Meridian, Sections 1 and 2;

Excluding the following portion thereof conveyed by Deed No. 081306 dated August 14, 2006, and legally described as follows:

A 4.0' strip of land parallel with the east boundary of Zip Second Addition Tract "B", A part of railroad parcel 10, a part of the East Half of the Northeast ¼ of Section 1, Township 110 North, Range 62 West of the 5th P.M. in the City of Huron, Beadle County, South Dakota.
Containing 370 Sq. Ft. Net

Excluding the following portion thereof conveyed by Deed No. 102205 dated October 28, 2005, and legally described as follows:

Lawson Tract to the City of Huron, Beadle County, South Dakota, a part of the E½ of NE¼, Section 1 T. 110 N. R. 62 W. of the 5th P.M.
Know all men by these presents that the Chicago & North Western Transportation Company, a Delaware corporation, owner of the following described property situated in the State of South Dakota and the County of Beadle, to wit;

Exhibit A
Property Description

Segment SD-3
Beadle County, South Dakota

That part of the East Half of the Northeast Quarter of Section One (1), Township One Hundred Ten North (110), Range Sixty-Two West (62W) of the Fifth Principal Meridian, in the City of Huron bounded and described as follows: Beginning at the most Northerly corner of Cook's Outlot, being a point on the Southwesterly line of Commercial Avenue as said avenue is presently platted, located and established in the City of Huron; thence North 76 degrees 14 minutes West along the said Southwesterly line of Commercial Avenue a distance of 310.53 feet more or less to a point distant 9 feet 8 inches Northeasterly, measured radially, from the center line of Chicago & North Western Transportation Company spur track I.C.C. No. 142, as said spur track is now located; thence Southeasterly along the arc of a circular curve with a radius of 499.06 feet, parallel with said spur track center line, a distance of 232.77 feet more or less to a point on a line drawn parallel with the Southwesterly line of Commercial Avenue and passing through the most Westerly corner of said Cook's Outlot; thence South 76 degrees 14 minutes East along said last described parallel line a distance of 108.98 feet more or less to the said most Westerly corner of Cook's Outlot; thence North 13 degrees 46 minutes East along the Northwestern line of said Cook's Outlot a distance of 112.20 feet to the point of beginning, containing 0.59 acres more or less;

Township 111 North, Range 62 West of the Fifth Principal Meridian, Sections 36, 35, 34, 33, 32, 31 and 30; except Airport Lot N, a part of the South Half (S½) of Section Thirty-Six (36), Township 111, Range 62;

Township 111 North, Range 63 West of the Fifth Principal Meridian, Sections 25, 26, 27, 28, 21, 20 and 19;

Township 111 North, Range 64 West of the Fifth Principal Meridian, Sections 24, 23, 14, 15, 16, 17, 8 and 7;

Township 111 North, Range 65 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 3, 4, 5 and 6;

to the Westerly line of said Section 6 and the Westerly line of Beadle County, South Dakota;

FURTHER INCLUDING THE FOLLOWING:

- (a) All property conveyed to the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 91670 dated December 29, 2012, and recorded at 12:30 o'clock a.m. in Disk H, page 527F described as Halse Plat Two to the City of Huron in the SE¼ of the NE¼ of Section 1, Township 110 North, Range 62 West of the 5th P.M., Beadle County, South Dakota.
- (h) All of Grantor's right-of-way or trackage rights for the Yale Spur, beginning at the intersection of said Yale Spur track and the northerly right-of-way line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota located in Section 1, Township 110 North, Range 62 West of the Fifth Principal Meridian; thence Northeasterly along said spur track center line traversing the following Sections:

Exhibit A
Property Description

Segment SD-3
Beadle County, South Dakota

Township 111 North, Range 60 West of the Fifth Principal Meridian, Sections 11, 12, 14, 15, 16, 17, 19, and 20;

Township 111 North, Range 61 West of the Fifth Principal Meridian, Sections 22, 23, 24, 26, 28, 29, 30, 31 and 32;

Township 111 North, Range 62 West of the Fifth Principal Meridian, Section 36;

Township 110 North, Range 62 West of the Fifth Principal Meridian, Section 1

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-3
Beadle County, South Dakota

The following is expressly excluded from the real property in Beadle County, South Dakota described in Exhibit A:

Brooks First Addition #2, Block 11 Lots 16-18 in the City of Wessington as conveyed by Deed No. 030998, and except Lot 22, Block 11, Brooks First Addition to the City of Wessington as conveyed by Deed No. 010600, and except Lot 21, Block 11 of Brooks First Addition to the City of Wessington, Beadle County, South Dakota, as conveyed by Deed No. 122006 dated January 29, 2007.

Lot 1, ABE Railroad Addition, a part of the Southeast Quarter of the Southwest Quarter of Section 34, Township 111 North, Range 62 West of the Fifth P.M. as conveyed by deed dated October 26, 2010.

Including all of the CNW's abandoned branch line extending from James Valley Jct. in the Northeast Quarter of Section 32, Township 111 North, Range 62 West of the Fifth Principal Meridian northerly to Redfield, South Dakota.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-4
Hand County, South Dakota

The following real property in **Hand County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the Easterly line of Section 1, Township 111 North, Range 66 West of the Fifth Principal Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 111 North, Range 66 West of the Fifth Principal Meridian, Section 1;

Township 112 North, Range 66 West of the Fifth Principal Meridian, Sections 36, 35, 34, 26, 27, 28, 21, 20, 19 and 18;

Township 112 North, Range 67 West of the Fifth Principal Meridian, Sections 13, 14, 15, 16, 17 and 18;

Township 112 North, Range 68 West of the Fifth Principal Meridian, Sections 13, 14, 15, 16, 11, 10, 9, 8 and 7; except Blackburn's Railroad Addition in the NE¼ of Sections 15-T112N-R68W of the 5th P.M. as conveyed by Deed No. 061798;

Township 112 North, Range 69 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 8 and 7;

Township 112 North, Range 70 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 8 and 7;

to the Westerly line of said Section 7 and the Westerly line of Hand County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-4
Hand County, South Dakota

The following is expressly excluded from the real property in Hand County, South Dakota described in Exhibit A:

that portion conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by the Deed recorded in Book 112, Page 315, and except Fanning Railroad Addition to the City of St. Lawrence as conveyed by Deed No. 092900, and except Performance Seeds Addition to the City of Miller as conveyed by Deed No. 042401.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-5
Hyde County, South Dakota

The following real property in **Hyde County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the Easterly line of Section 12, Township 112 North, Range 71 West of the Fifth Principal Meridian; thence Westerly along said main track center line traversing the following Sections:

Township 112 North, Range 71 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 8 and 7;

Township 112 North, Range 72 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 8 and 7; except Lot 1, Railroad Addition located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$, of Section 12, T112N, R72W, 5th P.M., City of Highmore, Hyde County, South Dakota (containing 4.1 acres more or less) as conveyed by Deed No. 122302 dated December 23, 2002.

Township 112 North, Range 73 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 8 and 7;

to the Westerly line of said Section 7 and the Westerly line of Hyde County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-5
Hyde County, South Dakota

The following is expressly excluded from the real property in Hyde County, South Dakota described in Exhibit A:

No Exceptions.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-6
Hughes County, South Dakota

The following real property in **Hughes County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the Easterly line of Section 12, Township 112 North, Range 74 West of the Fifth Principal Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 112 North, Range 74 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 8 and 7; excluding the portion thereof, conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 012404 and described as follows:

Tract 2, the West 790' of the North 150' of the North 200' of Railroad Right-of-Way, North of railroad track and West of Lot 1, Block 1 Sexauer Railroad Addition, NW¼ Sec. 9, T112N, R74W, 5th P.M., to Harrold, Hughes County, South Dakota. Containing 2.38 Acres.

The East 100' of the West 790' of the North 150' of the North 200' of Railroad Right-of-Way, North of railroad track and West of Lot 1, Block 1, Sexauer Railroad Addition, NW¼ Sec. 9, T112N, R74W, 5th P.M., to Harrold, Hughes County, South Dakota. Containing 0.34 Acres.

Township 112 North, Range 75 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 8 and 7;

Township 112 North, Range 76 West of the Fifth Principal Meridian, Sections 12, 11, 10, 9, 16, 17, 20, 29 and 32; except Lot M.C. 1, A subdivision of the Southwest Quarter of the Southwest Quarter of Section Nine (9), Township 112 North, Range 76 West of the 5th P.M. as conveyed by Deed No. 100695; and further Excluding and Excepting that part of the Northwest Quarter of the Northwest Quarter of Section 16, Township 112 North, Range 76 West of the Fifth Principal Meridian, bounded and described as follows: Commencing at the Northwest corner of said Section 16; thence Southerly along the West line of said Section 16 a distance of 425 feet to the point of beginning of the tract of land herein described; thence Northerly along the West line of said Section 16 a distance of 100 feet; thence Easterly, at right angles to said West line of Section 16, a distance of 150 feet, more or less, to the intersection of a line that is parallel to and 20 feet Southwesterly, measured at right angles, from the Southwesterly face of a coal storage building, said coal storage building located 520 feet Southwesterly, more or less, from the North line of said Section 16, as measured along a line that is 9 feet Northwesterly, measured radially, from the center line of the Chicago and North Western Transportation Company spur track I.C.C. No. 26, as now located and established; thence Southwesterly parallel with said spur track center line a distance of 100 feet; thence Northwesterly radial to the last described course a

Exhibit A
Property Description

Segment SD-6
Hughes County, South Dakota

distance of 85 feet, more or less, to a point on a line drawn at right angles to the West line of said Section 16 through the point of beginning; thence Westerly along said last described right angle line a distance of 110 feet, more or less, to the point of beginning; and further Excluding and Excepting all of the CNW's Branch Line extending from Blunt, South Dakota to Onida, South Dakota in Section 17, Township 112 North, Range 76 West of the Fifth Principal Meridian;

Township 111 North, Range 76 West of the Fifth Principal Meridian, Sections 5, 8, 17, 18 and 19;

Township 111 North, Range 77 West of the Fifth Principal Meridian, Sections 24, 25, 26 and 35;

Township 110 North, Range 77 West of the Fifth Principal Meridian, Sections 2, 11, 14, 15, 22, 21, 16, 17 and 18;

Township 110 North, Range 78 West of the Fifth Principal Meridian, Sections 13, 14, 15, 16, 9, 8 and 7;

Township 110 North, Range 79 West of the Fifth Principal Meridian, Sections 12, 11, 2, 3, 4 and 5; except Kohler's Addition, a subdivision of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, Township 110 North, Range 79 West of the 5th P.M. as conveyed by Deed No. 060695; and except Lots 1 and 2 Schimkat's First Addition being a subdivision of the S $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 2, Township 110 North, Range 79 West of the 5th Principal Meridian as conveyed by Deed No. 121696; and further Excluding and Excepting a part of the Northwest Quarter of Section 4 in Township 110 North, Range 79 West of the Fifth Principal Meridian, situated in the City of Pierre, in the County and State aforesaid, described as follows, to wit: Commencing at the point of intersection of the Southeasterly line of Highland Avenue with the Southwesterly line of Capitol Avenue; running thence in a Southeasterly direction on and along said Southwesterly line of Capitol Avenue, 1,435 feet to the point of beginning of the land herein to be described; thence Southeasterly on a line which is parallel with said Southeasterly line of Highland Avenue, 460 feet, more or less, to a point which is 100 feet distant, at right angles Northeasterly from the center line of the main track of the Chicago and North Western Transportation Company (formerly Chicago and North Western Railway Company), as said main track is now located and established; thence Southeasterly on a line which is parallel with and distant 100 feet, at right angles Northeasterly from said center line of said main track a distance of 785 feet; thence Northerly 250 feet, more or less, to a point which is 165 feet distant, at right angles Southwesterly from said Southwesterly line of Capitol Avenue, and 2,105 feet distant Southeasterly from said Southeasterly line of Highland Avenue; measured on a line parallel to said Capitol Avenue; thence Northeasterly, 165 feet to a point on the Southwesterly line of Capitol Avenue which is 2,105 feet distant Southeasterly from its intersection with the Southeasterly line of Highland Avenue; thence Northwesterly on said Southwesterly line of Capitol Avenue, 670 feet to the place of beginning. Containing 6.77 acres, more or less; and except G.M.D. Lot 1 in the City of Pierre as conveyed by Deed No. 081296;

Township 111 North, Range 79 West of the Fifth Principal Meridian, Section 32, except Klein's Addition being a subdivision of the Southwest Quarter at the Southeast Quarter of Section 32,

Exhibit A
Property Description

Segment SD-6
Hughes County, South Dakota

Township 111 North, Range 79 West of the 5th P.M. as conveyed by Deed No. 110195, and except Lot D.M.E. No. 1 within Government Lot 3 as conveyed by Deed No. 122895;

to the center line of the Missouri River being also the Westerly line of Hughes County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-6
Hughes County, South Dakota

The following is expressly excluded from the real property in Hughes County, South Dakota described in Exhibit A:

No Exceptions

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-7
Stanley County, South Dakota

The following real property in **Stanley County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the center line of the Missouri River in Section 21, Township 5 North, Range 31 East of the Black Hills Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 5 North, Range 31 East of the Black Hills Meridian, Sections 21, 28 and 33; Excluding and Excepting that part of Government Lot 3 of Section 28, Township 5 North, Range 31 East of the Black Hills Meridian, bounded and described as follows: Beginning at the Southeast corner of R. W. Tract "A"; thence Northwesterly along the Southwesterly line of said R. W. Tract "A" a distance of 1,000 feet; thence Northeasterly at right angles to the last described course a distance of 32 feet, more or less, to a point distant 18 feet Southwesterly, measured at right angles, from the center line of the main track of the Chicago and North Western Transportation Company, as said main track is now located; thence Southeasterly parallel with said main track center line a distance of 1,003 feet, more or less, to a point on the Northeasterly extension of the Southeasterly line of said R. W. Tract A, being also a point on the Northwesterly lines of Blocks 62 and 63 in the City of Fort Pierre, and extensions thereof; thence Southwesterly along said Southeasterly line, extended, of R. W. Tract "A", a distance of 32 feet, more or less, to the point of beginning; and further Excluding and Excepting those parts of Blocks 62 and 63, and of vacated Second Street lying between and adjoining said Blocks, all in the City of Fort Pierre, lying Southwesterly of a line parallel with and distant 18 feet Southwesterly, measured at right angles, from the center line of the main track of the Chicago and North Western Transportation Company, as said main track is now located, and lying Northwesterly of a line parallel with and distant 9 feet Southwesterly, measured at right angles, from the center line of the parallel (with said main track) tangent segment, and the Northwesterly extension thereof, of Chicago and North Western Transportation Company spur track ICC No. 1, as said spur track is now located; and further Excluding and Excepting those parts of Blocks 59, 48, and 44 in the City of Fort Pierre, together with those parts of Second Street, Fifth Avenue, and Sixth Avenue, lying between and adjoining said Blocks, bounded and described as follows: Beginning at the Southeast corner of Lot 7 in said Block 44; thence Northerly along the Easterly line of said Lot 7 a distance of 160 feet, more or less, to the Northeasterly corner of said Lot 7; thence Westerly along the Northerly line of said Lot 7 a distance of 5 feet, more or less, to a point distant 61 feet Southwesterly, measured at right angles, from the Southeasterly extension of the center line of the tangent segment of the main track of the Chicago and North Western Transportation Company, as said main track is now located; thence Northwesterly parallel with said center line, and the Southeasterly extension thereof, a distance of 165 feet, more or less, to a point on the Northerly line of said Block 44, being also a point on the Southerly line of said Fifth Avenue; thence Westerly along said Southerly line of Fifth Avenue a distance of 250 feet, more or less, to a point on the Southerly extension of the Easterly line of Lot 13 in Block 49 in said

Exhibit A
Property Description

Segment SD-7
Stanley County, South Dakota

City of Fort Pierre; thence Northerly along said Easterly line, extended, of Lot 13, a distance of 75 feet, more or less, to the Southeast corner of said Lot 13, being also the Southwest corner of Elevator Subdivision in the City of Fort Pierre; thence Easterly along the Southerly line of said Elevator Subdivision a distance of 196.14 feet to an angle point; thence Northwesterly along the Northeasterly line of said Elevator Subdivision at an angle of 80°28'30", measured clockwise from the last described course, a distance of 106.49 feet; thence Easterly along the Southerly line of said Elevator Subdivision at an angle of 80°28'30", measured counterclockwise from the last described course, a distance of 40.87 feet to an angle point distant 9 feet Southwesterly, measured at right angles, from the center line of Chicago and North Western Transportation Company spur track ICC No. 1, as said spur track is now located; thence Northwesterly along the Northeasterly line of said Elevator Subdivision and parallel with said spur track center line a distance of 671.55 feet to the Northeast corner of said Elevator Subdivision, being a point on the Northerly line of said Block 59, or the Westerly extension thereof; thence Easterly along said Northerly line of Block 59, and the Westerly extension thereof, a distance of 45 feet, more or less, to a point distant 18 feet Southwesterly, measured at right angles, from said main track center line; thence Southcasterly parallel with said main track center line a distance of 1,200 feet, more or less, to a point on the Southerly line of said Block 44; thence Westerly along said Southerly line of Block 44 a distance of 55 feet, more or less, to the point of beginning.

Township 4 North, Range 31 East of the Black Hills Meridian, Sections 3, 10, 9, 8, 17 and 18;

Township 4 North, Range 30 East of the Black Hills Meridian, Sections 13, 14, 23, 14, 15, 22, 21, 28, 29, 32 and 31;

Township 4 North, Range 29 East of the Black Hills Meridian, Sections 36, 35, 34, 33 and 32;

Township 3 North, Range 29 East of the Black Hills Meridian, Sections 2, 5, 6 and 7;

Township 3 North, Range 28 East of the Black Hills Meridian, Sections 12, 13, 14, 23, 22, 27, 34, 33 and 32,

to the Southerly line of said Section 32 and the Southerly line of Stanley County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-7
Stanley County, South Dakota

The following is expressly excluded from the real property in Stanley County, South Dakota described in Exhibit A:

No Exceptions

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-8
Jones County, South Dakota

The following real property in **Jones County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the Northerly line of Section 5, Township 2 North, Range 28 East of the Black Hills Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 2 North, Range 28 East of the Black Hills Meridian, Sections 5 and 6;

Township 2 North, Range 27 East of the Black Hills Meridian, Sections 1, 12, 11, 14, 15, 16, 17, 20 and 19;

Township 2 North, Range 26 East of the Black Hills Meridian, Sections 24, 23, 26, 27, 28, 29, 30 and 31;

to the Westerly line of said Section 31 and the Westerly line of Jones County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-8
Jones County, South Dakota

The following is expressly excluded from the real property in Jones County, South Dakota described in Exhibit A:

No Exceptions.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-9
Haakon County, South Dakota

The following real property in **Haakon County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the Easterly line of Section 36, Township 2 North, Range 25 East of the Black Hills Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 2 North, Range 25 East of the Black Hills Meridian, Sections 36, 35 and 34;

Township 1 North, Range 25 East of the Black Hills Meridian, Sections 3, 4, 5 and 6; except a plat of DM&E Lot A-R, which is a replat of part of vacated DM&E Lot A of the Dakota, Minnesota & Eastern Railroad Properties, all within the Southwest $\frac{1}{4}$ of Southeast $\frac{1}{4}$ of Section 6, Township 1 North, R 25 East, of the Black Hills Meridian as conveyed by Deed No. 020597; and except Lot 1 of DM&G Subdivision formerly a portion of Railroad Right-of-Way (Lease No. 87294) located in the SW $\frac{1}{4}$ of Section 6, T1N, R25E, BHM, Haakon County, South Dakota, as conveyed by Deed No. 102703 dated November 10, 2003;

Township 1 North, Range 24 East of the Black Hills Meridian, Sections 1, 12, 11, 10, 9, 8, 7 and 18;

Township 1 North, Range 23 East of the Black Hills Meridian, Sections 13, 14, 11, 10, 9, 8, 17 and 18;

Township 1 North, Range 22 East of the Black Hills Meridian, Sections 13, 14, 15, 16, 17, 18, 19 and 18;

Township 1 North, Range 21 East of the Black Hills Meridian, Sections 13, 14, 15, 16, 17, 18 and 19;

Township 1 North, Range 20 East of the Black Hills Meridian, Sections 24, 13, 24, 23, 22, 21, 28, 29, 32 and 31, and except Plat of Lot 1 of Conagra Subdivision, formerly an unplatted portion of the North 30 acres of the West 60 acres of the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 24, T1N, R20E, BHM, and located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T1N, R20E, BHM, Philip, Haakon County, South Dakota, as conveyed by Deed No. 102803 dated November 26, 2003,

to the Southerly line of said Section 31 and the Southerly line of Haakon County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-9
Haakon County, South Dakota

The following is expressly excluded from the real property in Haakon County, South Dakota described in Exhibit A:

Excluding and Excepting Outlot "S", a portion of the Southwest Quarter of the Southeast Quarter of the Southwest Quarter, Section 13 and the North 30 acres of the West 60 acres of the North Half of the Northwest Quarter of Section 24, Township 1 North, Range 20 East; and further

Excluding and Excepting the right in common with Grantee, to use for driveway purposes the following described real estate, to wit: A strip of land 39 feet in width extending Southwesterly from the Southwesterly line of the above-described real estate to the East line of Larimer Avenue, and lying between lines parallel with and distant 161 feet and 200 feet, respectively, Southeasterly, measured at right angles, from the center line of the main track of the Pierre Rapid City and Northwestern Railway Company (now the Chicago and North Western Transportation Company), as said main track center line was originally located and established across said Sections 13 and 24. TOGETHER WITH that part of the Northeast Quarter of the Northwest Quarter of said Section 24, bounded as follows: On the Northeast by the Northeasterly line of Farmers Cooperative Association Outlot 6C; On the Southwest by a line parallel with and distant 100 feet Southwesterly, measured at right angles, from said Northeasterly line; And on the Northwest and Southeast by lines parallel with and distant 200 feet and 240 feet, respectively, Southeasterly, measured at right angles, from said original main track center line. CNW, its successors and assigns, and those whom it may elect, assumes no responsibility for any cost in connection with the construction, reconstruction, maintenance or repair of said driveway; and further

Excluding and Excepting Performance Seed Outlot 1 & 2 lying in the Southeast Quarter of the Southeast Quarter, Section 6, Township 1 North, Range 25 East of the B.H.M. further

Excluding and Excepting Dakota Mill and Grain Lot 1, being a replat of Railroad Right of Way, Mobile Outlot No. 1, Lot 2 and unplatted parcels, lying in the Northeast Quarter of Section 23, Township 1 North, Range 20 East of the B.H.M. further

Excluding and Excepting Dakota Mill and Grain Lot 2 and Lot 3, being a replat of Lot 1 of Conagra Subdivision Outlot A and Lot 1; Lots 1 and 2, a portion of Outlot B, an unplatted parcel and Railroad Right of Way, lying in the Northwest Quarter of Section 24, Township 1 North, Range 20 East of the B.H.M. further

Excluding and Excepting Lot 1, Railroad First Addition in the Northeast Quarter of Section 23 and the Northwest Quarter of Section 24, Township 1 North, Range 20 East, of the B.H.M.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-10
Jackson County, South Dakota

The following real property in **Jackson County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the Northerly line of Section 6, Township 1 South, Range 20 East of the Black Hills Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 1 South, Range 20 East of the Black Hills Meridian, Section 6;

Township 1 South, Range 19 East of the Black Hills Meridian, Sections 1, 2, 3, 10, 9, 8, 17 and 18;

Township 1 South, Range 18 East of the Black Hills Meridian, Sections 13, 14, 12, 11, 10, 9, 8 and 7;

to the Westerly line of said Section 7 and the Westerly line of Jackson County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-10
Jackson County, South Dakota

The following is expressly excluded from the real property in Jackson County, South Dakota described in Exhibit A:

No Exceptions

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-11
Pennington County, South Dakota

The following real property in **Pennington County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of the DM&E's main line track extending from the Minnesota/South Dakota State Line to Rapid City, South Dakota and the Easterly line of Section 12, Township 1 South, Range 17 East of the Black Hills Meridian; thence Westerly along said main line track center line traversing the following Sections:

Township 1 South, Range 17 East of the Black Hills Meridian, Sections 12, 11, 10, 3, 4, 5 and 6; except Tract 7 in NE $\frac{1}{4}$ SE $\frac{1}{4}$, being former Dakota, Minnesota & Eastern Railroad Property, all in Section 6, Township 1 South, Range 17 East, Black Hills Meridian as conveyed by Deed No. 051095, and except Tract 6 in SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ and Tract 8 in NE $\frac{1}{4}$ E $\frac{1}{4}$, being former Dakota, Minnesota & Eastern Railroad property, all in Section 6, Township 1 South, Range 17 East Black Hills Meridian as conveyed by Deed No. 122394, and except Tract & in NE $\frac{1}{4}$ SE $\frac{1}{4}$, being former Dakota, Minnesota & Eastern Railroad property, all in Section 6, Township 1 South, Range 17 East, Black Hills Meridian as conveyed by Deed No. 051095;

Township 1 South, Range 16 East of the Black Hills Meridian, Section 1;

Township 1 North, Range 16 East of the Black Hills Meridian, Sections 35, 34, 33, 32 and 31;

Township 1 South, Range 16 East of the Black Hills Meridian, Section 6;

Township 1 South, Range 15 East of the Black Hills Meridian, Sections 1 and 2;

Township 1 North, Range 15 East of the Black Hills Meridian, Sections 35, 34, 33, 28, 29, 20, 19, 17, 18 and 7;

Township 1 North, Range 14 East of the Black Hills Meridian, Sections 12, 1, 2, 3, 4, 9, 8, 17, 20, 19, 30 and 31;

Township 1 North, Range 13 East of the Black Hills Meridian, Sections 36, 35, 34, 27, 28, 29, 30 and 19;

Township 1 North, Range 12 East of the Black Hills Meridian, Sections 24, 23, 14, 15, 16, 9, 8, 5 and 6;

Township 1 North, Range 11 East of the Black Hills Meridian, Sections 1 and 2;

Township 2 North, Range 11 East of the Black Hills Meridian, Sections 35, 34, 33, 32 and 31;

Exhibit A
Property Description

Segment SD-11
Pennington County, South Dakota

Township 2 North, Range 10 East of the Black Hills Meridian, Sections 36, 35, 34, 33, 28, 29 and 30;

Township 2 North, Range 9 East of the Black Hills Meridian, Sections 25, 26, 27, 28, 21, 20 and 19;

Township 2 North, Range 8 East of the Black Hills Meridian, Sections 24, 23, 26, 27, 28, 33, 32, 29, 30 and 31; excluding the following portion thereof conveyed by Deed No. 121605 dated December 16, 2005, and legally described as follows:

Lot 1 of Atlantis Subdivision, formerly all of Lot 1 and Lot 2 of Tract F of W-Y Addition, less Lot H-1 of Lot 1 of Tract F and less Lot H-1 of Lot 2 of Tract F, and including a portion of DM&E Railroad Right-of-Way all located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T2N, R8E, BHM, Rapid City, South Dakota, as shown on the plat filed in Plat Book 33, Page 123;

Township 2 North, Range 7 East of the Black Hills Meridian, Section 36, Excluding and Excepting that part of Section 36, Township 2 North, Range 7 East lying West of the West line of Third Street;

to a point (M.P. 649.05) on the south line of Omaha Street in the Original Town (now City) of Rapid City, South Dakota, and there terminating.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-11
Pennington County, South Dakota

The following is expressly excluded from the real property in Pennington County, South Dakota described in Exhibit A:

Excluding and excepting Lot 1 of Dakota Mill and Grain, in the city of Wall, as shown in Document No. A201217413 in the office of the Register of Deeds

Further excluding and excepting Lot 2 of Dakota Mill and Grain, as in Document No. A201215540 in the office of the Register of Deeds.

Further excluding and excepting any and all property or property rights held in the name of Wyoming Dakota Railroad Properties, Inc.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-12
Fall River County, South Dakota

The following real property in **Fall River County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being constructed and operated upon and across the following quadrants, to-wit:

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
E½, NE¼NW¼	14	12S.	7E.	BLACK HILLS
SW¼	11	12S.	7E.	BLACK HILLS
E½	10	12S.	7E.	BLACK HILLS
E½	3	12S.	7E.	BLACK HILLS
E½, SE¼NW¼	34	11S.	7E.	BLACK HILLS
E½	27	11S.	7E.	BLACK HILLS
SE¼SE¼	22	11S.	7E.	BLACK HILLS
W½, NW¼NE¼	23	11S.	7E.	BLACK HILLS
SE¼SW¼, E½	14	11S.	7E.	BLACK HILLS
NW¼	13	11S.	7E.	BLACK HILLS
SW¼, E½	12	11S.	7E.	BLACK HILLS
SE¼SE¼	1	11S.	7E.	BLACK HILLS
W½	6	11S.	8E.	BLACK HILLS
W½	31	10S.	8E.	BLACK HILLS
W½	30	10S.	8E.	BLACK HILLS
W½	19	10S.	8E.	BLACK HILLS
SW¼	18	10S.	8E.	BLACK HILLS
E½	13	10S.	7E.	BLACK HILLS
E½	12	10S.	7E.	BLACK HILLS
ALL	1	10S.	7E.	BLACK HILLS
W½	36	9S.	7E.	BLACK HILLS
SW¼SW¼	25	9S.	7E.	BLACK HILLS
E½	26	9S.	7E.	BLACK HILLS
ALL	23	9S.	7E.	BLACK HILLS
NW¼NW¼	24	9S.	7E.	BLACK HILLS
W½, NE¼	13	9S.	7E.	BLACK HILLS
E½	12	9S.	7E.	BLACK HILLS
NW¼	7	9S.	8E.	BLACK HILLS
W½	6	9S.	8E.	BLACK HILLS
W½	31	8S.	8E.	BLACK HILLS
NE¼NE¼	36	8S.	7E.	BLACK HILLS
SW¼SW¼	30	8S.	8E.	BLACK HILLS
E½	25	8S.	7E.	BLACK HILLS
SW¼SE¼, W½	24	8S.	7E.	BLACK HILLS
SW¼	13	8S.	7E.	BLACK HILLS

Exhibit A
Property Description

Segment SD-12
Fall River County, South Dakota

QUADRANT	SECTION	TOWNSHIP	RANGE	MERIDIAN
E½	14	8S.	7E.	BLACK HILLS
SW¼SE¼, W½	11	8S.	7E.	BLACK HILLS
SW¼	2	8S.	7E.	BLACK HILLS
E½	3	8S.	7E.	BLACK HILLS
E½	34	7S.	7E.	BLACK HILLS
E½	27	7S.	7E.	BLACK HILLS
SE¼, N½	22	7S.	7E.	BLACK HILLS
NE¼NE¼	21	7S.	7E.	BLACK HILLS
S½, NW¼	16	7S.	7E.	BLACK HILLS
W½	9	7S.	7E.	BLACK HILLS
NE¼	8	7S.	7E.	BLACK HILLS
E½	5	7S.	7E.	BLACK HILLS

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-12
Fall River County, South Dakota

The following is expressly excluded from the real property in Fall River County, South Dakota described in Exhibit A:

Any and all property or property rights held in the name of Wyoming Dakota Railroad Properties, Inc.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-13
Custer County, South Dakota

The following real property in **Custer County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being constructed and operated upon and across the following quadrants, to-wit:

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
E½, NW¼	32	6S.	7E.	BLACK HILLS
E½	29	6S.	7E.	BLACK HILLS
E½	20	6S.	7E.	BLACK HILLS
NW¼NW¼	21	6S.	7E.	BLACK HILLS
W½, NE¼	16	6S.	7E.	BLACK HILLS
SE¼SE¼	9	6S.	7E.	BLACK HILLS
W½, NE¼	10	6S.	7E.	BLACK HILLS
E½	3	6S.	7E.	BLACK HILLS
E½	34	5S.	7E.	BLACK HILLS
SW¼SE¼, W½	27	5S.	7E.	BLACK HILLS
W½	22	5S.	7E.	BLACK HILLS
W½	15	5S.	7E.	BLACK HILLS
NE¼	16	5S.	7E.	BLACK HILLS
E½	9	5S.	7E.	BLACK HILLS
E½	4	5S.	7E.	BLACK HILLS
NW¼NW¼	3	5S.	7E.	BLACK HILLS
SE¼SE¼	33	4S.	7E.	BLACK HILLS
W½NE¼	34	4S.	7E.	BLACK HILLS
SE½	27	4S.	7E.	BLACK HILLS
ALL	26	4S.	7E.	BLACK HILLS
NW¼	25	4S.	7E.	BLACK HILLS
S½	24	4S.	7E.	BLACK HILLS
W½, NE¼	19	4S.	8E.	BLACK HILLS
E½, NW¼	18	4S.	8E.	BLACK HILLS
SE¼SW¼, E½	7	4S.	8E.	BLACK HILLS
E½	6	4S.	8E.	BLACK HILLS
W½	5	4S.	8E.	BLACK HILLS
W½	32	3S.	8E.	BLACK HILLS
W½	29	3S.	8E.	BLACK HILLS
NE¼NE¼	30	3S.	8E.	BLACK HILLS
SE¼, N½	19	3S.	8E.	BLACK HILLS
SW¼	18	3S.	8E.	BLACK HILLS
E½	13	3S.	7E.	BLACK HILLS
SE¼SE¼	12	3S.	7E.	BLACK HILLS
W½, NE¼	7	3S.	8E.	BLACK HILLS

Exhibit A
Property Description

Segment SD-13
Custer County, South Dakota

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
E½	6	3S.	8E.	BLACK HILLS
NW¼NW¼	5	3S.	8E.	BLACK HILLS
W½, NW¼NE¼	32	2S.	8E.	BLACK HILLS
E½, SE¼SW¼	29	2S.	8E.	BLACK HILLS

Also that portion of the SE¼ of Section 20, Township 2 South, Range 8 East of the Black Hills Meridian lying between the South line of said Section 20 and the North line of Custer County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-13
Custer County, South Dakota

The following is expressly excluded from the real property in Custer County, South Dakota described in Exhibit A:

Any and all property or property rights held in the name of Wyoming Dakota Railroad Properties, Inc.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-14
Pennington County, South Dakota

The following real property in **Pennington County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being constructed and operated upon and across the following quadrants, to-wit:

That portion of the SE $\frac{1}{4}$ of Section 20, Township 2 South, Range 8 East of the Black Hills Meridian lying between the South line of Pennington County, South Dakota, and the East and West centerline of said Section 20.

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
N $\frac{1}{2}$	20	2S.	8E.	BLACK HILLS
W $\frac{1}{2}$	17	2S.	8E.	BLACK HILLS
SW $\frac{1}{4}$ N $\frac{1}{2}$	8	2S.	8E.	BLACK HILLS
SE $\frac{1}{4}$ SE $\frac{1}{4}$	5	2S.	8E.	BLACK HILLS
W $\frac{1}{2}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$	4	2S.	8E.	BLACK HILLS
E $\frac{1}{2}$	33	1S.	8E.	BLACK HILLS
NW $\frac{1}{4}$	34	1S.	8E.	BLACK HILLS
W $\frac{1}{2}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$	27	1S.	8E.	BLACK HILLS
E $\frac{1}{2}$	22	1S.	8E.	BLACK HILLS
SE $\frac{1}{4}$	15	1S.	8E.	BLACK HILLS
W $\frac{1}{2}$	14	1S.	8E.	BLACK HILLS
SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$	11	1S.	8E.	BLACK HILLS
ALL	2	1S.	8E.	BLACK HILLS
SW $\frac{1}{4}$ SW $\frac{1}{4}$	35	1N.	8E.	BLACK HILLS
E $\frac{1}{2}$	34	1N.	8E.	BLACK HILLS
S $\frac{1}{2}$, NW $\frac{1}{4}$	27	1N.	8E.	BLACK HILLS
N $\frac{1}{2}$	28	1N.	8E.	BLACK HILLS
SW $\frac{1}{4}$ SW $\frac{1}{4}$	21	1N.	8E.	BLACK HILLS
E $\frac{1}{2}$ NW $\frac{1}{4}$	20	1N.	8E.	BLACK HILLS
W $\frac{1}{2}$	17	1N.	8E.	BLACK HILLS
W $\frac{1}{2}$	8	1N.	8E.	BLACK HILLS
NE $\frac{1}{4}$	7	1N.	8E.	BLACK HILLS
S $\frac{1}{2}$, NW $\frac{1}{4}$	6	1N.	8E.	BLACK HILLS
N $\frac{1}{2}$	1	1N.	7E.	BLACK HILLS
S $\frac{1}{2}$	36	2N.	7E.	BLACK HILLS
S $\frac{1}{2}$	35	2N.	7E.	BLACK HILLS
S $\frac{1}{2}$, NW $\frac{1}{4}$	34	2N.	7E.	BLACK HILLS
NE $\frac{1}{4}$ NE $\frac{1}{4}$	33	2N.	7E.	BLACK HILLS
E $\frac{1}{2}$	28	2N.	7E.	BLACK HILLS
E $\frac{1}{2}$, NW $\frac{1}{4}$	21	2N.	7E.	BLACK HILLS
SW $\frac{1}{4}$ SW $\frac{1}{4}$	16	2N.	7E.	BLACK HILLS
E $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$	17	2N.	7E.	BLACK HILLS

Exhibit A
Property Description

Segment SD-14
Pennington County, South Dakota

Also that portion of the SE¼SW¼ of Section 8, Township 2 North, Range 7 East of the Black Hills Meridian lying between the South line of said Section 8 and the North line of Pennington County, South Dakota

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-14
Pennington County, South Dakota

The following is expressly excluded from the real property in Pennington County, South Dakota described in Exhibit A:

Any and all property or property rights held in the name of Wyoming Dakota Railroad Properties, Inc.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-15
Meade County, South Dakota

The following real property in **Meade County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being constructed and operated upon and across the following quadrants, to-wit:

That portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 8, Township 2 North, Range 7 East of the Black Hills Meridian lying between the south line of Meade County, South Dakota, and the east and west center line of said Section 8.

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
NW $\frac{1}{2}$	8	2N.	7E.	BLACK HILLS
SW $\frac{1}{4}$	5	2N.	7E.	BLACK HILLS
E $\frac{1}{2}$	6	2N.	7E.	BLACK HILLS
E $\frac{1}{2}$, NW $\frac{1}{4}$	31	3N.	7E.	BLACK HILLS
SW $\frac{1}{4}$ SW $\frac{1}{4}$	30	3N.	7E.	BLACK HILLS
E $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$	25	3N.	6E.	BLACK HILLS
SW $\frac{1}{4}$	24	3N.	6E.	BLACK HILLS
E $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$	23	3N.	6E.	BLACK HILLS
W $\frac{1}{2}$	14	3N.	6E.	BLACK HILLS
NE $\frac{1}{4}$	15	3N.	6E.	BLACK HILLS
SW $\frac{1}{4}$ SE $\frac{1}{4}$ W $\frac{1}{2}$	10	3N.	6E.	BLACK HILLS
NE $\frac{1}{4}$ NE $\frac{1}{4}$	9	3N.	6E.	BLACK HILLS
E $\frac{1}{2}$, NW $\frac{1}{4}$	4	3N.	6E.	BLACK HILLS
W $\frac{1}{2}$	33	4N.	6E.	BLACK HILLS
NE $\frac{1}{4}$ NE $\frac{1}{4}$	32	4N.	6E.	BLACK HILLS
E $\frac{1}{2}$, NE $\frac{1}{4}$ W $\frac{1}{4}$	29	4N.	6E.	BLACK HILLS
SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$	20	4N.	6E.	BLACK HILLS
W $\frac{1}{2}$	17	4N.	6E.	BLACK HILLS
SW $\frac{1}{4}$	8	4N.	6E.	BLACK HILLS
E $\frac{1}{2}$	7	4N.	6E.	BLACK HILLS
SE $\frac{1}{4}$, W $\frac{1}{2}$	6	4N.	6E.	BLACK HILLS
SW $\frac{1}{4}$ SW $\frac{1}{4}$	31	5N.	6E.	BLACK HILLS
E $\frac{1}{2}$, NW $\frac{1}{4}$	36	5N.	5E.	BLACK HILLS
W $\frac{1}{2}$	25	5N.	5E.	BLACK HILLS
NE $\frac{1}{4}$	26	5N.	5E.	BLACK HILLS
(Meade Mlty. Res.) S $\frac{1}{2}$, NW $\frac{1}{4}$	23	5N.	5E.	BLACK HILLS
(Meade Mlty. Res.) NE $\frac{1}{4}$ NE $\frac{1}{4}$	22	5N.	5E.	BLACK HILLS

Exhibit A
Property Description

Segment SD-15
Meade County, South Dakota

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
S½NW¼	15	5N.	5E.	BLACK HILLS
Excluding the portion thereof conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 102503 on November 10, 2003, and legally described as: RR Lot 1, a portion of the Dakota, Minnesota & Eastern Railroad Corporation Railroad Right-of-Way located in the NW¼NW¼ of Section 15 located in the T.5N., R.5E., B.H.M., City of Sturgis, Meade County, South Dakota.				
E½NE¼	16	5N.	5E.	BLACK HILLS
Excluding the portion thereof conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 102503 on November 10, 2003, and legally described as: RR Lot 1, a portion of the Dakota, Minnesota & Eastern Railroad Corporation Railroad Right-of-Way located in the NE¼NE¼ of Section 16 located in the T.5N., R.5E., B.H.M., City of Sturgis, Meade County, South Dakota.				
E½, NW¼	9	5N.	5E.	BLACK HILLS
Excluding the portion thereof conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by Deed No. 102603 on November 10, 2003, and legally described as: RR Lot X, a portion of Lots 19 thru 24, Lot 25N of Ash's Extension and a portion of the Dakota, Minnesota & Eastern Railroad Corporation Railroad Right-of-Way located in the NE¼NW¼, Section 9, T.5N., R.5E., B.H.M., City of Sturgis, Meade County, South Dakota.				
NE¼NE¼	8	5N.	5E.	BLACK HILLS
S½	5	5N.	5E.	BLACK HILLS
Except that portion of the SE¼ of the SW¼ lying north of Highway 34-14 and the Service Road right-of-way, as conveyed by Deed No. 091798.				
SE¼, N½	6	5N	5E.	BLACK HILLS

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-15
Meade County, South Dakota

The following is expressly excluded from the real property in Meade County, South Dakota described in Exhibit A:

Exceptions are incorporated into property descriptions in Exhibit A

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-16
Lawrence County, South Dakota

The following real property in **Lawrence County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being constructed and operated upon and across the following quadrants, to-wit:

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
N½	1	5N.	4E.	BLACK HILLS
SW¼	36	6N.	4E.	BLACK HILLS
NE¼SE¼, N½	35	6N.	4E.	BLACK HILLS
W½	26	6N.	4E.	BLACK HILLS
N½	27	6N.	4E.	BLACK HILLS
NE¼	28	6N.	4E.	BLACK HILLS
S½, NW¼	21	6N.	4E.	BLACK HILLS
SW¼SW¼	16	6N.	4E.	BLACK HILLS
E½	17	6N.	4E.	BLACK HILLS
SW¼SE¼, W½	8	6N.	4E.	BLACK HILLS
SW¼SW¼	5	6N.	4E.	BLACK HILLS
E½	6	6N.	4E.	BLACK HILLS
S½	31	7N.	4E.	BLACK HILLS
E½, NW¼	36	7N.	3E.	BLACK HILLS
SW¼SW¼	25	7N.	3E.	BLACK HILLS
SE¼, N½	26	7N.	3E.	BLACK HILLS
SW¼	23	7N.	3E.	BLACK HILLS
E½	22	7N.	3E.	BLACK HILLS
SW¼SE¼, W½	15	7N.	3E.	BLACK HILLS
NE¼	16	7N.	3E.	BLACK HILLS
E½, NW¼	9	7N.	3E.	BLACK HILLS
W½	4	7N.	3E.	BLACK HILLS
NE¼	5	7N.	3E.	BLACK HILLS

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-16
Lawrence County, South Dakota

The following is expressly excluded from the real property in Lawrence County, South Dakota described in Exhibit A:

No Exceptions

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-17
Butte County, South Dakota

The following real property in **Butte County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being constructed and operated upon and across the following quadrants, to-wit:

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
S½, SW¼NW¼	32	8N.	3E.	BLACK HILLS
N½	31	8N.	3E.	BLACK HILLS
N½, SW¼	36	8N.	2E.	BLACK HILLS
SW¼SE¼, W½	25	8N.	2E.	BLACK HILLS
W½	24	8N.	2E.	BLACK HILLS
E½NE¼	23	8N.	2E.	BLACK HILLS
E½	14	8N.	2E.	BLACK HILLS
S½	11	8N.	2E.	BLACK HILLS
NE½SE¼	10	8N.	2E.	BLACK HILLS

Except that portion within the City of Belle Fourche conveyed by Deed No. 120197 and recorded at Book 5282 at page 616.

W½	3	8N.	2E.	BLACK HILLS
NE¼	4	8N.	2E.	BLACK HILLS
S½, NW¼	33	9N.	2E.	BLACK HILLS
NE¼NE¼	32	9N.	2E.	BLACK HILLS
S½, NW¼	29	9N.	2E.	BLACK HILLS
NE¼NE¼	30	9N.	2E.	BLACK HILLS
S½, NW¼	19	9N.	2E.	BLACK HILLS
NE¼NE¼	24	9N.	1E.	BLACK HILLS
S½, NW¼	13	9N.	1E.	BLACK HILLS
NE¼NE¼	14	9N.	1E.	BLACK HILLS
S½, NW¼	11	9N.	1E.	BLACK HILLS
NE¼NE¼	10	9N.	1E.	BLACK HILLS
S½, NW¼	3	9N.	1E.	BLACK HILLS
NE¼	4	9N.	1E.	BLACK HILLS
S½, NW¼	33	10N.	1E.	BLACK HILLS
N½	32	10N.	1E.	BLACK HILLS
SW¼	29	10N.	1E.	BLACK HILLS
NE¼SE¼, N½	30	10N.	1E.	BLACK HILLS
SW¼	19	10N.	1E.	BLACK HILLS

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-17
Butte County, South Dakota

The following is expressly excluded from the real property in Butte County, South Dakota described in Exhibit A:

Exceptions incorporated in descriptions in Exhibit A.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-18
Brookings County, South Dakota

The following real property in **Brookings County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of DM&E's Sioux Valley Junction to Watertown branch line main track and a line 100 feet Northerly of and parallel with DM&E's Tracy to Pierre main track center line (M.P. 0.1), said intersection being located in the Northeast Quarter of Section 19, Township 110 North, Range 50 West of the Fifth Principal Meridian; thence Northerly along said branch line main track center line traversing the following Sections:

Township 110 North, Range 50 West of the Fifth Principal Meridian, Sections 19, 18 and 7; except Block 2 of Eighth Railroad Addition to the City of Brookings as conveyed by Deed No. 113095, and except Lot 2A Second Railroad Addition to the City of Brookings as conveyed by Deed No. 121394, and except Lots Seven (7) and Eight (8), Railroad Addition as conveyed by Deed No. 061197, and further excluding that portion conveyed by Deed No. 112497 which is described as follows:

One Hundred Foot (100') Strip of Railroad Right-of-Way, Fifty Feet (50') on either side of the center line of the railroad line as it has been surveyed, located and constructed across the following described Parcels:

The Northwest Quarter (NW $\frac{1}{4}$) of Section Seven (7);
The Southwest Quarter (SW $\frac{1}{4}$) of Section Seven (7);
The Southeast Quarter (SE $\frac{1}{4}$) of Section Seven (7);
and the Northeast Quarter (NE $\frac{1}{4}$) of Section Eighteen (18);
ALL in Township One Hundred Ten (110) North, Range Fifty (50) West of the 5th P.M.,
Brookings County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-18
Brookings County, South Dakota

The following is expressly excluded from the real property in Brookings County, South Dakota described in Exhibit A:

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-19
Spink County, South Dakota

The following real property in **Spink County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

Beginning at the intersection of the center line of DM&E's Redfield to Mansfield branch line main track and the South line of Section 14, Township 116 North, Range 64 West of the Fifth Principal Meridian (M.P. 37.9); thence Northerly along said branch line main track center line traversing the following Sections:

Township 116 North, Range 64 West of the Fifth Principal Meridian, Sections 14, 15, 10, 9, 5 and 4; except the Southeast Quarter of Section 14 in Township 116 North, Range 64 West as conveyed by Deed No. 071095, and except a strip of land extending across all that part of the Northeast Quarter of Section 15 in Township 116 North, Range 64 West as conveyed by Deed No. 062095, and except the West Half of Section 14 in Township 116 North, Range 64 West as conveyed by Deed No. 060195, and except Cenex Lot 2 in the SE¼ of Section 5, T116N, R64W of the 5th P.M. as conveyed by Deed No. 020402;

Township 117 North, Range 64 West of the Fifth Principal Meridian, Sections 33, 28, 29, 20, 17, 8, 7 and 6;

Township 118 North, Range 64 West of the Fifth Principal Meridian, Sections 31 and 30;

Township 118 North, Range 65 West of the Fifth Principal Meridian, Sections 25, 24, 13, 12 and 1; excluding the portion thereof conveyed by the Dakota, Minnesota, & Eastern Railroad Corporation by Deed No. 012307 dated January 29, 2007, described as follows:

Plat showing Hoellein Railroad Addition in the NE¼ of Section 25-T118N-R65W of the 5th P.M., Spink County, South Dakota. Track contains 2.32 acres more or less and is subject to all easements of record.

Township 118 North, Range 64 West of the Fifth Principal Meridian, Section 6;

Township 119 North, Range 64 West of the Fifth Principal Meridian, Sections 31, 30, 19, 18, 7 and 6; except Lot 1 of Peterson's Second Addition to Northville in the NE¼ of Section 6, Township 119 North, Range 64 West of the 5th P.M. as conveyed by Deed No. 101399;

Township 120 North, Range 64 West of the Fifth Principal Meridian, Sections 31, 32, 29, 20, 17, 8 and 5; except Plat of Peterson Lot 1 in the SE¼ of Section 31, T120N, R64W of the 5th P.M. as conveyed by Deed No. 120399; and except Lot 1, Wagner Addition in the N½ of Section 5, Township 120N, Range 64W, of the 5th P.M., Spink County, South Dakota (containing 3.351 acres) as conveyed by Deed No. 102502 dated November 1, 2002;

Exhibit A
Property Description

Segment SD-19
Spink County, South Dakota

to the North line of Section 5, Township 120 North, Range 64 West of the Fifth Principal Meridian, being also the Northerly line of Spink County.

ALSO:

Beginning at the intersection of the center line of CNW's former main track running from Redfield to Watertown and the Westerly line of First Street East in the City of Redfield, said intersection being located in the Northwest Quarter of Section 10, Township 116 North, Range 64 West of the Fifth Principal Meridian; thence Easterly along said former main track center line traversing the following Sections:

Township 116 North, Range 64 West of the Fifth Principal Meridian, Sections 10 and 11, except Wheat Growers 2nd Addition to the City of Redfield as conveyed by Deed No. 060196;

to the intersection with a line perpendicular to said center line at a point thereon distant 1,593 feet Easterly, as measured along said center line, from the West line of said Section 11.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-19
Spink County, South Dakota

The following is expressly excluded from the real property in Spink County, South Dakota described in Exhibit A:

Appel Railroad Addition to the City of Redfield as conveyed by Deed No. 110194,
and
Wiedmeier's Railroad Addition to the City of Redfield as conveyed by Deed No. 112194,
and
Fuss Railroad Addition to the City of Redfield as conveyed by Deed No. 071696,
and
Commercial Lane Addition to the City of Redfield as conveyed by Deed No. 042099,
and
Lots One and Two of Blain Addition to the City of Redfield as conveyed by Deed No. 101199.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-20
Brown County, South Dakota

The following real property in **Brown County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

BEGINNING at the intersection of the center line of DM&E's Redfield to Mansfield branch line main track and the South line of Section 32, Township 121 North, Range 64 West of the Fifth Principal Meridian, said South line being also the Southerly line of Brown County; thence Northeasterly along said branch line main track center line traversing the following Section:

Township 121 North, Range 64 West of the Fifth Principal Meridian, Section 32;

to the intersection with a line perpendicular to said center line at a point thereon distant 1,965 feet Southwesterly, as measured along said center line, from the North line of said Section 32 (M.P. 67.1);

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-20
Brown County, South Dakota

The following is expressly excluded from the real property in Brown County, South Dakota described in Exhibit A:

THAT PORTION quieted in C.W. Hyde in Civ. Case #88-865 in the Brown County (5th Judicial Circuit) Court, the said judgment was recorded August 7, 1991 in Book 109, Page 12 in the Brown County Register of Deeds Office;

and

THAT PORTION conveyed to the Red River Valley & Western Railroad Company by Deed recorded January 24, 1992 in Book 256, Page 745;

and

THOSE PORTIONS conveyed by the Dakota, Minnesota & Eastern Railroad Corporation by the Deeds recorded in Book 252, Page 768; Book 255, Page 707; Book 256, Page 522; and Book 261, Page 279.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-21
Sully County, South Dakota

The following real property in **Sully County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

BEGINNING at the intersection of the center line of DM&E's Blunt to Onida branch line main track and the south line of Section 31, Township 113 North, Range 76 West of the Fifth Principal Meridian, said South line being also the Southerly line of Sully County; thence Northerly along said branch line main track center line traversing the following Sections:

Township 113 North, Range 76 West of the Fifth Principal Meridian, Sections 31, 30, 19, 18, 7 and 6;

Township 114 North, Range 76 West of the Fifth Principal Meridian, Sections 31 and 30;

Township 114 North, Range 77 West of the Fifth Principal Meridian, Sections 25, 24, 13, 14, 11 and 2,

to the North line of Section 2, Township 114 North, Range 77 West of the Fifth Principal Meridian (M.P. 98.36),

Further including property granted to the Dakota, Minnesota & Eastern Railroad by deed dated October 20, 2008 and recorded in Book 14, pages 47-50 on October 24, 2008 at 9:00 o'clock a.m. with the Register of Deeds, further described as follows:

All land within the strip of land 1,624' in length, and 100' in width extending over and across the W ½ of Section 35, Township 115 North, Range 77 West of the Fifth Principle Meridian, such strip of land being 50' in width on each side of the center line of the main track, over and across said W ½ of Section 35; and

All land within the 100' existing railway located on the West side of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, Block 17; and Lots 17, 18, 19, 20, 21, 22, 23 and 24, Block 24, all in the Second Addition to the City of Onida, Sully County, South Dakota.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-21
Sully County, South Dakota

The following is expressly excluded from the real property in Sully County, South Dakota described in Exhibit A:

THOSE PORTIONS within the City of Onida conveyed by Deed Nos. 110394, 110696, and 102798.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment SD-22
Hughes County, South Dakota

The following real property in **Hughes County, South Dakota** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being more particularly described as follows, to-wit:

BEGINNING at the intersection of the center line of DM&E's Blunt to Onida branch line main track and the Northwestern right-of-way line of DM&E's Huron to Pierre main line, said intersection being located in the East Half of the East Half of Section 17, Township 112 North, Range 76 West of the Fifth Principal Meridian (M.P. 114.95); thence Northwesternly along said branch line main track center line traversing the following Sections:

Township 112 North, Range 76 West of the Fifth Principal Meridian, Sections 17, 8, 7 and 6;

Township 112 North, Range 77 West of the Fifth Principal Meridian, Section 1,

to the North line of said Section 1, Township 112 North, Range 77 West of the Fifth Principal Meridian, being also the Northerly line of Hughes County.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment SD-22
Hughes County, South Dakota

The following is expressly excluded from the real property in Hughes County, South Dakota described in Exhibit A:

No Exceptions

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment NE-1
Dawes County, Nebraska

The following real property in **Dawes County, Nebraska** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being constructed and operated upon and across the following quadrants, to-wit:

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
S½, SW¼NW¼	4	33N.	49W.	6TH
N½	5	33N.	49W.	6TH
SW¼	32	34N.	49W.	6TH
E½, NW¼	31	34N.	49W.	6TH
SW¼	30	34N.	49W.	6TH
NE¼SE¼, N½	25	34N.	50W.	6TH
SW¼	24	34N.	50W.	6TH
E½	23	34N.	50W.	6TH
S½, NW¼	14	34N.	50W.	6TH
NE¼	15	34N.	50W.	6TH
S½, NW¼	10	34N.	50W.	6TH
SW¼	3	34N.	50W.	6TH
E½	4	34N.	50W.	6TH
S½, NW¼	33	35N.	50W.	6TH
NE¼	32	35N.	50W.	6TH
S½, NW¼	29	35N.	50W.	6TH
W½	20	35N.	50W.	6TH
N½NE¼	19	35N.	50W.	6TH

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment NE-1
Dawes County, Nebraska

The following is expressly excluded from the real property in Dawes County, Nebraska described in Exhibit A:

Excluding and excepting that property in the S ½ of Section 4, Township 33 North, Range 49 West of the Sixth, P.M., deeded to the Nebraska Northwestern Railroad, Inc., being further described in Instrument No. 2010-00713, recorded on July 2, 2010 at 9:51 am by the Dawes County Register of Deeds.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment NE-2
Dawes County, Nebraska

The following real property in **Dawes County, Nebraska** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being constructed and operated upon and across the following quadrants, to-wit:

<u>QUADRANT</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
W½	9	33N.	49W.	6TH
SE¼	8	33N.	49W.	6TH
N½	17	33N.	49W.	6TH
SE¼NE¼, S½	18	33N.	49W.	6TH
NW¼	19	33N.	49W.	6TH
NE¼, W½	24	33N.	50W.	6TH
S½	23	33N.	50W.	6TH
S½	22	33N.	50W.	6TH
SE¼	21	33N.	50W.	6TH
N½, NW¼SW¼	28	33N.	50W.	6TH
SE¼	29	33N.	50W.	6TH
N½NW¼SW¼	32	33N.	50W.	6TH
SE½	31	33N.	50W.	6TH
N½, NW¼SW¼	1	32N.	51W.	6TH
SE¼	2	32N.	51W.	6TH
N½, NW¼SW¼	11	32N.	51W.	6TH
SE¼	10	32N.	51W.	6TH
N½	15	32N.	51W.	6TH
SE¼NE¼, S½	16	32N.	51W.	6TH
SE¼SE¼	17	32N.	51W.	6TH
N½	20	32N.	51W.	6TH
S½NE¼, S½	19	32N.	51W.	6TH
S½	24	32N.	52W.	6TH
NW¼	25	32N.	52W.	6TH
E½, SW¼	26	32N.	52W.	6TH
NW¼	35	32N.	52W.	6TH
E½	34	32N.	52W.	6TH
N½, SW¼	3	31N.	52W.	6TH

Except Blocks 1 and 3 of Railroad Addition to the town of Crawford, Nebraska, according to the recorded plat thereof, conveyed by the Dakota, Minnesota & Eastern Railroad Corp. ("DM&E") in Deeds No. 12498 and No. 022201, respectively; And further excepting Tracts 1 through 3 located in the Original Government Lot 6, Section 3 and formerly a part of Out Lot C, as shown on that survey recorded as Instrument No. 2223 filed on July 14, 1997, in Book One of Plat Cabinet on Page 168, Dawes County, and conveyed by DM&E in Deed No. 030100.

Exhibit A
Property Description

Segment NE-2
Dawes County, Nebraska

Also all right, title, and interest in and to the right-of-way, trackage, and appurtenances of said Crawford Branch situate in the SW¼ of Section 15, Township 33 North, Range 48 West of the Sixth Principal Meridian in Dawes County, Nebraska, that lies between the west line of said Section 15 and a line drawn at right angles through the centerline of the main track of said Crawford Branch, said line being 1,461.5 feet distant easterly, measured along said centerline of main track, from said west line of Section 15.

Also all right, title, and interest in and to the right-of-way, trackage, and appurtenances of said Crawford Branch situate in the NW¼ of Section 10, Township 31 North, Range 52 West of the Sixth Principal Meridian in Crawford, Dawes County, Nebraska, lying between the north line of said Section 10 and the northeasterly line of that certain strip of land conveyed by Deed dated August 17, 1993, from Chicago and North Western Transportation Company to Friends of the White River Trail, Inc. and identified as Parcel 1 in said Deed.

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment NE-2
Dawes County, Nebraska

The following is expressly excluded from the real property in Dawes County, Nebraska described in Exhibit A:

There are no exclusion or exceptions.

>END of Exhibit B Exclusions.

Exhibit A
Property Description

Segment WY-1
Crook County, Wyoming

The following real property in **Crook County, Wyoming** :

All of Grantor's railroad right-of-way, including continuous lines of railroad ("Lines") and other real property station grounds, abutting lands and extra width lands associated with said Lines, EXCEPT as excluded or excepted herein or in Exhibit B, or that may have been previously conveyed by the Grantor or its predecessors in title, and being constructed and operated upon and across the following quadrants, to-wit:

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
Lots 14, 13, 10, 11, 6	28	56N.	60W.	BLACK HILLS
Lots 8, 2, 1	29	56N.	60W.	BLACK HILLS
Lots 11, 10, 9, 8	20	56N.	60W.	BLACK HILLS
Lots 13, 14, 11, 10, 7, 8, 9	19	56N.	60W.	BLACK HILLS
Lot 1	24	56N.	61W.	BLACK HILLS
Lots 16, 15, 10, 11, 6, 5, 4	13	56N.	61W.	BLACK HILLS
NE $\frac{1}{4}$ NE $\frac{1}{4}$	14	56N.	61W.	BLACK HILLS
All	11	56N.	61W.	BLACK HILLS
SW $\frac{1}{4}$ SW $\frac{1}{4}$	2	56N.	61W.	BLACK HILLS
E $\frac{1}{2}$ SE $\frac{1}{4}$	3	56N.	61W.	BLACK HILLS

>END of Exhibit A Property Description.

Exhibit B
Property Exceptions

Segment WY-1
Crook County, Wyoming

The following is expressly excluded from the real property in Crook County, Wyoming described in Exhibit A:

No Exceptions

>END of Exhibit B Exclusions.

EXHIBIT B

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of this ____ day of _____, 201_, by and between RAPID CITY, PIERRE & EASTERN RAILROAD, INC., A DELAWARE CORPORATION ("*Buyer*"), and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, A DELAWARE CORPORATION, D/B/A CANADIAN PACIFIC RAILWAY ("*DM&E*").

RECITALS

A. Buyer and DM&E have concurrently herewith consummated the purchase and Lease by Buyer of all of the Transaction Assets from DM&E pursuant to the terms and conditions of that certain Transaction Agreement dated as of January [●], 2014 between Buyer and DM&E (the "*Transaction Agreement*").

B. Capitalized terms herein not otherwise defined herein shall have the meanings ascribed to them in the Transaction Agreement.

C. Pursuant to the terms and conditions of the Transaction Agreement, Buyer has agreed to assume and to satisfy, pay, perform and discharge when due all Assumed Obligations.

TERMS AND CONDITIONS

In consideration of the foregoing and the mutual representations, warranties and covenants set forth herein and in the Transaction Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and DM&E agree as follows:

1. 

[REDACTED]

2. [REDACTED]

3. [REDACTED]

4. This Agreement may be executed by facsimile signature and in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument binding upon all of the parties hereto notwithstanding the fact that all parties are not signatory to the original or the same counterpart.

[Signatures On Next Page]

The parties hereto have caused this Assignment and Assumption Agreement to be executed as of the date first written above.

BUYER:

**RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.**

By: _____
Name:
Title:

DM&E:

**DAKOTA, MINNESOTA &
EASTERN RAILROAD
CORPORATION**

By: _____
Name:
Title:

BILL OF SALE

BILL OF SALE made on this ____ day of _____, 201_ (this "Bill of Sale") by Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a CANADIAN PACIFIC RAILWAY ("DM&E"), in favor of Rapid City, Pierre & Eastern Railroad, Inc., a Delaware corporation ("Buyer"). Capitalized terms used in this Bill of Sale but not otherwise defined herein have the meanings ascribed thereto in the Agreement (as defined herein).

RECITALS:

WHEREAS, pursuant to that certain Transaction Agreement dated as of January [●], 2014 between DM&E and Buyer (the "Agreement"), DM&E has agreed to sell, transfer, assign and convey and where applicable Lease to Buyer all right, title and interest of DM&E in or to the Transaction Assets, free and clear of all Encumbrances, except Permitted Encumbrances, but excluding the Excluded Assets, subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants set forth herein and in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DM&E agrees as follows:

1. DM&E does hereby sell, transfer, assign and convey to Buyer, free and clear of all Encumbrances, except Permitted Encumbrances, but excluding the Excluded Assets, all right, title and interest of DM&E in or to all the Transaction Assets. Buyer, its

successors and assigns, shall have and hold the Transaction Assets for its and their own use and benefit forever.

2. [REDACTED]

3. This Bill of Sale shall be binding upon and inure to the benefit Buyer and its successors and permitted assigns.

4. [REDACTED]

[Signatures On Next Page]

IN WITNESS WHEREOF, DM&E has caused this Bill of Sale to be duly executed
by a duly authorized officer.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____
Name:
Title:

EXHIBIT D

[SAMPLE FORM OF DEED; A SEPARATE DEED WILL BE PREPARED FOR EACH COUNTY AND STATE (SOUTH DAKOTA, MINNESOTA, WYOMING, AND NEBRASKA) IN WHICH THE PROPERTY IS LOCATED IN FORM CONFORMING TO THE RECORDING REQUIREMENTS OF EACH STATE]

[Deeds affecting Colony Line to include assumption of CSSDA.]

Quit Claim Deed

THIS QUIT CLAIM DEED made as of the ___ day of ___, 20___, by Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a Canadian Pacific Railway (“**Grantor**”), in favor of RAPID CITY, PIERRE & EASTERN RAILROAD, INC., a Delaware corporation (“**Grantee**”).

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Grantor hereby quitclaims to Grantee without any covenants or warranties of title whatsoever, and without recourse to Grantor, all of the Grantor's right, title, and interest, legal and equitable, in and to the real property described on attached Exhibit A (the “**Real Property**”), situated in the County of _____, in the State of _____, including, without limitation for lack of specific enumeration, all estates, roadbeds, rights-of-way, station grounds, railroad yards, lines of railroad, improvements and fixtures thereon and all appurtenances thereto, to have and to hold unto the Grantee, its successors and assigns forever, subject to the following, all of which are hereby incorporated in and made a part of this Quit Claim Deed, and shall run with the land and be binding upon, and inure to the benefit of, all successors, assigns, and legal representatives of Grantor and Grantee and all future owners of any interest in the Real Property: (a) the agreements by and between Grantor and Grantee listed in attached Exhibit B executed and delivered as of the date of this Quit Claim Deed in

partial consideration for conveyance of the Real Property; (b) all covenants and conditions set forth in the Grantee Acknowledgement, Environmental Covenants and Release attached as Exhibit C (the “Environmental Covenants;” terms not defined in the body of this Quit Claim Deed related to the Environmental Covenants are defined in attached Exhibit C); and (c) the Reserved Coal Service Rights and Easements attached as Exhibit D.

Grantor quitclaims the Real Property to Grantee without representation or warranty of any kind by Grantor (subject, however, to written representations and warranties of Grantor to the Grantee named in this Quit Claim Deed pursuant to that certain Transaction Agreement, dated as of [], 2014, between Grantor and Grantee (the “**Transaction Agreement**”), which representations and warranties: (i) shall survive delivery of this Quit Claim Deed, (ii) are made solely for the benefit of the Grantee named in this Quit Claim Deed and its permitted assigns under the Transaction Agreement (and other persons referred to therein as beneficiaries of such representations and warranties), and (iii) shall not run with the land). Without limiting the generality of the preceding sentence, the Grantor disclaims any representation or warranty, express or implied, of merchantability or fitness for a particular purpose with respect to the Real Property.

To ensure that any party acquiring all or any portion of the Real Property from the Grantee and its successors in interest (“**Subsequent Grantee**”) shall be subject to all the terms and conditions of this Quit Claim Deed, including its Exhibits, each Subsequent Grantee shall execute a Binding Acknowledgement substantially in the form attached to this Easement as Exhibit E.

Capitalized terms used but not defined herein (including the Exhibits hereto) shall have the meanings set forth in the Transaction Agreement. Unless otherwise stated, terms, phrases and

expressions used in this Quit Claim Deed (whether or not capitalized) which pertain to railroad operations and service shall have the meaning commonly given such terms under common usage and practice of the railroad industry in 2013. All personal pronouns used in this Quit Claim Deed shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein”, “hereof”, “hereby”, “hereunder” and “hereinafter” refer to this Quit Claim Deed as a whole and not to the particular sentence, paragraph or Section where they appear, unless the context otherwise requires. The term “including” shall mean, and shall be interpreted as though such term were, the phrase “including, without limitation,” in each place where such term appears whether or not “without limitation” or similar phrase appears in each case. Whenever reference is made to a Section of this Quit Claim Deed, such reference is to the Section as a whole, including all of the subsections and paragraphs of such Section, unless the reference is expressly made to a particular subsection or paragraph of such Section.

[Signatures on next page]

IN WITNESS WHEREOF, the Grantor has executed this Quit Claim Deed as of the day and year above written.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION (d/b/a
CANADIAN PACIFIC RAILWAY)

By: _____
(signature)

(print name)

Its: _____
(title)

State of _____)

County of _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, in his/her capacity as the _____ Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation (d/b/a Canadian Pacific Railway), who acknowledged the execution of the foregoing Quit Claim Deed for and on behalf of said entity and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this _____ day of _____ 20__.

(SEAL)

(signature)

(printed name) Notary Public

My Commission Expires: _____

My County of Residence: _____

Grantee's address is and tax
Statements should be sent to:

This Instrument was prepared by:

Eric Galatz
Leonard, Street and Deinard,
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

EXHIBIT A
LEGAL DESCRIPTION

[SEPARATE LEGAL DESCRIPTIONS WILL BE PROVIDED FOR EACH COUNTY AND STATE (SOUTH DAKOTA, MINNESOTA, WYOMING, AND NEBRASKA) IN WHICH THE PROPERTY IS LOCATED]

Subject to the agreements listed in attached Exhibit B and as may be reserved unto, or re-granted to, Grantor, all Estates, roadbeds, rights-of-way, station grounds, railroad yards, lines of railroad, improvements and fixtures thereon and all appurtenances thereto belonging to the Grantor located the following public land survey quadrants in _____ County, _____.

EXHIBIT B
AGREEMENTS

Agreements by and between Grantor and Grantee executed and delivered as of the date of the Quit Claim Deed:

1. Marketing and Divisions Agreement
2. Haulage Agreement - Coal
3. Right of First Refusal Agreement

EXHIBIT C

Grantee Acknowledgement,

Environmental Covenants and Release

To induce by Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific Railway, a Delaware corporation ("**Grantor**") to convey the Real Property (as defined in the Quit Claim Deed of which this exhibit forms a part) to [●], a _____ ("**Grantee**"), Grantee, on behalf of itself, and its Affiliates (as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended), divisions and subsidiaries, and its successors and assigns, and each of their directors, officers, employees, stockholders, agents, subsidiaries, legal representatives, and anyone acting on its behalf or their behalf (the Grantee and the foregoing are collectively referred to as the "**Grantee Parties**"), hereby represents, warrants, covenants and agrees to and with Grantor and its Affiliates (as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended), divisions and subsidiaries and each of their directors, officers, employees, stockholders, agents, subsidiaries, predecessors, legal representatives, successors and assigns, grantors and anyone acting on its behalf or their behalf with respect to the condition of the Real Property or otherwise (the Grantor and the foregoing are collectively referred to as the "**Grantor Parties**") as follows:

Definitions. As used in this Grantee Acknowledgement, Environmental Covenants and Release (and in the Quit Claim Deed to which it is attached), the following terms have the following meanings:

"Claims" means demands, claims, actions or causes of action, suits, proceedings, investigations, assessments, losses, damages, liabilities, costs and expenses, including interest, penalties and attorneys' fees and disbursements, Third Party Claims, and other costs and

expenses.

"Environmental Law" means any existing or future federal, state, or local law (including without limitation common law), statute, rule, regulation, regulatory requirement, ordinance, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by any governmental authority relating to (i) the injury to, or the pollution or protection of, the environment (including any surface or subsurface physical medium or natural resource such as air, land, soil, surface waters, ground waters, stream and river sediments, and biota), (ii) the use, generation, storage, treatment, disposal, processing, transportation, handling, release, emission or remediation of harmful or deleterious substances, or (iii) impacts on human health and safety resulting from any of the foregoing, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund" or "CERCLA"), 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act ("Solid Waste Disposal Act" or "RCRA"), 42 U.S.C. §§ 6901 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 330f et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq. and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.

"Environmental Liabilities" means Claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities, encumbrances, liens, violations, costs and expenses (including attorneys' fees) of investigation, remediation, clean-up, corrective action, monitoring, or defense of any matter arising under any Environmental Laws (whether at law or in equity) or in any way relating to (i) the degradation of the environment (including any surface or subsurface physical medium or natural resource such as air, land, soil, surface waters, ground waters, stream and river sediments, and biota), (ii) the use, generation, storage, treatment,

disposal, processing, transportation, handling, release, emission or remediation of Hazardous Substances or (iii) impacts on human health and safety resulting from the foregoing, of whatever kind or nature by any party, entity, or authority, whether or not resulting from the violation of or noncompliance with any Environmental Laws.

“Hazardous Substances” means all hazardous or toxic materials (including Toxic Substances), substances, wastes, pollutants, contaminants, constituents or solid wastes, or terms of similar meaning, defined as such or subject to regulation under any Environmental Law.

“Third Party Claims” means any claim or other assertion of liability by third parties.

“Toxic Substances” means any materials which are subject to regulation under the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 et seq., or any other applicable Federal, state or other laws now in force relating to toxic substances. The term “Toxic Substances” includes but is not limited to asbestos, petroleum and derivative products, polychlorinated biphenyls (PCBs), Toxic-By-Inhalation chemicals and lead-based paints.

Acknowledgement. Grantee acknowledges and agrees that it has had or was entitled under the Transaction Agreement to the opportunity to inspect the Real Property and Grantor’s records to evaluate the environmental condition of the Real Property. Grantor and Grantee agree that (a) Grantor is conveying the Real Property **“AS IS, WHERE IS, WITH ALL FAULTS”** without warranty or representation of any kind except as provided in the Transaction Agreement and, (b) except as provided in the Transaction Agreement, Grantor does not make, and expressly disclaims, any representation or warranty with respect to the environmental condition of the Real Property, including with respect to surface and subsurface environmental conditions, whether latent or patent, the nonexistence of any Hazardous Substances, compliance by the Real Property or Grantor with any Environmental Law, the existence of any Environmental Liabilities, or

habitability or tenantability of the Real Property. Subject to any representations and warranties provided in the Transaction Agreement, Grantee's acceptance of title to the Real Property shall represent Grantee's acknowledgment that the Real Property has been developed and operated as a railroad and for other industrial uses for many years, and the Real Property may be contaminated with Hazardous Substances as a result and may include piping (above ground and underground piping), drainage mechanisms and the like. Except to the extent otherwise provided in the Transaction Agreement, Grantee agrees to accept all risk of existing or future losses, Claims, liability, demands, costs or expenses arising out of or relating to the condition of the Real Property, known or unknown, including any environmental contamination, the presence of any Hazardous Substances, or Environmental Liabilities, and whether such contamination is located on or under the Real Property, or has migrated or will migrate from or to the Real Property, it being understood that Grantee's acceptance thereof in no way diminishes or prejudices Grantee's right under any Environmental Law or otherwise with respect to any third party regarding such risk or such contamination.

Grantee's Release. Grantee on behalf of itself and the Grantee Parties, subject to Grantee's rights and Grantor's obligations under the Transaction Agreement, hereby releases Grantor and the Grantor Parties: from liability with respect to any Claims arising out of or relating to the condition of the Real Property, or non-compliance with Environmental Law related to the Real Property; and from all Environmental Liabilities related to the Real Property, including without limitation, any environmental contamination, or presence of Hazardous Substances and the handling, use, treatment, removal, storage, decontamination, cleanup, transport or disposal thereof, whether such contamination or Hazardous Substances are located on or under the Real Property, or has migrated or will migrate from or to the Real Property.

Grantee, on behalf of itself and the Grantee Parties, subject to Grantee's rights and Grantor's obligations under the Transaction Agreement, hereby waives any cause of action (including without limitation any right of contribution) the Grantee Parties had, has or may have against the Grantor Parties with respect to the foregoing, whether arising under common law, or federal, state or local statute, rule or regulation. The foregoing shall apply to any condition or noncompliance with Environmental Law, including any environmental condition, known or unknown, suspected or unsuspected, contemplated or un contemplated or any liability the Grantee Parties may incur as a result of Third Party Claims.

The foregoing provisions shall run with and burden the land and be binding upon all future owners of any interest in the Real Property. Grantor and Grantee acknowledge the foregoing release and the other provisions of this Grantee Acknowledgement, Environmental Covenants and Release do not modify or release their respective rights or obligations under the Transaction Agreement.

IN WITNESS WHEREOF, the Grantor and Grantee have executed this Acknowledgement, Environmental Covenants and Release, attached as Exhibit C to the Quit Claim Deed, as of the day and year above written as an acknowledgement of the Grantor's quitclaim of the Real Property and the reservations, restrictions, covenants and agreements of Grantee contained in the Quit Claim Deed.

[NAME OF GRANTEE ENTITY]

By _____
(signature)

(printed name)

Its _____
(title)

State of _____)

County of _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, in his/her capacity as the _____ of **GRANTEE**, a/an _____, who acknowledged the execution of the foregoing instrument for and on behalf of said entity and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this _____ day of _____, _____.

(SEAL)

(signature)

(printed name) Notary Public

My Commission Expires: _____

My County of Residence: _____

EXHIBIT D

Reserved Coal Service Rights and Easements

1. Reservation of Easement. Subject to the terms and conditions set forth below, Grantor excepts from the Real Property hereby quitclaimed, and reserves unto itself, and does not transfer an exclusive and unconditional easement (this “**Easement**”) in gross for a term of years commencing as of the date hereof and terminating on December 31, 2030, at 11:59 p.m. Chicago Time (subject to Section 5, the “**Term**”), over, under and on the Real Property, including all facilities constructed thereon as improved from time to time, for the Exclusive Uses.

“**Exclusive Uses**” means the following purposes in connection with the provision of common carrier coal service by Grantor (which common carrier coal service rights and obligations shall automatically transfer from Grantor to Grantee upon the expiration of the Term):

(a) accessing, installing, placing, altering, repairing, renewing, replacing, rehabilitating, improving, constructing, operating and maintaining new and existing rail tracks, rails, ties, ballast, track material, structures, improvements and facilities for hauling, stockpiling, transferring, processing, or storing coal from any source on or along the Real Property, including other related capital improvements to the Real Property to support the foregoing (all of the foregoing together with any additional real property acquired by Grantor for the foregoing, is referred to as “**Coal Easement Facilities**”); and

(b) undertaking the “**PRB Expansion**,” consisting of any of (i) the construction and operation of a new line of railroad that extends between any point on the Real Property and coal mines in the Powder River Basin area of Wyoming or Montana,

as defined in STB Finance Docket No. 33407 (the “**New Construction**”) and improvements or rehabilitation to the rail lines of the Grantee reasonably relating thereto as set forth in paragraph (a) above, (ii) the entering into of mine access agreements related to coal from in and around the Powder River Basin area of Wyoming and Montana (“**PRB Coal**”) in connection with the Real Property, and (iii) the construction of any rail lines that would connect or interchange the Real Property with (A) any New Construction or (B) any rail line or transportation facility of a third party that ships PRB Coal or serves mines producing PRB Coal;

(c) whether or not Grantor undertakes the PRB Expansion, transporting coal from any source on the Real Property; and

(d) the exclusive right to disturb the right-of-way or move earth for any of the foregoing purposes.

Grantor’s exercise of its Exclusive Use to transport coal on the Real Property shall only be pursuant to the Haulage Agreement (identified in Exhibit B of this Quit Claim Deed) or such other written agreement as may be mutually agreed upon by Grantor and Grantee.

2. Exclusive Use Rights. Without limiting the generality of this Easement reserved herein, this Easement reserved by Grantor shall be exclusive to Grantor, and shall exclude Grantee as well as third parties from using the Real Property for the Exclusive Uses (subject to Grantee’s right and obligation to transport coal for Grantor under the Haulage Agreement (identified in Exhibit B of this Quit Claim Deed) or other written agreement as may be mutually agreed upon between Grantor and Grantee, including any agreement necessary to effect the provisions of this Easement and subject to the other provisions of this Easement), as follows, in each case, during the Term:

(a) This Easement reserves to Grantor the exclusive right and obligation, including common carrier rights and obligations, to transport coal by rail to, from or over the Real Property (which common carrier right and obligation to transport coal shall automatically transfer from Grantor to Grantee upon the expiration of the Term).

(b) This Easement reserves to Grantor the exclusive right (but not the obligation) to commence and complete (including the exclusive right to make any decision regarding the commencement, design, construction, or completion of) the New Construction and the PRB Expansion.

(c) Subject to any Permitted Encumbrances affecting the Real Property as of the date of this Quit Claim Deed (“**Existing Encumbrances**”), the easement rights reserved herein shall be exclusive to Grantor and its agents, licensees, contractors, successors and assigns.

(d) Grantee shall not construct or operate and shall not grant to any other party the right to construct or operate any Coal Easement Facilities on, over, under or through the Real Property or any portion of the Real Property without the prior written consent of Grantor, which consent Grantor may grant, withhold, condition or delay in its sole discretion. Notwithstanding the foregoing, Grantor shall not unreasonably withhold, condition or delay its consent to any proposed exercise or grant of rights for rehabilitating, improving, constructing, operating and maintaining new and existing rail tracks and facilities for purposes other than hauling, stockpiling, transferring, processing, or storing coal (“**Subsequent Encumbrances**”), provided such Subsequent Encumbrances do not materially interfere with Grantor’s Exclusive Use. In no event shall Grantor’s consent be deemed to have been granted, nor shall Grantor’s authority to

grant, withhold, condition or delay such consent be deemed to have been waived, except in writing by Grantor.

3. Unobstructed Access. Subject to any Existing Encumbrances and Subsequent Encumbrances, the Haulage Agreement and any other agreements between Grantor and Grantee, Grantor shall have rights to access, ingress and egress over and across the Real Property to the extent necessary to access the Coal Easement Facilities for the purpose of rehabilitating, improving, altering, relocating, constructing, installing, inspecting, maintaining, repairing, replacing or removing any Coal Easement Facilities (including any improvements to the Railroad Facilities or Grantee's lines incidental to the Coal Easement Facilities, **"Coal Facilities Work"**), including emergency maintenance and repairs, for the purpose of planning and designing Coal Facilities Work, or any other purpose consistent with the terms of this Easement, provided that Grantor (a) shall comply with any additional requirements set forth in other provisions of this Easement, (b) shall provide Grantee with at least five (5) business' days written notice (except in the event of an emergency) before entering onto the Real Property, (c) shall not unreasonably interfere with Grantee's use of the Real Property for railroad purposes, or any other purpose for which the Real Property may be used, including, without limitation, Grantee's common carrier rail operations, (d) shall not unreasonably interfere with the rights of any third parties under any Existing Encumbrances or any Subsequent Encumbrances, (e) shall use its best efforts not to disturb or damage any railbed, track, ties, pipe or any other improvements, structures or facilities or personal property located upon or under the Real Property (the "Railroad Facilities"), and shall restore, at Grantor's sole cost and expense, any Railroad Facilities Grantor does disturb or damage, (f) at Grantor's sole cost and expense, after completion, remove from the Real Property all personal property and equipment used in the construction, maintenance or repair work and

restore the Real Property to at least the condition that existed prior to such construction, maintenance or repairs, and (g) shall comply with Grantee's standard requirements for entry onto its property, including entering into Grantee's customary right of entry form and any other customary undertakings in connection therewith, and the provision of insurance.

4. Construction and Alteration of Coal Easement Facilities. Grantor shall have the right, at its sole cost and expense, to undertake Coal Facilities Work that shall not unreasonably interfere with Grantee's use of the Real Property for railroad purposes or any other purpose for which the Real Property may be used and shall not unreasonably interfere with the rights of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise, as follows:

(a) Grantor shall notify Grantee in writing, with preliminary plans and specifications for the proposed Coal Facilities Work.

(b) At Grantor's expense, Grantor and Grantee shall cooperate in developing final plans and specifications, a budget, and a schedule for completion of the proposed Coal Facilities Work that are reasonably acceptable to Grantor and Grantee.

(c) Grantor shall perform or contract for performance of such Coal Facilities Work, on the terms Grantor would perform the work on its own behalf on its own property, with its own forces or through solicitation of proposals or bids from third parties reasonably acceptable to Grantee.

(d) Before Grantor commences any Coal Facility Work, Grantor shall provide Grantee with reasonable evidence that Grantor has made financial arrangements to complete such work in accordance with the approved plans and schedule.

(e) Grantor will reimburse Grantee for reasonable costs and expenses incurred by Grantee in connection with Grantee's design, construction and monitoring of Coal Facility Work or Grantee's cooperation with Grantor in connection with Grantor's design, construction and monitoring of Coal Facility Work.

Except to the extent required by law, regulation or court order, Grantee shall not disclose or furnish to any third party (other than its representatives or any regulatory body or other governmental authority) any copy of any plans for any Coal Easement Facilities without the consent of Grantor, which consent will not be unreasonably withheld, conditioned or delayed.

Grantor and Grantee shall reasonably cooperate with each other in structuring any expenditures on improvements to the Property pursuant to this Section 4 to minimize any adverse tax consequences to Grantee or Grantor or any reimbursement therefore. If Grantee is ever required to include for purposes of federal or state income tax or any other tax (including property and ad valorem taxes) the value of, or any income or gain attributable to, all or any portion of the Coal Easement Facilities, then Grantor shall pay Grantee an amount equal to the additional taxes resulting therefrom.

5. Ownership of Coal Easement Facilities. All Coal Easement Facilities (but not any incidental improvements to the Railroad Facilities or Grantee's lines and not any real property acquired by Grantor in connection with the Exclusive Uses) will be the sole property of Grantor during the term of this Easement. Any real property acquired and paid for by Grantor in connection with the Exclusive Uses will be owned by Grantee during and following expiration of the term of this Easement. Upon expiration of this Easement (at the end of the term or earlier termination of this Easement by Grantor), Grantor shall advise Grantee of the depreciated net book value of the Coal Easement Facilities other than real property acquired by Grantor during

the Term and incidental improvements to the Railroad Facilities or Grantee's lines. To the extent the depreciated net book value of the Coal Easement Facilities (other than real property) at the time of such expiration (including any extension thereto) or termination is no more than \$10.00, Grantee shall not be obligated to pay Grantor any amount for such Coal Easement Facilities, and the Easement will terminate. To the extent the depreciated net book value of the Coal Easement Facilities (other than real property) is more than \$10.00, Grantee shall have the option to either extend the term of the Easement (until the time that such value is no more than \$10.00) or purchase the Coal Easement Facilities for an amount equal to the depreciated net book value (other than real property) thereof. If Grantee elects to extend the term of the Easement, it shall be permitted at any time thereafter to terminate the Easement by providing written notice to Grantor of such termination and paying Grantor an amount equal to the depreciated net book value at the time such termination notice is provided. "Depreciated net book value" means an amount equal to any expenditures on the Coal Easement Facilities, reduced, for purposes of this Easement, by depreciation calculated based on Grantor's GAAP accounting treatment at the time the construction occurs, from the date of the expenditure to the date of expiration or termination.

Grantor and Grantee shall reasonably cooperate with each other in structuring any reimbursement pursuant to this Section 5 to minimize any adverse tax consequences to Grantee or Grantor or any reimbursement therefore. If Grantee is ever required to include for purposes of federal or state income tax or any other tax (including property and ad valorem taxes) the value of, or any income or gain attributable to, all or any portion of the Coal Easement Facilities, then Grantor shall pay Grantee an amount equal to the additional taxes resulting therefrom.

Grantee shall pay Grantor any such amounts within 30 days after Grantee exercises any right that would require payment pursuant to the preceding paragraph of this Section 5. Such 30

day period, however, shall be freely extended as reasonably necessary to resolve any dispute or ambiguity in the amount to be paid or method of payment

Upon payment in full, Grantor shall quit claim (and take any other action necessary to transfer ownership of) its interests in the Coal Easement Facilities to Grantee.

6. Maintenance of Coal Easement Facilities. After completion of any construction described in Section 4, at Grantee's sole cost and expense, Grantee shall maintain and repair all Coal Easement Facilities (including any additions thereto pursuant to Section 4 and any improvements to the Railroad Facilities incidental to the Coal Easement Facilities) in good condition and repair and in accordance with all applicable laws, regulations or ordinances, and with the specifications and standards established by Grantee for its railroad facilities.

7. Mechanic's and Other Liens. Grantor shall not suffer any mechanic's or other lien or encumbrance to be filed against the Real Property by reason of any work, labor, services or materials performed or furnished at Grantor's, its successors', assigns' or licensees' request or otherwise on behalf of or for the benefit of Grantor, its successors, assigns or licensees or any third party, including without limitation any financing source, in connection with construction, operation, or maintenance of the Coal Easement Facilities or otherwise. If such lien or encumbrance shall at any time be filed, Grantor shall forthwith, at Grantor's sole cost and expense, promptly cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, in a manner acceptable to Grantee, but Grantor shall have the right to contest any and all such liens or encumbrances, provided that Grantor, at Grantor's sole cost and expense, shall first deposit with Grantee a bond or other security satisfactory to Grantee in such amounts as Grantee shall require and provided further, that Grantor shall thereafter diligently and continuously proceed to cause such lien or encumbrance to be removed

and discharged. If Grantor shall fail to cause such lien or encumbrance to be discharged within thirty (30) days after being notified of the filing thereof, Grantee may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Grantee, and the amount so paid by Grantee and all costs and expenses incurred by Grantee in procuring the discharge of such lien or encumbrance, including reasonable attorney's fees and fees and expenses of other agents, shall be reimbursed by Grantor to Grantee on demand.

8. Use of Real Property by Grantee. Grantee shall have the right to use the Real Property in any manner not inconsistent with this Easement. Grantor expressly agrees it will not, through its use of the privileges and authority granted herein, unreasonably interfere with Grantee's operations on the Real Property or the operations of third parties using the Real Property, or any portion thereof or without Grantee's permission, unreasonably interfere with the rights or privileges of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise. Nothing herein shall be construed to limit the right of Grantee to make repairs, alterations, changes, improvements, or additions determined by Grantee to be in its interests; provided such repairs, alterations, changes, improvements or additions do not unreasonably interfere with Grantor's use of the Coal Easement Facilities.

Grantee may at any time, for any reason, and in its sole discretion, seek Surface Transportation Board ("STB") authority (or an exemption therefrom) to abandon freight service, over all of, or any segment of, the Real Property. Grantor agrees to cooperate with, and not to directly or indirectly oppose, Grantee's abandonment efforts, and to seek abandonment or discontinuance authority for any common carrier or trackage rights applicable to the line for which Grantee is seeking abandonment or discontinuance. Grantor shall have the option to

purchase any segment for which Grantee is seeking abandonment, either through the STB's offer of financial assistance procedures or outside of such procedures, for net liquidation value as determined under the standards applied by the STB at that time. In connection with such purchase, Grantor shall be responsible for compliance with applicable STB requirements.

9. Indemnification. Grantor does hereby indemnify and hold harmless Grantee and Grantee's owners, officers, directors, managers, employees, contractors, agents, representatives, licensees and invitees from and against any and all liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments arising from, in connection with or relating to, acts or omissions of, or use of the Real Property by, Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees related to the Coal Easement Facilities or Railroad Facilities or otherwise related to the Real Property, including but not limited to, costs related to any personal injury, death or property damage occurring as a result of such acts or omissions or use and tax liabilities or obligations to the extent arising from Grantor's repairs, alterations, changes, improvements, or additions related to the Real Property, except to the extent such liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments relate to or arise from the willful misconduct or gross negligence of Grantee or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees, provided Grantor shall not be required to provide indemnification for any of the foregoing if settled or compromised by Grantee without Grantor's prior written consent (not to be unreasonably withheld).

Grantee does hereby indemnify and hold harmless Grantor and Grantor's officers, directors, managers and employees from and against any and all liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments to the extent arising from,

in connection with or relating to, grossly negligent acts or omissions of Grantee or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees (other than, for the avoidance of doubt, Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees) related to the Coal Easement Facilities, including but not limited to, costs related to any personal injury, death or property damage occurring as a result of such gross negligence, except to the extent such liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments relate to or arise from the willful misconduct or negligence of Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees. Grantee shall be entitled to assume the defense of any of the foregoing, and Grantee shall not be required to provide indemnification for any of the foregoing if settled or compromised by Grantor without Grantee's prior written consent (not to be unreasonably withheld).

Notwithstanding the foregoing, the parties mutually waive any claims for indirect, consequential, punitive or exemplary damages, including loss of profits or income.

10. Restrictive Covenants. Grantee for itself and its successor and assigns, covenants and agrees that prior to the expiration of the Term, except pursuant to the Haulage Agreement – Coal, this Reserved Coal Service Rights and Easements and the other agreements entered into in connection herewith, Buyer shall not (i) directly or indirectly take any action which results in any Milestone Payment becoming due and payable, (ii) hold itself out as a “transferee, successor or assign” of Grantor or SOO Line Holding Company, as those terms are used in the DM&E Merger Agreement, or make any public statement or take any position in litigation that Grantee and its successors and assigns or any of their Affiliates is such a “transferee, successor or assign” of Grantor or SOO Line Holding Company or (iii) take any action in violation of Section

5.08 of the Transaction Agreement. “**Milestone Payments**” means “Construction Milestone Payments” and “Coal Milestone Payments” that may be due under, and as such terms are defined in the DM&E Merger Agreement and similar payments that may be due under the Amended and Restated Dakota, Minnesota & Eastern Railroad Corporation Warrant dated November 4, 2005 and Effective October 3, 2007 between Grantor and Kevin V. Schieffer (as in effect on January [●], 2014) and the First Amendment to the Dakota, Minnesota & Eastern Railroad Corporation Director Change In Control Agreement (as in effect on January [●], 2014) entered into in connection with the DM&E Merger Agreement. “**DM&E Merger Agreement**” means the Agreement and Plan of Merger dated as of September 4, 2007 among Soo Line Holding Company, Soo Line Properties Company, Canadian Pacific Railway Company and Grantor as in effect on January [●], 2014.

11. Enforcement of Restrictive Covenants. Grantee acknowledges and agrees that Grantor would suffer irreparable damage in the event that Grantee failed to observe, perform or enforce any of the Restrictive Covenants, or any other covenants, restrictions and agreements of this Easement in accordance with their specific terms. Grantee accordingly agrees that Grantor and its Affiliates shall be entitled to seek an injunction or injunctions to specifically enforce the performance of this Easement in accordance with its terms. In addition to the right to seek specific performance of this Easement, Grantor and its Affiliates shall have the right to seek any of its direct damages and reasonable attorney fees, including without limitation, any amounts paid or due and owing by Grantor to any third party as a result of a breach of the Restrictive Covenants or any other covenants, restrictions and agreements of this Easement, including without limitation (a) Milestone Payments which become due as a result of Grantee’s breach of this Easement and (b) 100% of all linehaul revenue received by Grantee derived from

transporting coal by rail to, from or over the Real Property in violation of this Easement, or any other revenue received by Grantee derived from an Exclusive Use in violation of this Easement at any time during the term of this Easement. For the avoidance of doubt, any actions taken directly or indirectly by Grantor that result in any Milestone Payment becoming due and payable shall not be a breach of this Easement by Grantee.

12. Default. In the event either party believes that the other party has breached any of the covenants or agreements contained herein, the party asserting the default shall notify the other party of said breach in writing. Should a party fail to correct any breach or condition, other than the prohibition against use of the Real Property for Exclusive Uses or any Restrictive Covenant, within 10 days after receiving written notice of default, then the non-defaulting party may pursue any remedy available at law or equity other than termination; provided, however, in the case of a condition violated, other than the prohibition against use of the Real Property for Exclusive Uses or any Restrictive Covenant, that cannot be cured with due diligence within said 10 day period, the defaulting party shall be entitled to such additional time to correct the condition as may be reasonably necessary, but no more than 60 additional days, provided that the defaulting party gives the other party written notice of its need for additional time, prior to the expiration of the initial 10 day period, and provided that the defaulting party shall not be entitled to the benefit of the additional 60 day period if the default unreasonably interferes with the use of the Real Property for railroad purposes or unreasonably interferes with rights of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise.

Notwithstanding the foregoing, if the event of default consists of Grantee using or allowing others to use the Real Property for Exclusive Uses or a breach of any Restrictive Covenant, Grantee shall be deemed to be in default immediately on occurrence of the breach,

and Grantor shall be entitled to exercise any remedy available at law or in equity immediately upon discovery of the breach.

In all events of default, the party asserting the default shall have available all rights and remedies provided at law or in equity (provided Grantee shall not have the right to terminate this Easement under any circumstances), and defaulting party shall not interpose the defense that specific performance should not be available on the basis of the availability of an adequate remedy at law.

13. Covenants Run With Land. This Easement constitutes an easement in gross. The burdens imposed on the Grantee, as owner of the fee interest in the Real Property, shall run with the land and be binding upon future owners of the Real Property or any interest therein for the term of this Easement. The rights and obligations of Grantor shall be binding on Grantor and its successors and permitted assigns. Grantor shall not assign this Easement or its rights or obligations under this Easement without any necessary regulatory approvals. Subject to such regulatory approvals, Grantor may assign its rights and obligations under this Easement to an entity controlled by, controlling or under common control with Grantor, provided that Grantor shall provide Grantee with written notice of any such assignment within five (5) days after such assignment occurs; provided, no such assignment by Grantor shall relieve Grantor of any of its obligations under this Easement.

14. Notices. All notices, requests, demands, consents and other communications required or permitted under this Easement shall be in writing and shall be deemed to have been duly and properly given on the date of service if delivered personally, or, if mailed, on the third business day after such notice is deposited in a receptacle of the United States Postal Service, registered or certified mail, first class postage prepaid, return receipt requested, or on the first

business day following deposit with a nationally recognized overnight courier service (e.g., FedEx), postage prepaid, in any event addressed appropriately as follows:

If to Grantee: _____

Attention: _____

If to Grantor: Dakota, Minnesota & Eastern Railroad Corporation
Suite 700, 120 S. 6th Street
Minneapolis, MN 55402
Facsimile No.: 612 904 5981

With a copy to: James Clements, AVP Commercial Performance
Canadian Pacific Railway
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9 Canada

with a copy to:

Paul Guthrie, Esq.
Canadian Pacific Railway
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9 Canada

with a copy to:

[CP Real estate Department]

Either party may change its address for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

15. Amendment. This Easement shall not be amended except by written agreement executed by Grantor and Grantee, or their successors and permitted assigns, which agreement shall be duly recorded in the land records where the Real Property is located.

16. No Dedication. The provisions of this Easement shall not be deemed to constitute a dedication for public use or to create any right in the general public.

17. Counterparts. This Easement may be executed in counterparts, each of which may be deemed an original but together shall constitute but one and the same instrument.

18. Entire Agreement. This Easement constitutes the entire agreement between the Parties relating to its subject matter and, except as provided herein, no other representations, warranties or agreements, oral or written, will be binding on the Parties with respect to such subject matter.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year above written.

[●]

By _____
(signature)

(printed name)

Its _____
(title)

State of _____)
County of _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, in his/her capacity as the _____ of [●], a/an _____, who acknowledged the execution of the foregoing Easement Agreement for and on behalf of said entity and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this _____ day of _____, _____.

(SEAL)

(signature)

(printed name) Notary Public

My Commission Expires: _____

My County of Residence: _____

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION d/b/a CANADIAN
PACIFIC RAILWAY, a Delaware corporation

By _____
(signature)

(printed name)

Its _____

(title)

State of _____)

_____)

County of _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, in his/her capacity as the _____ of Dakota, Minnesota & Eastern Railroad Corporation (d/b/a Canadian Pacific Railway), a Delaware corporation, who acknowledged the execution of the foregoing Easement Agreement for and on behalf of said entity and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this _____ day of _____, _____.

(SEAL)

(signature)

(printed name) Notary Public

My Commission Expires: _____

My County of Residence: _____

This Instrument was prepared by:

Eric Galatz
Leonard, Street and Deinard,
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

EXHIBIT E

Binding Acknowledgement

THE UNDERSIGNED _____, a _____ [insert type of organization] (“Subsequent Grantee”) is delivering this binding acknowledgement (“Binding Acknowledgement”) to Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific Railway, a Delaware corporation (“Original Grantor”), in connection with the transfer of all or a part of the Real Property described in that certain Quit Claim Deed dated as of _____, recorded in the land records of the County of _____, State of _____, on _____ as Document No. _____ (the “Deed”) (terms not defined in this Binding Acknowledgement are defined in the Deed and its Exhibits).

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Subsequent Grantee, intending to be legally bound hereby, acknowledges, covenants and agrees for the benefit of Original Grantor and its successors and assigns as follows:

1. Subsequent Grantee hereby assumes and agrees to be bound to and to abide by the terms, conditions, and restrictions applicable to the “Grantee” contained in the Deed and its Exhibits, including specifically but without limitation the release provisions of the Grantee Acknowledgement, Environmental Covenants, and Release attached to the Deed as Exhibit C and the Restrictive Covenants set out in the Reserved Coal Service Rights and Easements attached to the Deed as Exhibit D (the “Easement”) during the term of said Easement, and acknowledges all such terms, conditions and restrictions are, valid and binding upon it.

2. If any provision of this Binding Acknowledgement is in conflict with any statute or rule of any law or is otherwise void, illegal, or unenforceable for any reason, then that provision shall be deemed severable from or enforceable to the maximum extent permitted by law, as the case may be, and that provision shall not invalidate any other provision of this Binding Acknowledgement or the Deed.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Binding Acknowledgement as of _____.

[SUBSEQUENT GRANTEE]

By _____
Name:
Title

STATE OF)
) ss.:
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____ by _____ as _____ and by
_____, as _____ of
_____, a _____ [corporation], on behalf of the
corporation.

Notary Public
_____ County, _____
My commission expires: _____

EXHIBIT E-1

AGREEMENT AND PLAN OF MERGER

dated as of September 4, 2007

among

SOO LINE HOLDING COMPANY,

SOO LINE PROPERTIES COMPANY,

CANADIAN PACIFIC RAILWAY COMPANY,
(solely for the purposes set forth herein)

and

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

Table of Contents

Page

ARTICLE I

DEFINITIONS

SECTION 1.01.	Certain Defined Terms	2
SECTION 1.02.	Other Defined Terms	12

ARTICLE II

CERTAIN PAYMENTS; THE MERGER

SECTION 2.01.	The Merger	14
SECTION 2.02.	Closing	14
SECTION 2.03.	Effect of the Merger	16
SECTION 2.04.	Certificate of Incorporation; By-Laws	16
SECTION 2.05.	Directors and Officers	16
SECTION 2.06.	Voting Trust	16

ARTICLE III

MERGER CONSIDERATION

SECTION 3.01.	Conversion of Securities	17
SECTION 3.02.	Share Units; Company Options; Warrants	17
SECTION 3.03.	Surrender of Shares; Stock Transfer Books	18
SECTION 3.04.	Working Capital Statement	20
SECTION 3.05.	Post-Closing Payments	22
SECTION 3.06.	Withholding Taxes	27
SECTION 3.07.	No Dissenter's Rights	30

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

SECTION 4.01.	Authority of the Company	31
SECTION 4.02.	Incorporation and Qualification and the Company and the Subsidiaries	31
SECTION 4.03.	Capital Stock of the Company and the Subsidiaries	31
SECTION 4.04.	Subsidiaries	32
SECTION 4.05.	No Conflict	32
SECTION 4.06.	Consents, Approvals, Licenses, Etc	32
SECTION 4.07.	Financial Statements; Budgets	33
SECTION 4.08.	Absence of Certain Changes	33
SECTION 4.09.	Employee Benefit Plans; Labor Matters	35
SECTION 4.10.	Absence of Litigation	36

Table of Contents
(continued)

	<u>Page</u>
SECTION 4.11. Compliance with Laws	37
SECTION 4.12. Taxes.....	37
SECTION 4.13. Material Contracts.....	38
SECTION 4.14. Environmental Matters.....	41
SECTION 4.15. Tangible Personal Property and Real Property	42
SECTION 4.16. Intellectual Property.....	42
SECTION 4.17. Brokers.....	43
SECTION 4.18. Insurance	43

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER

SECTION 5.01. Incorporation and Authority of Purchaser	43
SECTION 5.02. No Conflict.....	44
SECTION 5.03. Consents and Approvals	44
SECTION 5.04. Absence of Litigation.....	44
SECTION 5.05. Investment Purpose	45
SECTION 5.06. Financing.....	45
SECTION 5.07. Brokers.....	45

ARTICLE VI

ADDITIONAL AGREEMENTS

SECTION 6.01. Conduct of Business Prior to the Closing	45
SECTION 6.02. Access to Information	48
SECTION 6.03. Confidentiality	48
SECTION 6.04. Regulatory and Other Authorizations; Consents	49
SECTION 6.05. Investigation.....	51
SECTION 6.06. Further Action.....	51
SECTION 6.07. Directors' and Officers' Indemnification.....	51
SECTION 6.08. Stockholders' Representative Appointment.....	52
SECTION 6.09. Preserve Accuracy of Representations and Warranties; Notification of Certain Matters.....	54
SECTION 6.10. Acquisition Proposals	54
SECTION 6.11. Indemnity	55
SECTION 6.12. Guaranty.....	56
SECTION 6.13. Consents; Reports.	56
SECTION 6.14. Gross-Up Escrow Account.	57

Table of Contents
(continued)

Page

ARTICLE VII

CONDITIONS TO CLOSING

SECTION 7.01.	Conditions to Obligations of the Company.....	57
SECTION 7.02.	Conditions to Obligations of Parent and Purchaser	58

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

SECTION 8.01.	Termination.....	59
SECTION 8.02.	Effect of Termination.....	60
SECTION 8.03.	Waiver.....	60

ARTICLE IX

GENERAL PROVISIONS

SECTION 9.01.	Expenses	60
SECTION 9.02.	Notices	60
SECTION 9.03.	Survival	62
SECTION 9.04.	Public Announcements	62
SECTION 9.05.	Headings	62
SECTION 9.06.	Severability	62
SECTION 9.07.	Entire Agreement.....	62
SECTION 9.08.	Assignment	62
SECTION 9.09.	No Third-Party Beneficiaries.....	63
SECTION 9.10.	Waivers and Amendments	63
SECTION 9.11.	Specific Performance	63
SECTION 9.12.	Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.....	63
SECTION 9.13.	Counterparts.....	64

AGREEMENT AND PLAN OF MERGER, dated as of September 4, 2007, among Soo Line Holding Company, a Delaware corporation and an indirect wholly owned subsidiary of the Guarantor ("Parent"), Soo Line Properties Company, a Delaware corporation and a wholly owned subsidiary of Parent ("Purchaser"), Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation (the "Company"), solely for the purposes of Article V and Sections 6.03 and 6.12, Canadian Pacific Railway Company, a company organized under the laws of Canada (the "Guarantor"), and, at such time as it is appointed pursuant to Section 6.08(a), the Stockholders' Representative.

WITNESSETH:

WHEREAS, the Boards of Directors of Guarantor, Parent, Purchaser and the Company have each determined that it is in the best interests of their respective stockholders for Parent to acquire the Company upon the terms and subject to the conditions set forth herein;

WHEREAS, the Boards of Directors of Guarantor, Parent, Purchaser and the Company have each approved this Agreement and declared its advisability and approved the merger (the "Merger") of Purchaser with and into the Company in accordance with the terms of this Agreement and the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL");

WHEREAS, concurrently with the execution and delivery of this Agreement by the parties hereto, the holders of a number of shares of the common stock, par value \$0.01 per share, of the Company (the "Shares") sufficient to adopt and approve this Agreement and approve the Merger (the "Requisite Stockholder Approval") are executing and delivering written consents to deliver the Requisite Stockholder Approval;

WHEREAS, the Company has issued the Preferred Stock and the Warrants (each as hereinafter defined);

WHEREAS, the Company has elected to redeem the Preferred Stock in accordance with its terms at the Closing (as hereinafter defined), and Purchaser wishes to fund such redemption, upon the terms and subject to the conditions set forth herein;

WHEREAS, it is intended that the holders of all of the Warrants (as hereinafter defined) will sell such Warrants to the Company at the Effective Time upon the terms and subject to the conditions set forth in the Warrant Purchase Agreement and Purchaser wishes to fund the purchase of such Warrants, upon the terms and subject to the conditions set forth herein;

WHEREAS, in order to induce Guarantor, Parent and Purchaser to enter into this Agreement, it is intended that the holders of Shares and holders of certain of the Warrants will enter into the Termination Agreement (as hereinafter defined) and it is intended that holders of Preferred Stock, Share Units and Options (each as hereinafter defined) will enter into a Release Agreement (as hereinafter defined); and

WHEREAS, the Company is required to satisfy its payment obligations for the Company Options and the Share Units in accordance with the terms thereof at the Closing, and

Purchaser wishes to fund such payment, upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants hereinafter set forth, Guarantor, Parent, Purchaser and the Company hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms have the following meanings:

"1994 Bonus Share Plan" means the Company Bonus Share Plan approved and instituted by the Board of Directors of the Company by unanimous resolution dated June 28, 1994.

"2004 Bonus Share Plan" means the Company Bonus Share Plan approved and instituted by the Board of Directors by unanimous resolution dated December 9, 2004.

"Action" means any claim, action, suit, arbitration or proceeding by or before or brought or conducted by any third-party or Governmental Entity, or arbitrator, or any audit or investigation by any Governmental Entity.

"Affiliate" means, when used with respect to a specified Person, another Person that, either directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Aggregate Closing Consideration" means \$1,480,000,000.00.

"Aggregate Strike Price Amount" means the sum of the aggregate exercise price payable in respect of all Shares issuable upon the exercise of each vested and unvested Company Option and each Warrant and the aggregate Base Value of each Share Unit granted under the 2004 Bonus Share Plan.

"Agreement" means this Agreement and Plan of Merger, dated as of August [], 2007, among Purchaser, Parent and the Company (together with attachments hereto) and all amendments hereto made in accordance with Section 9.10.

"Audited Financial Statements" means the balance sheets, statements of income and statements of cash flows as of the last day of, and for each of, the three most recent calendar years immediately preceding the date hereof, together with the reports thereon by an independent auditor.

"Base Value" means with respect to a Share Unit granted under the 2004 Bonus Share Plan, the base value established for such unit in accordance with the 2004 Bonus Share Plan.

"Bonus Share Plans" means the 1994 Bonus Share Plan and the 2004 Bonus Share Plan.

"Books and Records" means all books of account and other financial records and corporate records pertaining to the Company and the Subsidiaries.

"Business" means the business of the Company and the Subsidiaries as conducted as of the date of this Agreement, including, but not limited to, the railroad business.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City of New York.

"Capital Expenditures Difference" means the aggregate of the proposed Capital Expenditures, as set forth on Schedule 6.01(b)(vi) of the Disclosure Schedule, for the period beginning on July 1, 2007 through the last day of the calendar month immediately preceding the Closing Date, *less* the actual capital expenditures of the Company during such period (other than any amount for capital expenditures incurred in connection with the Flooding Repair Project).

"Cash" means the total amount of cash and cash equivalents and short-term investments, each of which shall be calculated in accordance with GAAP in a manner consistent with the calculation of the corresponding line items on the Company's Audited Financial Statements for the year ended December 31, 2006, held by the Company and its Subsidiaries as of 12:01 a.m., Central time, on the Closing Date.

"Closing Date" means the date on which the Closing occurs.

"Common Equity Consideration" means the amount equal to (i) the Aggregate Closing Consideration, (ii)(a) if Target Working Capital *less* Estimated Working Capital is a positive number, then *less* such number or (b) if Target Working Capital *less* Estimated Working Capital is a negative number, then *plus* the absolute value of such number, *less* (iii) the Estimated Debt Amount, *less* (iv) the Preferred Redemption Amount, *less* (v) the Consulting Fees Payable, *less* (vi) the Escrow Amount, *less* (vii) the Gross-up Escrow Amount and *plus* (viii) the Aggregate Strike Price Amount and *plus* (ix) an amount equal to the actual capital expenditures of the Company incurred from August 20, 2007 through Closing solely in connection with upgrading the existing bridges and tracks at the Waseca Sub, the Marquette Sub and the Rapid City Sub from 286K standard to 315K standard as part of the Flooding Repair Project, in each case, without duplication.

"Consultants" means any and all consultants (including, without limitation, engineering consultants), financial advisors, accountants, investment bankers or attorneys of the Company and its Subsidiaries in connection with this Agreement and the transactions contemplated hereby or with respect to any transactions considered by the Company or the Subsidiaries as alternatives to the Merger and, solely with respect to the matters set forth in the

Gross-Up Agreement, Kevin Schieffer, and, solely with respect to the matters set forth in the Director Change in Control Agreements, the directors named therein.

"Consulting Fees Payable" means any and all Liabilities of the Company or any of its Subsidiaries to be paid at the Closing for any item set forth on Schedule 1.01(a)(i) and any (i) fees, costs, or expenses of, or amount owing to, any Consultant, or (ii) dataroom and due diligence costs or expenses, in each case incurred by the Company or the Subsidiaries in connection with this Agreement and the transactions contemplated hereby or with respect to any transactions considered by the Company or the Subsidiaries as alternatives to the Merger.

"Control" (including the terms "Controlling," "Controlled by" and "under common Control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or otherwise.

"Credit Risk Premium" means any Credit Risk Premium (as defined in 49 United States Code 822(f)(3)) paid to the FRA in connection with the FRA Loan and accrued by the Company through the Closing Date.

"Debt Amount" means, as of 12:01 a.m., Central time, on the Closing Date, (i) the principal amount and accrued and unpaid interest outstanding under the FRA Loan, the Fishback Mortgage, the Illinois Rehabilitation Loan, the South Dakota Construction Loan and the Revolver and prepayment and termination costs related thereto, *plus* (ii) capital lease obligations of the Company and its Subsidiaries, calculated in accordance with GAAP in a manner consistent with the calculation of the corresponding line item on the Company's Audited Financial Statements for the year ended December 31, 2006, *plus* (iii) any other Indebtedness not included in clauses (i) and (ii), *minus* (iv) Cash, and (v)(a) if the Capital Expenditures Difference is a positive number, then *plus* such amount or (b) if the Capital Expenditures Difference is a negative number, then *minus* the absolute value of such amount.

"Definitive Agreements" means this Agreement, the Escrow Agreement, the Gross-up Escrow Agreement, the Termination Agreement, the Warrant Purchase Agreement, the Release Agreements and any contracts or agreements executed pursuant or related hereto or thereto, including any documents or certificates delivered pursuant hereto or thereto or to carry out the transactions contemplated under any Definitive Agreement.

"Development Property" means any real property that is, as of the date hereof, in one or more phases of development, including pre-construction, provided that a real property shall cease to be a Development Property at the time such real property becomes a Stabilized Property.

"Disclosure Schedule" means the Disclosure Schedule delivered to Purchaser by the Company pursuant to this Agreement.

"DM&E" means the Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation.

"Encumbrance" means any security interest, pledge, mortgage, lien (statutory or other), charge, adverse claim of ownership or use, easement, encroachment, defect in title or other encumbrance of any kind.

"Environment" means surface waters, ground waters, soil, subsurface strata and ambient air.

"Environmental Claims" means actions, suits, demands, claims, notices of noncompliance, proceedings, consent orders or consent agreements relating to Environmental Laws, Environmental Permits or Hazardous Materials.

"Environmental Law" means any applicable Law relating to protection of the environment.

"Environmental Permit" means any permit, approval, identification number, license or other authorization required under any applicable Environmental Law.

"Equityholders" means the holders of Shares, Share Units, Warrants and Company Options, in each case outstanding immediately prior to the Effective Time.

"Equityholder's Percentage" means, except as set forth on Schedule 1.01(a)(iii), as to any holder of Shares, Share Units, Company Options or Warrants, in each case outstanding immediately prior to the Effective Time, the percentage as determined in good faith by the Stockholders' Representative in accordance with the way that a marginal dollar of Per Share Merger Consideration would be allocated to such holder under Section 3.01(a), Section 3.02 and Section 3.05; provided that the aggregate Equityholder's Percentage for all holders of Shares, Share Units, Company Options and Warrants shall total one hundred percent (100%), and provided further that such Equityholder's Percentages may be adjusted from time to time upon certification by the Stockholders' Representative that a transfer of the right, title and interest in an Equityholder's Percentage has occurred in accordance with any plan approved by a majority of the Equityholders. The Equityholder's Percentages for the Equityholders as of the date of this Agreement are set forth in Schedule 4.03 of the Disclosure Schedule.

"Escrow Agreement" means the Escrow Agreement, initially dated as of a date prior to the Closing Date, between the Company, Parent, Purchaser and a commercial bank or trust company having net capital of not less than \$250 million, as escrow agent, to be mutually agreed upon by Parent and the Company.

"Expected Withholding Tax" means (i) any Tax that would not have been imposed but for the failure of the payee to provide a properly completed and executed IRS Form W-9, or otherwise to establish an exemption from U.S. backup withholding tax, or the failure of the payee to provide a properly completed and executed IRS Form W-8 BEN and (ii) any applicable withholding Tax on compensation for services rendered to the Company or its Subsidiaries by employees, independent contractors or consultants.

"Financial Agreement" means the Financial Agreement dated November 22, 1993 between the Company and the Chicago & North Western Transportation Company, predecessor in interest to Union Pacific Railroad Company.

"FIRPTA Report" means a report, prepared by FMV Opinions, Inc., providing an opinion of the fair market value of the real property and total assets of the Company as of December 31st of years 2002-2006 and as of the Closing Date or as close thereto as practicable, in all cases determined in accordance with applicable regulations under Section 897 of the Internal Revenue Code.

"Fishback Mortgage" means the Mortgage Agreement, dated as of April 15, 2003, between the Company and Fishback Financial Corporation.

"Flooding Repair Project" means the construction and other work necessary to repair flooding damage to the Waseca Sub, the Marquette Sub and the Rapid City Sub as described on Schedule 4.08(a)(viii) and such other construction and other work as may be determined by the Company to be necessary to repair such flooding damage, including to make upgrades as necessary to achieve 315K standards.

"FRA Loan" means the Financing Agreement, dated as of December 16, 2003, among the Company, Iowa, Chicago & Eastern Railroad Corporation and the United States of America, represented by the Secretary of Transportation acting through the Administrator of the Federal Railroad Administration, as amended by Amendment No. 1 thereto, dated July 20, 2004 and as further amended by Amendment No. 2 thereto, dated as of February 21, 2007.

"Future Consulting Fees" means any and all Liabilities of the Company or any of its Subsidiaries (or the Surviving Corporation on behalf of the Company) not paid at the Closing or arising after the Closing for (i) any item set forth on Schedule 1.01(a)(ii), (ii) fees, costs, or expenses of, or amount owing to, any Consultant, or (iii) dataroom and due diligence costs or expenses, in each case incurred by the Company in connection with this Agreement and the Merger and the transactions contemplated hereby or with respect to any transactions considered by the Company or the Subsidiaries as alternatives to the Merger except (x) amounts payable in connection with the Construction Milestone Payment, the Coal Milestone Payment, the Final Adjustment Amount and the Transfer described in Section 2.02(e), and (y) amounts payable to the Consultants to the extent such amounts, fees, costs or expenses are incurred as a result of any engagement initiated by or on behalf of, or instructions from or for the benefit of, the Company or the Surviving Corporation following the Closing.

"GAAP" means United States generally accepted accounting principles in effect from time to time applied consistently throughout the period involved.

"Governmental Entity" means any United States or foreign federal, national, supra-national, state, provincial, or local government, governmental, regulatory, self-regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body or political or other subdivision, department or branch of any of the foregoing.

"Governmental Order" means any order, judgment, injunction, decree, stipulation, determination or award entered, issued or made by or with any Governmental Entity.

"Gross-up Agreement" means the Withholding Tax Gross-up Agreement, dated as of the date of this Agreement, between Kevin Schieffer and the Company, which agreement shall

be amended and modified by the parties thereto after the date hereof to the extent reasonably necessary to reflect the principles set forth on Schedule 6.14 of the Disclosure Schedule.

"Hazardous Materials" means (a) those substances regulated under the United States Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act and the Clean Air Act; (b) petroleum and petroleum products, radioactive materials and polychlorinated biphenyls; and (c) chemicals or substances regulated as toxic or hazardous under any applicable Environmental Law.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

"ICCTA" means the ICC Termination Act of 1995.

"IC&E" means the Iowa, Chicago & Eastern Railroad Corporation, a Delaware corporation.

"Illinois Rehabilitation Loan" means the Track Rehabilitation Loan Agreement, dated as of June 26, 1992, between the Company, as the successor to the Soo Line Railroad Company, and the State of Illinois, acting by and through its Department of Transportation.

"Indebtedness" means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money and prepayment and termination costs related thereto, (b) all obligations of such Person for the deferred purchase price of property or services (including the aggregate principal amount thereof and the aggregate amount of any accrued but unpaid interest thereon), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments and prepayment and termination costs related thereto, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit (other than the Letter of Credit) or similar facilities or in respect of interest rate and currency obligation swaps, hedges or similar arrangements and prepayment and termination costs related thereto, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, other than the Preferred Stock, the Company Options and the Warrants, (h) all Indebtedness of others referred to in clauses (a) through (g) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through any agreement and (i) all Indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Intellectual Property" means all patents, copyrights, software, service marks, domain names, trade dress and trade secrets.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

"IRS" means the United States Internal Revenue Service.

"knowledge of the Company" means the actual knowledge, after due inquiry, of Kevin V. Schieffer, Kurt V. Feaster, Lynn A. Anderson, J. Ed Terbell, Mike Ball, John Brooks, Randy H. Henke, Daniel L. Goodwin, Steve O. Scharnweber, Clyde F. Mittleider and Ray Giegear.

"Land Holdings" means any real property that is unimproved and not a Development Property.

"Law" means any United States or foreign federal, national, supra-national, state, provincial, local, municipal or similar constitution, statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including any rules of any self-regulatory organization, securities exchange or clearinghouse or common law).

"Letter of Credit" means the Irrevocable Standby Letter of Credit Number SCL SCL011670 issued by National City Bank, as amended through July 21, 2006, in favor of KM Strategic Investments, LLC, in the amount of \$10,000,000 as of the date of this Agreement.

"Liabilities" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute, matured or determined.

"Licenses" means all of the licenses, permits, franchises and other governmental authorizations required under any Law for the operation of the Business.

"Material Adverse Effect" means any condition, change, circumstance, or effect (or any development that would result in any condition, change, effect or circumstance) that, individually or in the aggregate with all other changes, circumstances, or effects, is, or would reasonably be expected to be, materially adverse to the financial condition or results of operations of the Company and the Subsidiaries, taken as a whole, except for any such changes or effects resulting from (i) changes or effects affecting the securities markets generally or changes in general economic, regulatory or political conditions or other changes that affect the railroad or coal industries in general, (ii) any action taken pursuant to or in accordance with this Agreement, (iii) changes caused by acts of terrorism or war (whether or not declared) occurring after the date of this Agreement, (iv) the consummation of this Agreement or the transactions contemplated hereby or the announcement of the execution thereof and (v) any uninsured damage resulting from the flood conditions affecting the Waseca Sub, the Marquette Sub and the Rapid City Sub since August 2007 and so long as such uninsured damage does not exceed \$10,000,000, except, with respect to the foregoing clauses (i) through (iii), to the extent that such changes, effects, or actions have a disproportionate effect on the Company and the Subsidiaries, taken as a whole, relative to other participants in the industries in which the Company and the Subsidiaries operate.

"New Construction" means the construction and operation of a new line of railroad that extends between the existing lines of the DM&E and coal mines in the Powder River Basin area of Wyoming, as defined in STB Finance Docket No. 33407, or as may be modified by Parent or its Affiliates (or its or their transferees, successors and assigns) from time to time.

"Off-the-Shelf Software" means any and all Company Software that is commercially available off-the-shelf Software and (i) is not material to the Company or any Company Subsidiary, (ii) has not been modified or customized for the Company or any Company Subsidiary, and (iii) is licensed to the Company or any Company Subsidiary for a one-time or annual fee of \$10,000 or less.

"Permitted Encumbrances" means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (a) liens for Taxes not yet due and payable or the validity of which is being contested in good faith; (b) Encumbrances imposed by law, such as materialmen's, mechanics', workmen's, repairmen's, warehousemen's and carrier's liens and other similar liens arising in the ordinary course of business for sums not due and payable; (c) pledges or deposits to secure obligations under workers' compensation Laws or similar legislation or to secure public or statutory obligations under applicable Law; and (d) survey exceptions, reciprocal easement agreements and other customary encumbrances on title to real property that (i) were not incurred in connection with any Indebtedness and (ii) do not, individually or in the aggregate, materially adversely affect the use of such property.

"Person" means any individual, partnership, firm, corporation, association, trust, limited liability company, unincorporated organization, a Governmental Entity or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

"PRB Expansion" means the New Construction and the improvements or rehabilitation to the rail lines of the Company and its Subsidiaries reasonably relating thereto and the entering into of mine access agreements as referenced in Section 3.05(b)(i) of the Disclosure Schedule.

"Preferred Redemption Amount" means the amount, including accrued and unpaid dividends (whether or not declared) or similar amounts, required to be paid to the holders of the Preferred Stock to redeem the Preferred Stock pursuant to the terms of the Preferred Stock at the Effective Time.

"Preferred Stock" means, collectively, the Company's (i) Series A preferred stock, par value \$1.00 per share, (ii) Series B preferred stock, par value \$1.00 per share, (iii) Series C preferred stock, par value \$1.00 per share, (iv) the Series C-1 preferred stock, par value \$1.00 per share, and (v) the Series D preferred stock, par value \$1.00 per share.

"Purchaser Disclosure Schedule" means the Disclosure Schedule delivered to the Company by the Purchaser pursuant to this Agreement.

"Real Property" means any material real property owned or leased by the Company and the Subsidiaries.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land or water or air or otherwise entering into the Environment.

"Release Agreement" means the agreement in form of Exhibit A to be executed by holders of Preferred Stock and holders of Share Units and Options.

"Remedial Action" means all action to (a) clean up, remove, treat or handle in any other way Hazardous Materials in the Environment; (b) prevent the Release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or the Environment; or (c) perform remedial investigations, feasibility studies, corrective actions, closures and post-remedial or post-closure studies, investigations, operations, maintenance and monitoring.

"Revolver" means the Loan Agreement, dated as of December 16, 2003, by and among the Company, IC&E and National City Bank.

"Share Unit" means a credit to the plan account of a participant in the applicable Bonus Share Plan entitling such participant to receive (i) a payment based on the fair market value of one Share upon settlement, in the case of the 1994 Bonus Share Plan or (ii) a payment based on the difference between the fair market value of one Share and such Share Unit's Base Value upon settlement, in the case of the 2004 Bonus Share Plan.

"South Dakota Construction Loan" means the Loan Agreement, dated as of August 12, 2005, between the Company and Brookings County Railroad Authority and the State of South Dakota.

"Stabilized Property" means any real property that is improved and (i) is 90% leased or (ii) one year has elapsed since a certificate of occupancy has been issued with respect to such real property.

"STB" means the Surface Transportation Board or any successor agency.

"Stockholders' Agreement" means the Stockholders' Agreement, dated September 3, 1986, as amended.

"Subsidiaries" means Cedar American Rail Holdings, Inc., a Delaware corporation, the IC&E, and Wyoming Dakota Railroad Properties, Inc., a Delaware corporation.

"Tangible Personal Property" means all machinery, equipment, tools, supplies, furniture, fixtures, personalty, vehicles, rolling stock and other tangible personal property used in the Business.

"Target Working Capital" means -\$40,010,843 (deficit of \$40,010,843).

"Tax" or "Taxes" means (i) any and all income, gross receipts, sales, use, employment, franchise, profits, property or other taxes, duties, assessments or other governmental charges in the nature of a tax (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority with respect thereto and (ii) any liability of the Company or any of its Subsidiaries for the payment of amounts determined by reference to amounts described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of the Company or any of its Subsidiaries under any Tax sharing agreement or arrangement.

"Tax Return" means any report, return, declaration or other filing required to be supplied to any taxing authority with respect to Taxes including any amendments thereto.

"Termination Agreement" means the agreement entered into in connection with this Agreement in the form of Exhibit B hereto among holders of Shares, certain holders of Warrants and the Company.

"Unaudited Financial Statements" means the unaudited balance sheet, statement of income and statement of cash flow of the Company as of July 31, 2007.

"Warrants" means, collectively, the outstanding and unexpired warrants to purchase Shares issued by the Company set forth on Schedule 4.03 of the Disclosure Schedule.

"Warrant Purchase Agreement" means the Warrant Purchase Agreement, dated as of the date hereof, among the Company and each of the Sellers (as defined therein) in the form of Exhibit C hereto pursuant to which each of the Sellers has agreed to surrender to the Company at the Effective Time the Warrants held by such Seller in exchange for the applicable amount of the Option/Warrant Merger Consideration.

"Working Capital" means, as of a particular time, (a) (i) current assets (other than Cash, income taxes receivable and any deferred income taxes receivable) *less* (ii) Future Consulting Fees, to the extent not already reflected in current liabilities, *less* (iii) current liabilities other than deferred income Taxes payable, including, to the extent they have not been paid by the Company or arrangements have not been made for payment at the Closing by the Paying Agent on behalf of the Company, payroll, excise and similar Taxes arising as a result of the transactions contemplated by this Agreement and all change in control payments or deal/transaction bonuses paid or payable in connection with the transactions contemplated herein (other than current maturities of long-term debt, interest payable, Consulting Fees Payable and Future Consulting Fees) of the Company and its consolidated Subsidiaries, as of such time, in each case calculated in accordance with GAAP in a manner consistent with the calculation of the corresponding line items on the Company's Audited Financial Statements for the year ended December 31, 2006, *less* (iv) all costs and expenses to be incurred after the Closing for any work related to the Flooding Repair Project (other than the costs and expenses of upgrading the existing bridges and tracks at the Waseca Sub, the Marquette Sub and the Rapid City Sub from 286K standard to 315K standard as part of the Flooding Repair Project), and *plus* (v) all payments or other reimbursements to the Company from insurance carriers with respect to the Flooding Repair Project received, or reasonably expected to be received, after the Closing. For

purposes of determining Working Capital, (i) inventory shall not include any item in existence on December 31, 2006 but excluded from inventory in the December 31, 2006 Audited Financial Statements, (ii) prepaid expenses shall not include any expense category not set forth in the December 31, 2006 Audited Financial Statements, (iii) any cash payment or Liability (whether accrued, absolute, contingent or otherwise) arising specifically from the Company's termination of any capital lease at the request of Parent or Purchaser pursuant to Section 6.13(a) shall be excluded from Working Capital and (iv) any amounts paid or payable pursuant to the Gross-Up Agreement shall not be included in such determination.

(b) Unless otherwise specified herein, all references to "dollars" or "\$" shall be deemed to be references to United States Dollars.

SECTION 1.02. Other Defined Terms. The following terms have the meanings defined for such terms in the Sections set forth below:

Term	Section
280G Amounts.....	3.06(e)
280G Report.....	3.06(e)
409A Amounts.....	3.06(f)
Adjustment.....	3.01(d)
Applicable Contracts.....	6.13(b)
Benefit Plans.....	4.09(a)
Budgets.....	4.07(c)
Certificate of Merger.....	2.02(a)
Certificates.....	3.03(b)
Claim.....	6.11(b)
Closing.....	2.02(a)
Closing Date Payment Schedule.....	2.02(b)
Coal Milestone Payments.....	3.05(b)(ii)
Company.....	Recital
Company Intellectual Property.....	4.16
Company Licenses.....	4.06(a)
Company Option.....	3.02(b)
Construction Conditions.....	3.05(b)(i)
Construction Milestone Payment.....	3.05(b)(i)
Debt Payment Amount.....	2.02(a)
Determination Date.....	3.05(a)
DGCL.....	Recital
Disputed Pre-Closing Working Capital Amount.....	3.04(a)
DM&E.....	1.01
Effective Time.....	2.02(a)
Emergency Tonnage.....	3.03(b)(iii)
ERISA.....	4.09(a)
Escrow Account.....	2.02(b)
Escrow Amount.....	2.02(b)
Estimated Debt Amount.....	3.04(a)
Estimated Working Capital.....	3.04(a)

Term	Section
Estimated Working Capital Statement.....	3.04(a)
Fifth Milestone Payment.....	3.05(b)(ii)
Final Adjustment Amount.....	3.05(a)
Final Debt Amount	3.04(c)
Final Working Capital.....	3.04(c)
First Milestone Payment	3.05(b)(ii)
FIRPTA Amount.....	3.06(d)
Fourth Milestone Payment.....	3.05(b)(ii)
Gross-up Escrow Account	2.02(b)
Gross-up Escrow Agreement	2.02(b)
Gross-up Escrow Amount.....	2.02(b)
Guarantor	Recital
Guaranteed Obligations	6.12
Holders.....	3.03(a)
Incumbent Carrier.....	3.05(b)(ii)
Indemnified Parties	6.07(b)
Independent Accounting Firm	3.04(d)
IRS Notice.....	3.06
Koch Transaction.....	6.11(c)
LC Amount	6.11(c)
Letter.....	3.03(b)
Loss	6.11(b)
Material Contracts.....	4.13(a)
Merger.....	Recital
Milestone Statement.....	3.05(b)(iii)
Non-Releasing Equityholder.....	6.11(a)
Non-Releasing Equityholder Indemnity Amount	6.11(a)
Notice of Disagreement	3.05(b)(iii)
Option/Warrant Merger Consideration	3.02(b)
Parent	Recital
Paying Agent.....	3.03(a)
Paying Equityholder.....	6.08(b)
Per Share Merger Consideration.....	3.01(a)
Purchaser.....	Recital
Required Equityholders	6.08(c)
Requisite Stockholder Approval.....	Recital
Restricted Equityholder	3.05(b)(iii)
Second Milestone Payment.....	3.05(b)(ii)
Shares.....	Recital
Sixth Milestone Payment	3.05(b)(ii)
Stockholders' Representative.....	6.08(a)
Stockholders' Representative's Losses.....	6.08(b)
Surviving Corporation	2.03
Termination Date	8.01(a)
Third Milestone Payment.....	3.05(b)(ii)

Term	Section
Tonnage Condition.....	3.05(b)(ii)
Track Maintenance Agreement.....	6.11(c)
Transfer.....	2.02(f)
Voting Trust.....	2.06
Voting Trust Agreement.....	2.06
WARN Act.....	4.09(f)
Working Capital Statement.....	3.04(b)

ARTICLE II

CERTAIN PAYMENTS; THE MERGER

SECTION 2.01. The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time Purchaser shall be merged with and into the Company.

SECTION 2.02. Closing. (a) Subject to Section 6.13, as promptly as practicable after all of the conditions set forth in Article VII have been satisfied or, if permissible, waived, the parties hereto shall cause the Merger to be consummated by filing a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware, in such form as is required by, and executed in accordance with, the relevant provisions of the DGCL (the date and time of such filing of the Certificate of Merger (or such later time as may be agreed by each of the parties hereto and specified in the Certificate of Merger) being the "Effective Time"). Immediately prior to such filing of the Certificate of Merger a closing (the "Closing") shall be held at the offices of Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York or such other office as the Company and Purchaser may mutually agree upon in writing.

(b) At the Closing, and immediately prior to the Effective Time, Parent or Purchaser shall (i) deliver to the Company (A) the Preferred Redemption Amount and (B) an amount equal to any outstanding Indebtedness of the Company and its consolidated Subsidiaries which will be, or may become, payable as a result of the consummation of the transactions contemplated by this Agreement (the "Debt Payment Amount"), (ii) deliver to the Paying Agent, (A) an amount equal to the consideration to which the holders of Shares become entitled pursuant to Section 3.01(a) hereof *less* such holders' proportional share of the aggregate Equityholder's Percentage of the Escrow Amount, (B) an amount equal to the Consulting Fees Payable, and (C) an amount equal to the consideration to which the holders of Share Units, Company Options and Warrants become entitled pursuant to Section 3.02 hereof *less* such holders' such holders' proportional share of the aggregate Equityholder's Percentage of the Escrow Amount and (iii) deposit or cause to be deposited (by wire transfer of immediately available funds) cash in the amount of (A) \$10,000,000, as such amount may be adjusted in accordance with Section 3.04(a) (the "Escrow Amount"), in an account (the "Escrow Account") maintained pursuant to the Escrow Agreement to be entered into prior to Closing by Parent, Purchaser, the Company and the Stockholders' Representative which Escrow Agreement shall provide that any interest and other income resulting from the investment of the Escrow Amount

by the escrow agent shall be held in the Escrow Account and shall be disbursed from the Escrow Account in accordance with this Agreement and (B) \$7,500,000 (the "Gross-up Escrow Amount"), in an account (the "Gross-up Escrow Account") designated by Purchaser and maintained pursuant to the Gross-up Escrow Agreement (the "Gross-up Escrow Agreement") to be entered prior to the Closing by the Company, Kevin Schieffer, the Stockholders' Representative and Purchaser, which Gross-up Escrow Agreement shall provide that any interest and other income resulting from the investment of the Gross-up Escrow Amount by the escrow agent designated by Parent shall be held in the Gross-up Escrow Account and shall be disbursed from the Gross-up Escrow Account in accordance with the Gross-up Agreement. The amounts described in clauses (i) and (ii) of this Section 2.02(b), and the calculations thereof, shall be specified in a certificate of an officer of the Company delivered to Purchaser seven Business Days prior to the Closing (the "Closing Date Payment Schedule"). The Closing Date Payment Schedule shall be prepared in good faith and shall include reasonable documentation supporting the amounts set forth thereon. If Purchaser notifies the Company at least five Business Days prior to the Closing that it disagrees with the Closing Date Payment Schedule, the parties hereto shall use commercially reasonable best efforts to reach an agreement on such disputed items and amend the Closing Date Payment Schedule to reflect such agreement. The amounts reflected on the Closing Date Payment Schedule, as amended (if applicable), shall be paid as described above by wire transfer in immediately available funds to the accounts designated at least two Business Days prior to the Closing by the Company in a written notice to Purchaser.

(c) At the Closing, and immediately prior to the Effective Time, the Company shall redeem all of the Preferred Stock in accordance with the terms of the Preferred Stock, and the Company shall withhold and retain for further payment to the applicable Governmental Authority any applicable withholding Taxes in accordance with Section 3.06.

(d) At the Closing, and immediately prior to the Effective Time, the Company shall pay the Debt Payment Amount to the applicable creditors in the amounts set forth in the Closing Date Payment Schedule.

(e) No less than five Business Days prior to the Closing, the Company shall deliver to Purchaser an updated version of Schedule 4.03, which shall be true and correct as of the Closing Date. The Company shall reasonably consider any changes thereto requested by Parent prior to Closing.

(f) At the Closing, the Company shall sell, transfer and assign ("Transfer") all of its right, title and interest in and to the Credit Risk Premium to an entity to be designated by the Stockholders' Representative. Following the Closing, Parent shall, and shall cause the Surviving Corporation, Parent and its Affiliates, to cooperate with the Stockholders' Representative and the entity to which the Credit Risk Premium is intended to be sold, transferred and assigned pursuant to the foregoing sentence to give effect to such sale, transfer and assignment and, if the Company is unable to Transfer the Credit Risk Premium to such entity at the Closing, then the Surviving Corporation shall use its commercially reasonable best efforts, at no cost or expense to the Surviving Corporation or any of its Affiliates and as the Stockholders' Representative may reasonably request, to take such actions as are necessary to provide such entity with the economic benefits of the ownership of the Credit Risk Premium. The Stockholders' Representative shall reimburse Parent and its Affiliates for all costs and

expenses incurred in connection therewith and the Stockholders' Representative shall indemnify and hold Parent and its Affiliates harmless from and against all Losses related thereto.

SECTION 2.03. Effect of the Merger. As a result of the Merger, the separate corporate existence of Purchaser shall cease and the Company shall continue as the surviving corporation of the Merger (the "Surviving Corporation"). At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Purchaser shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions, disabilities and duties of the Company and Purchaser shall become the debts, liabilities, obligations, restrictions, disabilities and duties of the Surviving Corporation.

SECTION 2.04. Certificate of Incorporation; By-Laws.

(a) At the Effective Time, the Certificate of Incorporation of the Surviving Corporation shall be amended in its entirety to read as the certificate of incorporation of Purchaser in effect immediately prior to the Effective Time, until thereafter changed or amended as provided therein or by applicable law.

(b) Unless otherwise determined by Parent prior to the Effective Time, at the Effective Time, the By-laws of the Surviving Corporation shall be amended and restated in their entirety to read as the bylaws of Purchaser as in effect immediately prior to the Effective Time, until thereafter changed or amended as provided therein or by applicable law.

SECTION 2.05. Directors and Officers. The director or directors identified to the Company by Parent at least three (3) Business Days prior to the Closing Date shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and By-laws of the Surviving Corporation, and the officers of the Company immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified or until the earlier of their death, resignation or removal.

SECTION 2.06. Voting Trust. Immediately following the Effective Time, the shares of the common stock, par value \$.01 per share, of the Surviving Corporation shall be deposited into a voting trust (the "Voting Trust") in accordance with the terms and conditions of a voting trust agreement (the "Voting Trust Agreement"), which agreement shall be in form and substance reasonably acceptable to Purchaser and to the STB.

ARTICLE III

MERGER CONSIDERATION

SECTION 3.01. Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of Purchaser, the Company or the holders of any of the following securities:

(a) Each issued and outstanding Share immediately prior to the Effective Time (other than any Shares to be canceled pursuant to Section 3.01(b)) shall cease to be outstanding and be canceled and shall be converted automatically into the right to receive such holders' proportional share of the aggregate Equityholder's Percentage of the Escrow Account, as set forth in Section 3.04, and the Gross-up Escrow Account, as set forth in Section 3.06(g), and any Construction Milestone Payment and any Coal Milestone Payments as set forth in Section 3.05, plus an amount in cash, equal to the quotient obtained dividing (i) the Common Equity Consideration by (ii) the sum of (A) the number of Shares outstanding immediately prior to the Effective Time (but after giving effect to Section 3.01(b)), (B) the number of Share Units outstanding immediately prior to the Effective Time, (C) the number of Shares represented by the Company Options and (D) the number of Shares issuable in respect of the Warrants, without interest (the "Per Share Merger Consideration"), to the holder of such Shares, upon surrender, in the manner provided in Section 3.03, of the certificate that formerly evidenced such Share, in all cases less any applicable withholding Taxes in accordance with Section 3.06;

(b) Each Share held in the treasury of the Company and each Share owned by Purchaser, Parent, Guarantor or any direct or indirect wholly owned subsidiary of Guarantor or of the Company immediately prior to the Effective Time shall be canceled without any conversion thereof and no payment or distribution shall be made with respect thereto;

(c) Each share of common stock, par value \$.01 per share, of Purchaser issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock, par value \$.01 per share, of the Surviving Corporation; and

(d) If, between the date of this Agreement and the Effective Time, there is a recapitalization, reclassification, stock split, stock dividend, subdivision, combination or exchange of shares with respect to, or rights issued in respect of, the Shares (each, an "Adjustment"), the Per Share Merger Consideration shall be adjusted accordingly, without duplication, to provide the holders of Shares with the same economic effect as contemplated by this Agreement prior to such Adjustment.

SECTION 3.02. Share Units; Company Options; Warrants.

(a) Except as set forth in Schedule 3.02(a), each holder of a Share Unit that is outstanding as of the Effective Time shall be entitled to receive such holders' proportional share of the aggregate Equityholder's Percentage of the Escrow Account, as set forth in Section 3.04, and the Gross-up Escrow Account, as set forth in Section 3.06(g), and any Construction Milestone Payment and any Coal Milestone Payments as set forth in Section 3.05, if any, and shall be paid by the Paying Agent, on behalf of the Surviving Corporation, in exchange for the cancellation of such Share Unit, an amount in cash, without interest, in each case less any applicable withholding Taxes in accordance with Section 3.06, which applicable withholding Taxes shall be paid to the Surviving Corporation immediately after being so withheld for further payment to the applicable Governmental Entity, equal to, as applicable, (i) with respect to Share Units granted under the 1994 Bonus Share Plan, the product of (a) the Per Share Merger Consideration and (b) the aggregate number of such holder's Share Units or (ii) with respect to Share Units granted under the 2004 Bonus Share Plan, (A) the product of (I) the Per Share

Merger Consideration and (2) the aggregate number of such holder's Share Units *less* (B) the aggregate Base Value for such holder's Share Units.

(b) Each holder of (i) a vested or unvested option to purchase Shares (a "Company Option") or (ii) a Warrant, in each case outstanding at the Effective Time, shall be entitled to receive such holders' proportional share of the aggregate Equityholder's Percentage of the Escrow Account, as set forth in Section 3.04, and the Gross-up Escrow Account, as set forth in Section 3.06(g), and any Construction Milestone Payment and any Coal Milestone Payments as set forth in Section 3.05, if any, and shall be paid by the Paying Agent, on behalf of the Surviving Corporation, in exchange for the cancellation of such Company Option or Warrant, an amount in cash, without interest, in each case less any applicable withholding Taxes in accordance with Section 3.06, which applicable withholding Taxes shall be paid to the Surviving Corporation immediately after being so withheld for further payment to the applicable Governmental Entity, equal to the product of (x) the number of Shares subject to such Company Option or Warrant, as applicable, and (y) the excess of (1) the Per Share Merger Consideration over (2) the exercise price per Share issuable upon the exercise of such Company Option or Warrant, as applicable (the aggregate amount of which is the "Option/Warrant Merger Consideration").

SECTION 3.03. Surrender of Shares; Stock Transfer Books.

(a) At least fifteen Business Days prior to the Effective Time, the Company shall designate a bank or trust company reasonably acceptable to Purchaser to act as agent (the "Paying Agent") for (i) the holders of Shares, Share Units, Company Options and Warrants (the "Holders") to receive the funds to which such Holders shall become entitled pursuant to Section 3.01(a) and Section 3.02 and (ii) the Consulting Fees Payable to which any Consultants shall become entitled upon consummation of the Merger. Except as provided in Section 3.03(b) below, such funds shall be invested by the Paying Agent as directed by Parent; provided, that such investments shall be in obligations of or guaranteed by the United States of America or of any agency thereof and backed by the full faith and credit of the United States of America, in commercial paper obligations rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, respectively, or in deposit accounts, certificates of deposit or banker's acceptances of, repurchase or reverse repurchase agreements with, or Eurodollar time deposits purchased from, commercial banks with capital, surplus and undivided profits aggregating in excess of \$1 billion (based on the most recent financial statements of such bank which are then publicly available at the SEC or otherwise).

(b) At least ten Business Days prior to the Effective Time, the Company shall cause the Paying Agent to deliver to each person who is, as of such date, (i) a Holder entitled to receive the Per Share Merger Consideration pursuant to Section 3.01(a) or Section 3.02 a form of letter of transmittal reasonably acceptable to Purchaser (which shall specify, in the case of a Holder of Shares, that delivery shall be effected, and risk of loss and title to the certificates evidencing such Shares (the "Certificates") shall pass, only upon proper delivery of the Certificates to the Paying Agent) and instructions for use in effecting the surrender of the Certificates and, if applicable, evidencing ownership of Share Units, Company Options and Company Warrants pursuant to such letter of transmittal and (ii) a Consultant entitled to receive any Consulting Fees Payable a letter of instruction (together with the letter of transmittal, a

"Letter") for payment of the applicable Consulting Fee Payable to the Consultant. Upon delivery to the Paying Agent of a Letter duly completed and validly executed in accordance with the instructions thereto, together with (A) as applicable, Certificates or evidence of ownership of Share Units, Company Options and Company Warrants, (B) with respect to each Equityholder, each Release and/or Termination Agreement to which such Equityholder is to be a party, and (C) such other documents as may be required pursuant to such instructions, (1) the Holder shall be entitled to receive in exchange for its Certificates, Share Units, Company Options or Company Warrants (or appropriate evidence of the ownership thereof) the Per Share Merger Consideration for each Share formerly evidenced by such Certificate, Share Units, Company Options or Warrants (in each case after giving effect to any required withholding Tax in accordance with Section 3.06, which applicable withholding Taxes shall be paid to the Surviving Corporation immediately after being so withheld for further payment to the applicable Governmental Entity) and such Certificates, Share Units, Company Options or Company Warrants shall then be canceled and (2) a Consultant shall be entitled to receive its applicable Consulting Fee Payable. Notwithstanding the foregoing, the aggregate Per Share Merger Consideration to which Globe Investments, Martin Curie Capital Return Trust PLC (F&C Asset Management PLC), Electra Investment Trust PLC, Hoare Govett Nominees Limited, Candover Investments PLC and Sun Alliance Trust Co. LTD become entitled to receive at the Closing under this Agreement shall be reduced by the amount of any payment with respect to the FIRPTA Report, estimated to be \$555,000.00. No interest shall accrue or be paid on the Per Share Merger Consideration or Consulting Fees Payable. The Company shall cause the Paying Agent to pay by wire transfer on the Closing Date the amount that a Holder is entitled to receive pursuant to Section 3.01(a) or Section 3.02 or that a Consultant is entitled to receive to any such Holder or Consultant who delivers to the Paying Agent, at least two Business Days prior to the Effective Time, the documentation required by the first two sentences of this Section 3.03(b), together with wire instructions for such holder's account. If the payment equal to the Per Share Merger Consideration is to be made to a person other than the person in whose name the surrendered certificate formerly evidencing Shares is registered on the stock transfer books of the Company, it shall be a condition of payment that the Certificate or evidence of ownership of Share Units, Company Options or Warrants so surrendered shall be endorsed properly or otherwise be in proper form for transfer and that the person requesting such payment shall have paid all transfer and other Taxes required by reason of the payment of the Per Share Merger Consideration to a person other than the registered holder of the certificate surrendered, or shall have established to the satisfaction of the Surviving Corporation that such Taxes either have been paid or are not applicable. If any Holder is unable to surrender such holder's Certificates, Share Units, Company Options or Company Warrants because such Certificates, Share Units, Company Options or Company Warrants have been lost, mutilated or destroyed, such holder may deliver in lieu thereof an affidavit and indemnity bond in form and substance and with surety reasonably satisfactory to the Surviving Corporation.

(c) At any time following the sixth month after the Effective Time, the Surviving Corporation shall be entitled to require the Paying Agent to deliver to it any funds which had been made available to the Paying Agent and not disbursed to Holders or Consultants (including, without limitation, all interest and other income received by the Paying Agent in respect of all funds made available to it) together with any applicable withholding Taxes withheld and not yet paid to the Surviving Corporation, and, thereafter, such Holders and Consultants shall be entitled to look to the Surviving Corporation (subject to abandoned

property, escheat and other similar laws) only as general creditors thereof with respect to any Per Share Merger Consideration or Consulting Fees Payable that may be payable under this Section 3.03. Notwithstanding the foregoing, neither the Surviving Corporation nor the Paying Agent shall be liable to any Holder for any Per Share Merger Consideration or to any Consultant for any Consulting Fees Payable delivered in respect thereof to a public official pursuant to any abandoned property, escheat or other similar law.

(d) At the close of business on the day of the Effective Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of Shares on the records of the Company. From and after the Effective Time, the holders of Shares outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such Shares except as otherwise provided herein or by applicable law.

SECTION 3.04. Working Capital Statement.

(a) No later than five (5) Business Days before the Closing Date, the Company shall deliver to Purchaser a statement containing good faith estimates of Working Capital (the "Estimated Working Capital") and of the Debt Amount (the "Estimated Debt Amount") and such statement, the "Estimated Working Capital Statement", in each case as of 12:01 a.m., Central time, on the Closing Date. The Estimated Working Capital Statement will be prepared on a basis consistent with and using the same methods used in preparing the Audited Financial Statements as of December 31, 2006 and shall include reasonable documentation supporting the amounts set forth thereon. If Purchaser notifies the Company at least three (3) Business Days prior to the Closing that it disagrees with the Estimated Working Capital Statement or the Estimated Debt Amount, the parties hereto shall use commercially reasonable best efforts to reach agreement on such disputed items and amend the Estimated Working Capital Statement to reflect such agreement. If the parties are not able to resolve such dispute prior to the Closing, such amount in dispute up to \$10,000,000, shall be deposited into the Escrow Account at the Closing (the "Disputed Pre-Closing Working Capital Amount") and shall be subject to the dispute resolution mechanism set forth in Section 3.04(d).

(b) No later than 90 days following the Closing Date, Parent shall cause to be prepared and delivered to the Stockholders' Representative a statement of Working Capital and the Debt Amount, in each case as of 12:01 a.m., Central time, on the Closing Date (the "Working Capital Statement"). The Working Capital Statement will be prepared on basis consistent with and using the same methods used in preparing the Audited Financial Statements as of December 31, 2006 and shall include reasonable documentation supporting the amounts set forth thereon and shall state whether Parent continues to dispute the Disputed Pre-Closing Working Capital Amount.

(c) Subject to Section 3.04(d), the Working Capital Statement, and the Working Capital and the Debt Amount set forth therein, shall be final, binding and conclusive on the parties hereto (the "Final Working Capital" and the "Final Debt Amount").

(d) The Stockholders' Representative may dispute any amounts reflected on the Working Capital Statement and, to the extent still in dispute, any Disputed Pre-Closing Working Capital Amounts, solely on the basis that the amounts reflected on the Working Capital

Statement and, to the extent still in dispute, any Disputed Pre-Closing Working Capital Amounts were not arrived at in a manner consistent with and using the same methods used in preparing the Audited Financial Statements as of December 31, 2006 or were arrived at based on mathematical or clerical error; provided, however, that the Stockholders' Representative shall have notified Parent in writing of each disputed item, specifying the estimated amount thereof in dispute and setting forth, in reasonable detail, the basis for such dispute, within 30 Business Days of Parent's delivery of the Working Capital Statement to the Stockholders' Representative. In the event of such a dispute, the Stockholders' Representative and Parent shall attempt to reconcile their differences, and any resolution by them as to any disputed amounts shall be final, binding and conclusive on the parties hereto. Any item or amount to which no dispute is raised in a timely delivered notice will be final, conclusive and binding on the parties as of the end of such 30th Business Day. If the Stockholders' Representative and Parent are unable to reach a resolution with such effect within 30 Business Days after the receipt by Parent of the Stockholders' Representative's written notice of dispute, Parent shall submit the items remaining in dispute for resolution to KPMG, LLP (or, if such firm shall decline or is unable to act or is not, at the time of such submission, independent of the Company and Parent, to another independent accounting firm of international reputation mutually acceptable to the Stockholders' Representative and Parent) (either KPMG, LLP or such other accounting firm being referred to herein as the "Independent Accounting Firm"), which shall, within 30 Business Days after such submission, determine and report to the Stockholders' Representative and Parent upon such remaining disputed items, and such report shall be final, binding and conclusive on the Stockholders' Representative and Parent and the Working Capital and the Debt Amount as adjusted pursuant to such report shall be, respectively, the "Final Working Capital" and the "Final Debt Amount". Notwithstanding anything to the contrary contained above, the Independent Accounting Firm is solely authorized and permitted to determine whether the Parent's calculations were prepared in a manner consistent with and using the same methods used in preparing the Audited Financial Statements as of December 31, 2006 or were arrived at based on mathematical or clerical error. The fees and disbursements of the Independent Accounting Firm shall be allocated between the Stockholders' Representative and Parent in the same proportion that the aggregate amount of such remaining disputed items so submitted to the Independent Accounting Firm that is unsuccessfully disputed by each such party (as finally determined by the Independent Accounting Firm) bears to the total amount of such remaining disputed items so submitted.

(e) In acting under this Section 3.04, the Stockholders' Representative, Parent and the Independent Accounting Firm shall be entitled to the privileges and immunities of arbitrators.

SECTION 3.05. Post-Closing Payments. (a) The date on which both of the Final Working Capital and the Final Debt Amount have been finally determined in accordance with Section 3.04 is hereinafter referred to as the "Determination Date", and the amount of such Final Working Capital and the Final Debt Amount shall be used to adjust the Common Equity Consideration (the amount of such adjustment as determined pursuant to the following two sentences, "Final Adjustment Amount"). In the event that the sum of (i) the Final Working Capital *less* the Estimated Working Capital *and* (ii) the Estimated Debt Amount *less* the Final Debt Amount is a positive number, then Parent shall pay to the Paying Agent, for prompt payment to the Equityholders, in proportion to their respective aggregate Equityholder's Percentage in the Escrow Account, an amount equal to such positive number (less any applicable

withholding Taxes in accordance with Section 3.06, which applicable withholding Taxes shall be paid to the Surviving Corporation immediately after being so withheld for further payment to the applicable Governmental Entity), together with interest thereon at a rate equal to the average LIBOR for the period beginning on the Closing Date and ending on the date of payment. In the event that the sum of (x) the Final Working Capital *less* the Estimated Working Capital and (y) the Estimated Debt Amount *less* the Final Debt Amount is a negative number, then the Stockholders' Representative and Parent shall direct the escrow agent maintaining the Escrow Account to pay Parent an amount equal to the absolute value of such negative number, together with interest earned thereon. Any required payment shall be made by Parent or the escrow agent (at the direction of the Stockholders' Representative), as the case may be, on the third Business Day following the Determination Date, in immediately available funds by wire transfer to, in the case of the Equityholders, the Paying Agent and, in the case of Parent, such bank account or accounts as Parent may specify. At the time of the payment of the Final Adjustment Amount pursuant to this Section 3.05, the balance of the Escrow Account shall be paid to the Paying Agent for distribution by the Paying Agent to the Equityholders in accordance with their respective Equityholder's Percentages. If the funds held pursuant to the Escrow Agreement are not sufficient to pay the Final Adjustment Amount, then Parent shall have the right to setoff and apply the Construction Milestone Payment or a Coal Milestone Payment against any such shortfall (plus interest accruing on such amount from the Closing Date to the payment date at an annual rate of 5%); provided that no party shall have any other right of setoff for any reason whatsoever against the Construction Milestone Payment or any Coal Milestone Payment or any interest accrued thereon except with respect to Parent's rights of setoff with respect to to: (1) the Final Adjustment Amount as set forth in Section 3.05(a), (2) the FIRPTA Amount, the 280G Amounts and the 409A Amounts as set forth in Section 3.06, and (3) the LC Amount and the Non-Releasing Equityholder Indemnity Amount as set forth in Section 6.11.

(b) Milestone Payments.

(i) Parent (or its transferees, successors or assigns) shall cause the Surviving Corporation (or its transferees, successors or assigns) to pay to the Equityholders an aggregate of \$350,000,000, less any amount deposited into escrow pursuant to Section 6.11 (plus interest on such amount from the Closing Date to the earlier of the payment date and December 31, 2012, at a rate of 5% compounded annually and less any applicable withholding Taxes in accordance with Section 3.06) (the "Construction Milestone Payment"), and subject to Parent's right to setoff against the Construction Milestone Payment with respect to: (1) the Final Adjustment Amount as set forth in Section 3.05(a), (2) the FIRPTA Amount, the 280G Amounts and the 409A Amounts as set forth in Section 3.06, and (3) the LC Amount and the Non-Releasing Equityholder Indemnity Amount as set forth in Section 6.11, upon the earlier to occur of either: (A) the issuance of a "notice(s) to proceed", duly authorized, directly or indirectly, by the board of directors of Parent (or its transferees, successors or assigns) in its sole discretion, under contracts for construction of any portion of the New Construction line for which the maximum aggregate amount committed to be paid exceeds \$500 million, or (B) Parent (or its transferees, successors or assigns) or one or more of its Affiliates (or their transferees, successors or assigns), to the extent such Affiliate or Affiliates are authorized to do so by the board of directors of Parent (or its transferees, successors or assigns) in its sole discretion, causing the movement of more

than 10,000 cubic yards of earth in connection with the New Construction line (collectively, the “Construction Conditions”). Parent agrees that, for either the issuance of the “notice(s) to proceed” or the movement of more than 10,000 cubic yards of earth in connection with the New Construction to take place, its board of directors must (or the board of directors of its transferees, successors or assigns shall be required to) take formal action authorizing such activity. Notwithstanding the foregoing, if neither of the Construction Conditions has been satisfied prior to December 31, 2025, no Construction Milestone Payment shall be payable.

(ii) Parent (or its transferees, successors or assigns) shall cause the Surviving Corporation (or its transferees, successors or assigns) to pay to the Equityholders certain payments (the “Coal Milestone Payments”) not to exceed \$707,000,000 in the aggregate (plus an inflation adjustment accruing on each such amount from the Closing Date to the payment date at a rate of 2% compounded annually and less any applicable withholding Taxes in accordance with Section 3.06), and subject to Parent’s right to setoff against the Coal Milestone Payments with respect to: (1) the Final Adjustment Amount as set forth in Section 3.05(a), (2) the FIRPTA Amount, the 280G Amounts and the 409A Amounts as set forth in Section 3.06, and (3) the LC Amount and the Non-Releasing Equityholder Indemnity Amount as set forth in Section 6.11, if prior to December 31, 2025, shipments of Powder River Basin coal over any portion of the New Construction line exceed certain tonnage targets (without rounding) for any calendar year as set forth in this clause (ii) below (the “Tonnage Condition”):

<u>Tonnage Condition</u>	<u>Coal Milestone Payment</u>
At least 40 million tons in any calendar year	\$58,000,000 plus an inflation adjustment from the Closing Date at a rate of 2%, compounded annually (the “ <u>First Milestone Payment</u> ”)
At least 50 million tons in any calendar year	\$60,000,000 plus an inflation adjustment from the Closing Date at a rate of 2%, compounded annually (the “ <u>Second Milestone Payment</u> ”)
At least 60 million tons in any calendar year	\$100,000,000 plus an inflation adjustment from the Closing Date at a rate of 2%, compounded annually (the “ <u>Third Milestone Payment</u> ”)
At least 75 million tons in any calendar year	\$164,000,000 plus an inflation adjustment from the Closing Date at a rate of 2%, compounded annually (the “ <u>Fourth Milestone Payment</u> ”)
At least 100 million tons in any calendar year	\$175,000,000 plus an inflation adjustment from the Closing Date at a rate of 2%, compounded annually (the “ <u>Fifth Milestone Payment</u> ”)

	<u>Payment</u> ")
At least 125 million tons in any calendar year	\$150,000,000 plus an inflation adjustment from the Closing Date at a rate of 2%, compounded annually (the " <u>Sixth Milestone Payment</u> ")

Upon satisfaction of any Tonnage Condition (and payment of the corresponding Coal Milestone Payment), the Equityholders will no longer be eligible to receive the Coal Milestone Payment corresponding to said Tonnage Condition. For purposes of illustration, in no event will Parent be obligated to pay more than one of each of the First Milestone Payment, Second Milestone Payment, Third Milestone Payment, Fourth Milestone Payment, Fifth Milestone Payment and the Sixth Milestone Payment upon satisfaction of any Tonnage Condition. If during any calendar year the Company satisfies more than one Tonnage Condition that has not previously been satisfied, then Parent shall make the corresponding Coal Milestone Payments for each such Tonnage Condition which has been satisfied through such time. For purposes of illustration, Section 3.05(b) of the Disclosure Schedule sets forth an example of the satisfaction of multiple Tonnage Conditions during a particular calendar year. Any tonnage that is under contract with either railroad (*i.e.*, BNSF or Union Pacific Railroad, or their successors) serving the PRB (the "Incumbent Carriers") and moves on an emergency basis via any portion of the lines that may be constructed or improved pursuant to the PRB Expansion ("Emergency Tonnage") shall not be included in measuring whether a Tonnage Condition has been met. Any tonnage under contract with Incumbent Carrier(s) that is moved over any portion of the PRB Expansion for less than six months shall be assumed to be Emergency Tonnage, unless there is a preponderance of the evidence to the contrary. Any tonnage under contract with Incumbent Carrier(s) that is diverted for more than six months shall be assumed to be other than Emergency Tonnage and shall be included in measuring whether a Tonnage Condition has been met, unless there is a preponderance of the evidence to the contrary. The parties understand and agree that the terms and conditions of any contract and agreement entered into after the Closing Date and related to the shipment of coal shall be determined by Parent in its sole discretion.

(iii) Timing of Payments. Within thirty (30) days following the satisfaction of the Construction Conditions or a Tonnage Condition, and, in any event, within forty-five (45) days following each calendar year prior to the earlier of December 31, 2025 and the payment of the Sixth Milestone Payment, Parent shall prepare and deliver to the Stockholders' Representative a statement certified by Parent's Chief Financial Officer or Chief Executive Officer setting forth (A) the status of the Construction Condition and the Tonnage Conditions, including a description of the status, in reasonable detail, of the PRB Expansion and (B) whether facts or circumstances have arisen to Parent's knowledge that are likely to give rise to a deduction from the Construction Milestone Payment or any Coal Milestone Payment in respect of a FIRPTA Amount, 280G Amount, 409A Amount or an LC Amount (the "Milestone Statement"). Notwithstanding the foregoing and solely with respect to any of the above-described amounts payable after the fifth (5th) anniversary of the Effective Time in respect of any

portion of the Equityholder's Percentages which are attributable to interests under the Bonus Share Plans or the Warrant Agreement dated November 4, 2005, between the Company and Kevin V. Schieffer (the holders of such Equityholder's Percentages, the "Restricted Equityholders"), which Equityholders and their applicable Equityholder's Percentages shall be identified in a writing delivered by the Stockholders' Representative to Parent at least thirty (30) days prior to the fifth (5th) anniversary of the Effective Time, such payments shall not be paid to the Stockholders' Representative or any Restricted Equityholder prior to January 1 of the calendar year next following the calendar year in which a Construction Condition or Tonnage Condition, as the case may be, occurs and shall be paid in such next following year on the later of the first Business Day of such year or the date the amount would otherwise be paid to the Stockholders' Representative (and promptly paid to the Restricted Equityholders by the Stockholders' Representative on receipt) as provided herein. The preceding sentence shall not, however, be interpreted as interfering with or as a waiver of Parent's right to enforce its legal rights as provided above, provided that the parties hereto agree that if there is a dispute or payment thereafter as a result of a dispute it shall be paid in a manner that satisfies the requirements of Treasury regulation section 1.409A-3(g). The Milestone Statement shall become final and binding upon the parties on the sixtieth (60th) day following receipt thereof by the Stockholders' Representative unless the Stockholders' Representative gives written notice of its disagreement with the Milestone Statement ("Notice of Disagreement") to Parent before such date. Any Notice of Disagreement must set forth in reasonable detail the nature of any disagreement. During the 30-day period following the delivery of a Notice of Disagreement, the Stockholders' Representative and Parent shall seek in good faith to resolve in writing any differences that they may have with respect to any matter specified in the Notice of Disagreement. If, at the end of such 30-day period, the Stockholders' Representative and Parent have not reached agreement on all such matters, then the Stockholders' Representative and Parent shall be entitled to seek such other remedies as may be available at Law. Not later than the tenth (10th) day following the date the Milestone Statement becomes final, whether automatically because the Stockholders' Representative does not provide a Notice of Disagreement, by agreement of Parent and the Stockholders' Representative or otherwise, if the final Milestone Statement sets forth the satisfaction of the Construction Conditions or one or more Tonnage Conditions, as applicable, Parent shall cause the Surviving Corporation to deposit by wire transfer of immediately available funds to (i) a single bank account specified by the Stockholders' Representative, the Construction Milestone Payment or the applicable Coal Milestone Payment(s), less, as applicable, any FIRPTA Amount, LC Amount, 409A Amount and 280G Amount and (ii) to the Escrow Account the Non-Releasing Equityholder Amount, if any. After deducting from any such Construction Milestone Payment or the applicable Coal Milestone Payment(s), as adjusted pursuant to the foregoing sentence, any amounts any Consultants are entitled to receive, which amounts Parent and the Stockholders' Representative shall use commercially reasonable best efforts to agree upon within ten days of the Milestone Statement becoming final, and distributing such amounts to the Consultants as required, the Stockholders' Representative shall distribute the remainder of such Construction Milestone Payment or Coal Milestone Payment(s), as applicable, among the Equityholders in proportion to their respective Equityholders' Percentage or as otherwise agreed among the Equityholders

and the Stockholders' Representative. Each party shall pay its own fees and expenses incurred during the 30-day review period with respect to the resolution of a Notice of Disagreement.

(iv) During the period of any dispute provided for in Section 3.05(b)(iii), and otherwise not more frequently than once per year until December 31, 2025, at the request of the Stockholders' Representative, Parent shall provide the Stockholders' Representative and its representatives (including legal and financial advisors), reasonable access to the books, records, facilities and employees of the Surviving Corporation and, to the extent applicable, Parent and its Affiliates and any other person operating the PRB Expansion and its Affiliates, and Parent shall cooperate, and cause its Affiliates, the Surviving Corporation and any other person operating the PRB Expansion and its Affiliates to cooperate, with the Stockholders' Representative and its representatives (including legal and financial advisors), to the extent reasonably required by the Stockholders' Representative to investigate the basis for any such dispute.

(v) Payments made pursuant to this Section 3.05(b) will be treated as adjustments to the consideration payable to the Equityholders in exchange for their Shares, Share Units, Warrants and Company Options, as the case may be, for U.S. federal income tax purposes and any other applicable Tax law (except to the extent a portion of such payments are treated as interest under Section 483 of the Internal Revenue Code or other applicable Tax law). For all Tax purposes, each party agrees not to take an inconsistent position therewith including in the filing of any Tax Return or pursuant to any audit or administrative or judicial proceeding.

(vi) Subject to any restrictions on transfer contained in the Bonus Share Plans, the Warrant Agreement dated November 4, 2005, between the Company and Kevin V. Schieffer and the Director Change in Control Agreements, each Equityholder shall be entitled to transfer all right, title and interests in and to its right to receive any payments under this Section 3.05 to: (i) one or more entities identified to Parent by the Stockholders' Representative, which entity or entities shall have been formed for the purposes of holding such rights and administering such Equityholders' rights under this Agreement, provided (A) if such transfer occurs on or prior to the Closing, such transfer shall be approved in advance by the Stockholders' Representative, which approval shall not be unreasonably withheld or delayed and (B) if such transfer occurs after the Closing, such transfer shall be approved in advance by Parent, which approval shall not be unreasonably withheld or delayed; (ii) one of its Affiliates, provided such transferee remains an Affiliate of the transferor or (iii) to any member of the immediate family of such Equityholder or any trust or trustee for the benefit thereof for estate or Tax planning purposes; provided, in each of (i)(A), (i)(B), (ii) and (iii), such transferee delivers to the Stockholders' Representative and Parent an agreement to be bound by the terms of this Agreement. The Stockholders' Representative shall provide Parent with notice of all such transfers which have occurred during a calendar quarter within 30 days of the end of each calendar quarter until the earlier to occur of December 31, 2025 or all payments of the Construction Milestone Payment and each Coal Milestone Payment have been made, if applicable.

(vii) Parent, Purchaser and Guarantor acknowledge and agree no direct or indirect transfer of any right, title and interest in the Surviving Corporation, the PRB Expansion or the right to undertake the PRB Expansion shall relieve Parent, Purchaser or Guarantor of their respective obligations hereunder and, to the extent applicable hereto, Section 6.12, without the consent of the Stockholders' Representative

SECTION 3.06. Withholding Taxes. (a) Subject to subsections (b), (c), (d), (e) and (f) of this Section 3.06, Parent, Purchaser, the Surviving Corporation and the Paying Agent shall be entitled to withhold and deduct Taxes on payments made pursuant to Section 2.02(b) and this Article III to the extent required by applicable Law. Any amounts withheld shall be timely paid to the person required to remit the withheld amounts to the appropriate Governmental Entity, and such person shall timely remit such amounts to the appropriate Governmental Entity.

(b) Notwithstanding subsection (a) of this Section 3.06, if Parent, Purchaser, the Surviving Corporation or the Paying Agent determines that withholding, other than an Expected Withholding Tax, is required by applicable Law, then Parent, Purchaser, the Surviving Corporation or the Paying Agent, as applicable, shall use its best efforts to so notify the payees subject to such withholding and the Stockholders' Representative in writing at least 15 days prior to the date the payment is to be made, together with a statement setting forth the amount of such non-Expected Withholding Tax to be deducted and withheld. If an affected payee objects in writing to the Parent, Purchaser, the Surviving Corporation or the Paying Agent's determination, then Parent, the Stockholders' Representative and such payee shall negotiate in good faith to agree on the amount that should be deducted and withheld. If (A) Parent, the Stockholders' Representative and such payee are unable to agree on such amount prior to the date such payment is to be made or (B) despite using best efforts to identify any withholding requirements and give such notice at least 15 days before a payment is required to be made, Parent, Purchaser, the Surviving Corporation or the Paying Agent determine that withholding, other than an Expected Withholding Tax, is required by applicable Law, prior to the date a payment is required to be made, then Parent, Purchaser, the Surviving Corporation and the Paying Agent shall withhold and deduct the amount that they have determined is required under applicable Law, and if the affected payee or the Stockholders' Representative objects in writing to such withholding, Parent shall engage a nationally recognized Law firm mutually acceptable to Parent, the Stockholders' Representative and such payee to render an opinion, addressed to Parent, as to whether such withholding was required under applicable Law, which opinion, absent manifest error, shall be conclusive and binding. If the Law firm renders an opinion that such withholding was not required under applicable Law, then Parent shall pay to the Stockholders Representative for further payment to such payee such an amount as may be necessary so that, after giving effect to all additional withholdings or deductions on such amount, such payee receives an after-Tax amount equal to the amount that such payee would have been entitled to receive in the absence of the imposition of the non-required withholding. The costs incurred in connection with the engagement of such Law firm shall be paid by the party whose position was not sustained by such Law firm. For the avoidance of doubt, none of Parent, Purchaser, the Surviving Corporation or the Paying Agent shall be liable for any Tax or obligated to make payments to a payee solely as a result of its failure to give the notice of withholding described in this subsection (b). Notwithstanding the foregoing, the parties agree that the terms of this subsection (b) shall not apply with respect to any withholding under Sections 1445, 4999 or 409A of the Internal Revenue Code.

(c) Notwithstanding anything to the contrary herein, the parties acknowledge and agree that (i) payments made pursuant to Section 2.02(b) and this Article III will not be subject to withholding under Section 1445 of the Internal Revenue Code provided that, based on the valuations provided and the methodologies used in the FIRPTA Report, the Company delivers to Parent at the Closing a certificate (the "FIRPTA Certificate") completed in accordance with Treasury regulation sections 1.897-2(h)(1) and 1.1445-2(c)(3) and an executed IRS notice (the "IRS Notice") completed in accordance with Treasury regulations section 1.897-2(h) (together with any attachments or supplements thereto, including any statements required under Treasury regulations section 1.897-2(h)(5)), and provided further that the FIRPTA Report is delivered to Parent on or prior to the Closing Date, and that Parent has not received a bona fide notice described in Treasury regulations section 1.1445-2(c)(3)(ii), and (ii) in the event that the Company does not timely provide such FIRPTA Certificate, the IRS Notice or statements in accordance with clause (i) (or Parent has received a bona fide notice described in Treasury regulations section 1.1445-2(c)(3)(ii)), such payments that are made to a payee will not be subject to withholding under Section 1445 of the Internal Revenue Code provided that such payee delivers to Parent at the Closing or on an earlier date a certification that it is not a foreign person, completed in accordance with Treasury regulations section 1.1445-2(b)(2), and provided further that Parent has not received the notice described in Treasury regulations section 1.1445-2(b)(4)(iii). If such withholding occurs, the amounts withheld shall be timely paid to the person required to remit the withheld amounts to the appropriate Governmental Entity, and such Person shall timely remit such amounts to the appropriate Governmental Entity. If such withholding does not occur and the IRS finally determines that withholding was required under Section 1445 and Parent or the Surviving Corporation provides the Stockholders' Representative with reasonably sufficient evidence of such final determination, (i) Parent shall be entitled to deduct an amount equal to the amount of any Taxes, interest and penalties incurred directly as a result of such failure to withhold, plus interest accrued thereon at a rate of 5% per year compounded annually from the date such Taxes, interest and penalties are paid through the date of such deduction (the "FIRPTA Amount") from the Construction Milestone Payment or a Coal Milestone Payment as provided in Section 3.05(b) of this Agreement; provided, however, that the foregoing indemnity shall not apply to any additional Taxes, interest and penalties incurred after the date of the final determination as a result of Parent's failure to pay such Taxes, interest and penalties when due under the final determination and (ii) Parent, the Surviving Corporation or the Paying Agent, as the case may be, shall be entitled to withhold and deduct amounts required to be withheld under Section 1445 of the Internal Revenue Code from any payments made pursuant to Section 2.02(b) and this Article III on or after the date of such final determination from such future payments.

(d) Notwithstanding anything to the contrary herein, to the extent that Parent, Purchaser, the Surviving Corporation or the Paying Agent is required to withhold or deduct any Canadian Taxes from any payment made pursuant to Section 2.02(b) or this Article III, the amount payable under such provisions shall be increased as may be necessary so that, after giving effect to all withholdings or deductions of Canadian Taxes (including withholdings or deductions of Canadian Taxes in respect of additional amounts payable under this Section 3.06(d)), the relevant payee receives an after-Tax amount equal to the amount that such payee would have been entitled to receive in the absence of the imposition of such Canadian Taxes.

(e) Notwithstanding anything to the contrary herein, the parties acknowledge and agree that certain payments made to "disqualified individuals" within the meaning of Section 280G of the Internal Revenue Code may be subject to Section 280G of the Internal Revenue Code and, hence would be subject to withholding pursuant to Section 4999 of the Internal Revenue Code. The Company shall within fifteen Business Days of the date hereof deliver to Parent a report of its independent accountants (the "280G Report"), based on the Common Equity Consideration and including a "reasonable compensation" analysis, disclosing the amounts constituting the total, on an individual basis for each "disqualified individual" as defined in Q&A 15 of Treasury Reg. §1.280G-1 and in the aggregate (a) "parachute payments" within the meaning of Section 280G(b)(2) of the Internal Revenue Code, (b) "base amounts" within the meaning of Section 280G(b)(3) of the Internal Revenue Code and (c) "excess parachute payments" within the meaning of Section 280G(a) of the Internal Revenue Code. Item (a) of the preceding sentence shall be shown before and after any reduction determined by such accountants to be available pursuant to Section 280G(b)(4)(A) of the Internal Revenue Code and items (b) and (c) of the preceding sentence shall be shown both before and after any reduction determined by such accountants to be available pursuant to Section 280G(b)(4)(B) of the Internal Revenue Code. The 280G Report also shall (i) disclose, on the same basis described above, the amounts subject to withholding pursuant to Section 4999 of the Internal Revenue Code, (ii) contain such detail and supporting documentation so as to allow an independent party to confirm the calculations contained therein and the facts relied upon in preparing such report and (iii) be accompanied by a written tax opinion of the Company's independent accountants supporting the positions used in such calculations, including a statement that the Company shall be entitled to file its federal income and employment tax returns for the periods in which such payments are made in reliance upon such report. The amounts withheld by the Company shall be based on the conclusions reached in the 280G Report. If the Internal Revenue Service finally determines that additional withholding was required under Section 4999 of the Internal Revenue Code and the Surviving Corporation provides the Stockholders' Representative with reasonably sufficient evidence of such final determination, Parent shall be entitled to deduct an amount equal to the Taxes, interest and related penalties incurred directly as a result of such failure to adequately withhold, together with interest accrued thereon at a rate of 5% per year compounded annually from the date such Taxes, interest and penalties are paid through the date of the deduction (the "280G Amounts") from the Construction Milestone Payment or a Coal Milestone Payment as provided in Section 3.05(b) of this Agreement; provided, however, that the foregoing indemnity shall not apply to any additional Taxes, interest and penalties incurred after the date of such final determination as a result of the Surviving Corporation's failure to timely pay any such Taxes, interest and penalties when due under the final determination. Any amounts payable after the Closing Date to persons identified as "disqualified individuals" in the 280G Report and treated as compensation for U.S. federal income tax purposes that are considered by the Surviving Corporation in reasonable good faith to be subject to Section 280G of the Internal Revenue Code shall be treated by the Surviving Corporation as subject to 280G of the Internal Revenue Code and the withholding required by Section 4999 of the Internal Revenue Code shall be made and notice thereof shall be given to the applicable payee and the Stockholders' Representative if such treatment and withholding is inconsistent with the recommendations set forth in the 280G Report.

(f) Notwithstanding anything to the contrary herein, the parties acknowledge and agree that certain compensation earned and deferred prior to the Closing Date may be

subject to Section 409A of the Internal Revenue Code and, hence, includible in employees' gross income and subject to regular withholding. If the Internal Revenue Service finally determines that additional withholding was required with respect to amounts includible in any employee's gross income pursuant to Section 409A of the Internal Revenue Code and the Surviving Corporation provides the Stockholders' Representative with reasonably sufficient evidence of such final determination, Parent shall be entitled to deduct an amount equal to the Taxes and related penalties (including interest) incurred directly as a result of such failure to adequately withhold, together with interest accrued thereon at a rate of 5% per year compounded annually from the date such Taxes and penalties (including interest) are finally determined by the Internal Revenue Service through the date of the deduction (the "409A Amounts") from the Construction Milestone Payment or a Coal Milestone Payment as provided in Section 3.05(b) of this Agreement; provided, however, that the foregoing indemnity shall not apply to any additional Taxes, interest and penalties incurred after the date of such final determination as a result of the Surviving Corporation's failure to timely pay any such Taxes, interest and penalties when due under the final determination.

(g) Except as may be provided in the Gross-up Escrow Agreement, any amounts held in the Gross-up Escrow Account at the expiration of the applicable statute of limitations with respect to the matters which are subject to the Gross-Up Agreement shall be paid to the Stockholders' Representative and the Stockholders' Representative shall distribute such amounts, less any applicable amounts required to be distributed to any Consultants, among the Equityholders in proportion to their respective Equityholders' Percentage or as otherwise agreed among the Equityholders and the Stockholders' Representative.

SECTION 3.07. No Dissenter's Rights. In accordance with *Schwabacher v. United States*, 334 U.S. 192 (1948), holders of Shares will not have any dissenter's rights, provided, however, that if the STB, the successor agency to the Interstate Commerce Commission, (or any successor agency) or a court of competent jurisdiction determines that dissenter's rights are available to holders of Shares, then holders of such Shares shall be provided with dissenter's rights in accordance with the DGCL.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Purchaser, except as set forth on the Disclosure Schedule, as of the date of this Agreement or, if a representation or warranty is made as of a specified date, as of such date, as follows:

SECTION 4.01. Authority of the Company. The Company has all necessary corporate power and authority to execute and deliver this Agreement and the Definitive Agreements, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Definitive Agreements by the Company, the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on

the part of the Company (including all necessary action by the Board of Directors and Equityholders). This Agreement and the Definitive Agreements have been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by the other parties hereto) this Agreement and the Definitive Agreements constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

SECTION 4.02. Incorporation and Qualification and the Company and the Subsidiaries. Each of the Company and the Subsidiaries is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. Each of the Company and the Subsidiaries is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary, except for such failures which do not have a Material Adverse Effect. No other jurisdiction has demanded, requested or otherwise indicated in writing that the Company or any Subsidiary is required so to qualify on account of the ownership or leasing of its assets and properties or the conduct of the Business. True and complete copies of the Certificate of Incorporation and By-laws of the Company and the Subsidiaries, as amended to the date of this Agreement, have been made available to Purchaser.

SECTION 4.03. Capital Stock of the Company and the Subsidiaries. The entire authorized and outstanding capital stock of the Company and the Subsidiaries, as of the date of this Agreement, is as set forth in Section 4.03 of the Disclosure Schedule. All of such outstanding shares of capital stock are duly authorized, validly issued, fully paid and nonassessable, and none of such shares were issued in violation of any preemptive or other rights. Except as set forth in Section 4.03 of the Disclosure Schedule, there are no options, warrants or other rights, agreements, arrangements or commitments of any character issued or authorized by the Company or the Subsidiaries relating to the issued or unissued capital stock of the Company or any Subsidiary or obligating the Company or any Subsidiary to issue or sell any shares of capital stock of, or other equity interests in, the Company or any Subsidiary. All Shares subject to issuance as set forth in Section 4.03 of the Disclosure Schedule, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, will be duly authorized, validly issued, fully paid and nonassessable. There are no outstanding contractual obligations of the Company or the Subsidiaries to repurchase, redeem or otherwise acquire any Shares or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any person. Except as set forth in Section 4.03 of the Disclosure Schedule, there are no voting trusts, shareholder agreements, commitments, undertakings, understandings, proxies or other restrictions to which the Company or any Subsidiary is a party which directly or indirectly restrict or limit in any manner, or otherwise relate to, the voting, sale or other disposition of any shares or securities of the Company or any Subsidiary.

SECTION 4.04. Subsidiaries. Except for the Subsidiaries, which are wholly owned, directly or indirectly, by the Company, the Company has no subsidiaries, equity investments or interests in joint ventures or any other Person.

SECTION 4.05. No Conflict. Except as set forth in Section 4.06 of this Agreement or in Section 4.05 of the Disclosure Schedule, the execution, delivery and performance of this Agreement and the Definitive Agreements by the Company do not and will not (a) violate or conflict with the Certificate of Incorporation or By-laws of the Company or any Subsidiary, (b) conflict with or violate any Law or Governmental Order applicable to the Company or any Subsidiary or their assets, (c) result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance on any of the assets or properties of the Company or any Subsidiary pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument relating to such assets or properties to which the Company or any Subsidiary is a party or by which any of such assets or properties are bound or affected, except as would not, in the case of either (b) or (c) above, individually or in the aggregate, delay the consummation of the transactions contemplated by this Agreement or have a Material Adverse Effect.

SECTION 4.06. Consents, Approvals, Licenses, Etc. (a) No consent, approval, authorization, license, order or permit of, or declaration, filing or registration with, or notification to, any Person is required to be made or obtained by the Company or any Subsidiary in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, except: (a) any applicable requirements of the ICCTA and the regulations of the STB and, if applicable, compliance with the HSR Act; (b) any applicable non-United States consents, approvals, authorizations, filings and notifications required under any applicable antitrust, competition or trade regulation Law, except where the failure to obtain such consents, approvals, authorizations, licenses, orders or permits, or to make such declarations, filings or registrations or notifications would not (i) individually or in the aggregate, prevent the Company from performing its obligations under this Agreement or (ii) have a Material Adverse Effect. The Company and the Subsidiaries hold all Licenses, except Licenses the failure of which to have been obtained has not had and would not reasonably be expected to have a Material Adverse Effect (the "Company Licenses"). Section 4.06 of the Disclosure Schedule sets forth a list of said Company Licenses. Except as set forth in Section 4.06 of the Disclosure Schedule, (i) to the knowledge of the Company no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a breach or default under any such Company License or which permits or, after notice or lapse of time or both, would permit revocation or termination of any such Company License, or which might materially and adversely affect the rights of the Company or any Subsidiary under any such Company License; (ii) no written notice of cancellation, of default or of any dispute concerning any Company License, or of any event, condition or state of facts described in the preceding clause, has been received by the Company or any Subsidiary; and (iii) each of the Company Licenses is valid, subsisting and in full force and effect and may be assigned and transferred in accordance with this Agreement and will continue in full force and effect thereafter, in each case without (x) the occurrence of any breach, default or forfeiture of rights thereunder, or (y) the consent, approval, or act of, or the making of any filing with, any Governmental Entity.

(b) To the knowledge of the Company, there are no material STB authorizations or material Environmental Permits required to complete the PRB Expansion that

have not been disclosed to the Purchaser and, to the knowledge of the Company, there exists no fact or circumstance that materially and adversely affects the PRB Expansion or makes it unlikely that the PRB Expansion can be completed within the time period contemplated by the construction plan identified on Section 4.06(b) of the Disclosure Schedule.

SECTION 4.07. Financial Statements; Budgets. (a) The Audited Financial Statements and Unaudited Financial Statements have been prepared in accordance with GAAP applied on a consistent basis, with only such deviations from GAAP as are referred to in the notes thereto, and fairly present in all material respects the consolidated financial position, results of operations and cash flows of the Company and the Subsidiaries as of each date and for each period covered thereby, except that the Unaudited Financial Statements are subject to normal and recurring year-end adjustments which are not expected to be material in amount.

(b) Except as and to the extent set forth on a balance sheet of the Company included in the Audited Financial Statements or the Unaudited Financial Statements, or the notes thereto, neither the Company nor any Subsidiary has any material liability or obligation of any nature (whether accrued, absolute, contingent or otherwise) which would be required to be reflected on a balance sheet, or in the notes thereto, prepared in accordance with GAAP, except for any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable disclosed herein or liabilities of the same nature as those set forth in the Audited Financial Statements and reasonably incurred in the ordinary course of Business after December 31, 2006 consistent with past practice.

(c) Section 4.07(c) of the Disclosure Schedule sets forth (i) as of the date hereof a true and correct copy of the Company's July unaudited financial statements and forecast, which sets forth the budgets of capital, construction, payroll and other expenditures of the Company and the Subsidiaries prepared in the ordinary course of business for the calendar years ending December 31, 2007 and (ii) the total capital expenditures through July 31, 2007 for each capital expenditure project for which funds are proposed to be expended through December 31, 2007 (collectively, the "2007 Budget").

SECTION 4.08. Absence of Certain Changes. (a) During the period from December 31, 2006 through the date of this Agreement, except as set forth in Section 4.08(a) of the Disclosure Schedule, the Business has been conducted in the ordinary course consistent with past practice and neither the Company nor any Subsidiary has:

(i) made any loan to, guaranteed any Indebtedness of or otherwise created, incurred or assumed any Indebtedness on behalf of any Person;

(ii) entered into any transaction with any Equityholder or any Affiliate of any Equityholder (other than a Subsidiary) or redeemed or agreed to redeem any of its capital stock or declared or agreed to declare, made or paid or agreed to make or pay any dividends or distributions (whether in cash, securities or other property) to any Equityholder or otherwise;

(iii) (A) granted any increase, or announced any increase, in the wages, salaries, compensation, bonuses, incentives, pension or other benefits payable by the

Company to any of its employees, including, without limitation, any increase or change pursuant to any Benefit Plan or (B) established or increased or promised to increase any benefits under any Benefit Plan, except as required by Law or any collective bargaining agreement and in either case except for annual merit increases in the ordinary course of business consistent with the past practices of the Company;

(iv) written down or written up (or failed to write down or write up in accordance with GAAP consistent with past practice) the value of any receivables or revalued any assets of the Company other than in the ordinary course of business consistent with past practice and in accordance with GAAP;

(v) made any change in any method of accounting or accounting practice or policy used by the Company;

(vi) created, incurred or assumed any Indebtedness, in excess of \$1,000,000 in the aggregate;

(vii) (a) sold, leased to others or otherwise disposed of, or mortgaged or pledged, or imposed or suffered to be imposed any Lien on, any of its assets other than in the ordinary course of business or (b) entered into any contractual obligation relating to (i) the purchase of assets constituting a business, (ii) any merger, consolidation or other business combination or (iii) the acquisition of real property or undertaking capital expenditures exceeding the amounts set forth with respect thereto in the 2007 Budget by \$100,000 in the aggregate;

(viii) cancelled any debts owed to or claims held (including the settlement of any claims or litigation) other than in the ordinary course of the Business consistent with past practice;

(ix) accelerated or delayed collection of notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of the Business consistent with past practice;

(x) delayed or accelerated payment of any account payable or other liability beyond or in advance of its due date or the date when such liability would have been paid in the ordinary course of the Business consistent with past practice;

(xi) entered into a collective bargaining agreement;

(xii) abandoned or discontinued service on all or any part of the rail lines; or

(xiii) entered into any agreement or contractual obligation to do any of the things referred to in clauses (i) through (xii) above or any other material transaction except in the ordinary course of Business.

(b) Since December 31, 2006, there has not been any event or occurrence which has had a Material Adverse Effect.

SECTION 4.09. Employee Benefit Plans; Labor Matters. (a) Section 4.09 of the Disclosure Schedule contains a true and complete list of each employee benefit plan, program, arrangement and contract (including, without limitation, any "employee benefit plan", as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) maintained or contributed to by the Company and the Subsidiaries or with respect to which the Company or any Subsidiary has any liability (the "Benefit Plans"). With respect to each Benefit Plan, the Company has made available to Purchaser a true and correct copy of (i) the most recent annual report (Form 5500) filed with the IRS, (ii) such Benefit Plan, (iii) each trust agreement or insurance contract relating to such Benefit Plan, (iv) each contract with any third party by which any such Benefit Plan is administered, (v) the most recent summary plan description for each Benefit Plan for which a summary plan description is required and (vi) the most recent determination or opinion letter issued by the IRS with respect to any Benefit Plan qualified under Section 401(a) of the Internal Revenue Code. There are no organizations other than the Subsidiaries which, together with the Company, are treated as a single employer pursuant to Section 414 of the Internal Revenue Code. No Benefit Plan is subject to Title IV of ERISA, and neither the Company nor any Subsidiary has any liability of any kind whatsoever under Title IV of ERISA.

(b) With respect to the Benefit Plans, no event has occurred and, to the knowledge of the Company, there exists no condition or set of circumstances in connection with which the Company or the Subsidiaries could be subject to any liability under the terms of such Benefit Plans, ERISA, the Internal Revenue Code or any other applicable Law which would have a Material Adverse Effect.

(c) Except with respect to the Train and Engine Crafts of the Company, no collective bargaining agreement is currently being negotiated by the Company or any Subsidiary. As of the date hereof, and since December 31, 2006, there is no labor dispute, strike, lockout, or work stoppage, or material grievance actually pending or, to the knowledge of the Company, threatened against the Company or any Subsidiary except as set forth in Section 4.08(a)(xii) of the Disclosure Schedule. As of the date hereof, to the knowledge of the Company, the Company and its Subsidiaries are, and have at all times been, in compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment, equal opportunity, nondiscrimination, immigration, labor, wages, affirmative action, hours of work and occupational safety and health, and have not engaged in any unfair labor practices as defined in the National Labor Relations Act or other applicable law or any statutory disputes under the Railway Labor Act or other applicable law; and there is no charge or complaint against the Company or any Subsidiary by the National Labor Relations Board or any comparable state agency pending or threatened in writing.

(d) Section 4.09 of the Disclosure Schedule sets forth (i) copies of all employment agreements with officers of the Company and the Subsidiaries and agreements with non-union employees that provides for annual compensation in excess of \$150,000; (ii) copies of all severance agreements, programs and policies of the Company and the Subsidiaries with or relating to its employees; (iii) copies of all plans, programs, agreements, policies and other arrangements of the Company and the Subsidiaries with or relating to its employees which contain change in control provisions; (iv) all collective bargaining agreements and other agreements with labor organizations or other employee representative bodies. Except as set forth

in Section 4.09 of the Disclosure Schedule, (i) each contract or agreement set forth on Section 4.09 of the Disclosure Schedule is valid and binding on the Company and to the knowledge of the Company, on the respective parties thereto and is in full force and effect and, upon consummation of the transactions contemplated by this Agreement, shall continue in full force and effect without penalty or other adverse consequence without the consent, approval or act of, or the making of any filing with, any other Person, (ii) neither the Company nor any Subsidiary is in breach of, or default under, any of such agreements or contracts and no event has occurred which with notice or lapse of time would constitute such a breach or default or permit termination, modification or acceleration thereunder, (iii) to the knowledge of the Company, no other party to any of such agreements or contracts is in breach thereof or default thereunder and no event has occurred which with notice or lapse of time would constitute such a breach or default or permit termination, modification or acceleration thereunder and (iv) no Person has taken any action that has the effect of creating or triggering any entitlement to benefits under the terms of any agreement with any of its employees.

(e) Except as required by Law, no Benefit Plan provides retiree medical or retiree life insurance benefits to any person.

(f) Since December 31, 2005, the Company and its Subsidiaries have not effectuated (i) a "plant closing" as defined in the Worker Adjustment and Retraining Notification Act of 1988 (the "WARN Act") affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company or any Subsidiary, or (ii) a "mass layoff" as defined in the WARN Act affecting any site of employment or facility of the Company or any of its Subsidiaries. Since December 31, 2005, neither the Company nor any of its Subsidiaries have been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any federal, state or local law similar to the WARN Act.

SECTION 4.10. Absence of Litigation. Except as set forth in Section 4.10 of the Disclosure Schedule, as of the date of this Agreement, there are no Actions pending or, to the knowledge of the Company, threatened against the Company, the Subsidiaries or any of the assets or properties of the Company or the Subsidiaries involving a claim in an amount in excess of \$1,000,000 or that reasonably would be expected to materially and adversely affect the Company's ability to affect the PRB Expansion or to prevent the Company from consummating the transactions contemplated hereby, and (b) the Company, the Subsidiaries and its and their assets and properties are not subject to any Governmental Order.

SECTION 4.11. Compliance with Laws. The Company and the Subsidiaries have each conducted and continue to conduct the Business in compliance with all applicable Laws in all material respects, except as would not be materially adverse to the Business.

SECTION 4.12. Taxes. Except as set forth in Section 4.12 of the Disclosure Schedule:

(a) All Tax Returns required to be filed by or with respect to the Company or any of its Subsidiaries have been properly and timely filed (taking into account any applicable extension periods), and all such Tax Returns were complete and correct in all material respects;

(b) The Company and its Subsidiaries have fully and timely paid all Taxes required to be paid by or with respect to them, and have made adequate provision in the financial statements of the Company (in accordance with GAAP) for Taxes not yet due and payable;

(c) There are no outstanding agreements or waivers extending the statutory period of limitations applicable to any Tax Returns required to be filed by or with respect to the Company and its Subsidiaries;

(d) None of the Tax Returns of or with respect to the Company or any of its Subsidiaries is currently being audited or examined by any taxing authority;

(e) The Company and its Subsidiaries have withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid to any employee, creditor, stockholder or other third party;

(f) No Encumbrances for material amounts of Taxes have been filed against the Company or any of its Subsidiaries, except for Encumbrances for Taxes not yet due or payable or for Taxes being contested in good faith;

(g) There are no material unresolved deficiencies or additions to Taxes that have been proposed, asserted or assessed in writing against the Company or any of its Subsidiaries;

(h) Neither the Company nor any Subsidiary is a party to any indemnification, allocation or sharing agreement with respect to Taxes that could give rise to a material payment or indemnification obligation (other than agreements among the Company and its Subsidiaries and other customary Tax indemnifications contained in credit or other commercial agreements the primary purpose of which does not relate to Taxes). Neither the Company nor any of its Subsidiaries has any liability for the Taxes of any Person under Treasury regulation section 1.1502-6 (or any similar provision of state, local or foreign law), or as a transferee or successor;

(i) Neither the Company nor any of its Subsidiaries has entered into any closing agreement pursuant to Section 7121 of the Internal Revenue Code or any similar provision of any state, local or foreign law;

(j) Since January 1, 2005, neither the Company nor any of its Subsidiaries has been a Controlled corporation or a distributing corporation in respect of a distribution to which Section 355 of the Internal Revenue Code was intended to apply;

(k) Neither the Company nor any of its Subsidiaries has participated in a transaction that is described as a "listed transaction" within the meaning of Treasury regulation section 1.6011-4(b)(2); and

(l) Neither the Company nor any of its Subsidiaries has, since October 3, 2004, (A) granted to any person an interest in a nonqualified deferred compensation plan (as defined in Section 409A(d)(1) of the Internal Revenue Code) which interest has been or, upon the lapse of a substantial risk of forfeiture with respect to such interest, will be subject to the Taxes imposed by Sections 409A(a)(1)(B) or (b)(4)(A) of the Internal Revenue Code, or (B)

modified the terms of any nonqualified deferred compensation plan in a manner that could cause an interest previously granted under such plan to become subject to the Taxes imposed by Sections 409(A)(a)(1)(B) or (b)(4)(A) of the Internal Revenue Code.

SECTION 4.13. Material Contracts. (a) Section 4.13(a) of the Disclosure Schedule is a true and complete list of all of the following contracts and agreements entered into as of the date of this Agreement by the Company or a Subsidiary (the "Material Contracts"):

- (i) each contract and agreement for the purchase of goods or for the furnishing of services to the Company under the terms of which the Company: (A) is likely to pay or otherwise give consideration of more than \$750,000 in the aggregate during the calendar year ended December 31, 2007 or (B) is likely to pay or otherwise give consideration of more than \$3,000,000 in the aggregate over the remaining term of such contract;
- (ii) all contracts and agreements relating to Indebtedness of the Company or any Subsidiary evidencing or which constitute a guarantee of any Indebtedness of any Person;
- (iii) all material contracts and agreements with any Governmental Entity;
- (iv) all contracts and agreements that limit or purport to limit the ability of the Company or any Subsidiary to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (v) each lease of real property involving more than \$1,000,000 in the aggregate of rent over the remaining term of the lease;
- (vi) each lease of personal property involving more than \$1,000,000 in the aggregate of rent over the remaining term of the lease;
- (vii) all contracts and agreements between or among the Company or any Subsidiary and any of the Equityholders or any Affiliate of any of such Equityholders;
- (viii) all contracts and agreements providing for benefits under any Benefit Plan;
- (ix) all contracts and agreements under which the Company or any Subsidiary is or may become obligated to pay any brokerage, finder's or similar fees or expenses in connection with this Agreement or consummation of the transactions contemplated hereby;
- (x) all contracts and agreements to sell or otherwise dispose of any assets having a fair market value in excess of \$750,000 other than in the ordinary course of business;

(xi) all contracts and agreements under which the Company or any Subsidiary is or may become obligated to pay any amount in respect of deferred or conditional purchase price (other than ordinary trade terms), indemnification obligations, purchase price adjustment or otherwise in connection with any (a) acquisition or disposition of all or substantially all of the assets or securities constituting a line of business of any Person, (b) merger, consolidation or other business combination, or (c) series or group of related transactions or events of a type specified in subclauses (a) and (b);

(xii) all contracts and agreements for the pending purchase or sale of real property in excess of \$100,000;

(xiii) all contracts and agreements that contain exclusivity, most favored nation or similar types of provisions;

(xiv) all material guarantees of the obligations of customers, suppliers, officers, directors, employees, Affiliates or others entered into other than in the ordinary course of business;

(xv) all material contracts and agreements containing "paper barriers" as such term is generally understood in the railroad industry;

(xvi) all material contracts and agreements granting demurrage relief to a shipper entered into other than in the ordinary course of business;

(xvii) all material contracts and agreements imposing car or other equipment supply obligations entered into other than in the ordinary course of business;

(xviii) all material contracts and agreements granting another common carrier the right to use all or any portion of the Real Property or rail lines, yards or other facilities of the Company or any Subsidiary (including yard(s) and other facilities) or the right to serve industries located on the Real Property or rail lines, yards or other facilities of the Company or any Subsidiary;

(xix) all material contracts and agreements granting the right to use all or any portion of the rail line, yards or other facilities of another common carrier which relate to the Real Property;

(xx) all material contracts and agreements that relate to trackage rights, haulage, interchange, joint facility, switching and similar agreements which relate to the Real Property;

(xxi) all material contracts and agreements with shippers for rail transportation;

(xxii) all written contracts and agreements imposing a construction obligation that would cost more than \$500,000; and

(xxiii) all other contracts and agreements whether or not made in the ordinary course of business, which are material to the Company and the Subsidiaries or the absence of which would have a Material Adverse Effect.

(b) Each Material Contract is valid and binding on the Company and, to the knowledge of the Company, the other parties thereto and is in full force and effect and, upon consummation of the transactions contemplated by this Agreement, shall continue in full force and effect without any change in control or prepayment expense or penalty, other penalty or other adverse consequence and without the consent, approval or act of, or the making of any filing with, any other Person, and neither the Company nor any Subsidiary is in breach of, or default under, any Material Contract and no event has occurred which with notice or lapse of time would constitute such a breach or default or permit termination, modification or acceleration thereunder; provided, however, that all Material Contracts described in clause (vii) above, other than those set forth on Schedule 4.13(b) of the Disclosure Schedule, shall terminate on or prior to the Effective Time without any ongoing obligation, change in control or prepayment expense or penalty, other penalty or other adverse consequence and without the consent, approval or act of, or the making of any filing with, any other Person.

(c) To the knowledge of the Company, no other party to any Material Contract is in material breach thereof or material default thereunder and no event has occurred which with notice or lapse of time would constitute such a breach or default or permit termination, modification or acceleration thereunder.

(d) Except for the Financial Agreement, there is no contract, agreement or other arrangement granting any Person any preferential right to purchase, other than in the ordinary course of business consistent with past practice, any of the properties or assets of the Company and the Subsidiaries. The terms of Section 2 of the Financial Agreement and any right of first refusal set forth in said agreement shall not be applicable to the transactions contemplated by this Agreement provided the Closing occurs on or before February 26, 2008.

(e) Neither the Company nor any Subsidiary is currently renegotiating any of the Material Contracts or paying liquidated damages in lieu of performance thereunder. Complete and correct copies of each Material Contract have been made available to Purchaser.

SECTION 4.14. Environmental Matters. (a) Except as set forth in Section 4.14 of the Disclosure Schedule or as would not have a Material Adverse Effect:

(i) The Company and each Subsidiary are in compliance with, and for the past three years has been in compliance with, all applicable Environmental Laws and all Environmental Permits. All past noncompliance with Environmental Laws or Environmental Permits has been resolved without any pending, ongoing or future obligation, cost or liability, and there is no requirement proposed for adoption or implementation under any Environmental Law or Environmental Permit.

(ii) There are no underground or aboveground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed of on any of the Real Property or,

during the period of the Company's or any Subsidiary's ownership, lease, use or occupancy thereof, on any property formerly owned, leased, used or occupied by the Company or any Subsidiary and neither the Company nor any Subsidiary has engaged in operation or activities upon any of the Real Property for the purpose of, or in any way involving, the handling, manufacture, treatment, processing, storage, use, generation, release, discharge, emission, dumping or disposal of any Hazardous Materials, at, on, or under such Real Property, except in compliance in all material respects with all applicable Environmental Laws.

(iii) There has been no Release of any Hazardous Material on any of the Real Property or, during the period of the Company's or any Subsidiary's ownership, lease, use or occupancy thereof, on any property formerly owned, leased, used or occupied by the Company or any Subsidiary.

(iv) Neither the Company nor any Subsidiary is conducting, and none of them has undertaken or completed, any Remedial Action relating to any Release or threatened Release of any Hazardous Material at the Real Property or at any other site, location or operation, either voluntarily or pursuant to the order of any Governmental Entity or the requirements of any Environmental Law or Environmental Permit.

(v) There is no asbestos or asbestos-containing material on any of the Real Property.

(vi) None of the Real Property is listed or, to the knowledge of the Company, proposed for listing, or adjoins any other property that is listed or, to the knowledge of the Company, proposed for listing, on the National Priorities List or CERCLIS or on any analogous federal, state or local list.

(vii) There are no Environmental Claims pending or, to the knowledge of the Company, threatened against the Company, any Subsidiary or the Real Property, and, to the knowledge of the Company, there are no circumstances that can reasonably be expected to form the basis of any such Environmental Claim, including with respect to any off-site disposal location currently or formerly used by the Company or any Subsidiary or any of its predecessors or with respect to previously owned or operated facilities.

(b) The Company has provided Purchaser with copies of (i) any environmental assessment or audit reports or other similar studies or analyses relating to the Business, the Real Property, the Company or any Subsidiary prepared since January 1, 2005, and (ii) all insurance policies issued at any time that may currently provide coverage to the Company or any Subsidiary or the Business for environmental matters.

SECTION 4.15. Tangible Personal Property and Real Property. (a) Except as set forth in Schedule 4.15(a) of the Disclosure Schedule and except for Permitted Encumbrances, the Tangible Personal Property and the Real Property owned or leased by the Company and the Subsidiaries is owned or leased free and clear of all Encumbrances and such assets and

properties owned or leased by the Company and the Subsidiaries constitute all the assets and properties used in or necessary for the operation of the Business.

(b) Section 4.15(b) of the Disclosure Schedule sets forth with respect to (x) each item of real property owned, leased or otherwise held and/or used by the Company or any of its Subsidiaries and (y) each material track, marshalling yard, trailer/container and automobile loading and unloading facility, operating office, shop and service building and other railway property outside of normal right of way owned, leased or otherwise held and/or used by the Company or any of its Subsidiaries: (i) the address of such real property, if applicable; (ii) whether such property is a Stabilized Property, a Development Property or a Land Holding; (iii) the specific owner/interest-holder, the type of interest that is held (other than with respect to railroad property) and the percentage interest held by such Person; (iv) the use of such real property; and (v) whether such Real Property is to the knowledge of the Company used or occupied by any Person other than the Company or any of its Subsidiaries or either the Company or a Subsidiary does not have, with respect to each item of real property described in Section 4.15(b) of the Disclosure Schedule, good and marketable fee title, or a valid leasehold, easement, right of way or other interest or otherwise has a valid right of possession which is sufficient to permit such Persons to conduct such business as is currently conducted or carried on without undue charge or expense, in each case free and clear of all Encumbrances, except for Permitted Encumbrances.

SECTION 4.16. Intellectual Property. Section 4.16(a) of the Disclosure Schedule sets forth a true and complete list of all Intellectual Property owned by the Company (the "Company Intellectual Property"). To the knowledge of the Company, (i) no person is engaging in any activity that infringes any Company Intellectual Property, and (ii) no claim has been asserted to the Company that the use of any Company Intellectual Property infringes the patents, trademarks, or copyrights of any third party. Except as would not have a Material Adverse Effect, with respect to each item of Company Intellectual Property, the Company or a Subsidiary is the owner of the entire right, title and interest in and to such Company Intellectual Property. Section 4.16(b) of the Disclosure Schedule sets forth a true and complete list of all material licenses of Intellectual Property to the Company from any third party, excluding licenses of Off-the-Shelf Software or "shrink-wrap" and "click-wrap" licenses. To the knowledge of the Company, the use of the Company Intellectual Property by the Company in connection with the operation of the Business as presently conducted does not infringe or misappropriate the Intellectual Property rights of any third party in any manner that would have a Material Adverse Effect.

SECTION 4.17. Brokers. Except for certain of the amounts to be set forth on the Closing Date Payment Schedule, no broker, finder, legal or financial adviser or consultant is entitled to any brokerage, finder's or other fee or commission in connection with the consummation of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

SECTION 4.18. Insurance. The Company and its Subsidiaries own or hold policies of insurance that provide coverage in the amounts and against the risks required to comply with applicable Law. With respect to each insurance policy owned or held by the Company or any of its Subsidiaries, except as, individually or in the aggregate, would not have a

Material Adverse Effect: (i) such policy is valid and binding on the Company or the Subsidiary of the Company party thereto and, to the knowledge of the Company as of the date of this Agreement, each other party thereto, and, except for any policy that has expired in accordance with its terms, is in full force and effect (and were in full force and effect during the periods of time such insurance policies were purported to be in effect) and all premiums due and payable thereon have been paid, (ii) none of the Company or any Subsidiary of the Company has received written notice of default under any such policy by the Company or any of its Subsidiaries and, to the knowledge of the Company as of the date of this Agreement, there is no default by any other party thereto, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder by the Company or any of its Subsidiaries or, to the knowledge of the Company as of the date of this Agreement, by any other party thereto and (iii) to the knowledge of the Company as of the date of this Agreement, no notice of cancellation or termination has been received other than in connection with ordinary renewals.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Guarantor, Parent and Purchaser, jointly and severally, represent and warrant to the Company as follows:

SECTION 5.01. Incorporation and Authority of Purchaser. Each of Guarantor, Parent and Purchaser are corporations duly incorporated, validly existing and in good standing under the laws of their respective jurisdictions of incorporation and have all necessary corporate power and authority to enter into this Agreement and the Definitive Agreements, to carry out their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Definitive Agreements by each of Guarantor, Parent and Purchaser, the performance by each of Guarantor, Parent and Purchaser of their respective obligations hereunder and thereunder and the consummation by Guarantor, Parent and Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of each of Guarantor, Parent and Purchaser. This Agreement and the Definitive Agreements have been duly executed and delivered by Guarantor, Parent and Purchaser, and, assuming due authorization, execution and delivery by the other parties hereto, constitutes legal, valid and binding obligations of Guarantor, Purchaser enforceable against Purchaser in accordance with their terms.

SECTION 5.02. No Conflict. Except as set forth in Section 5.02 of the Purchaser Disclosure Letter, the execution, delivery and performance of this Agreement and the Definitive Agreements by each of Guarantor, Parent and Purchaser do not and will not (a) violate or conflict with the Certificate of Incorporation or By-laws of any of Guarantor, Parent or Purchaser, (b) conflict with or violate any Law or Governmental Order applicable to any of Guarantor, Parent or Purchaser or (c) result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the

creation of any Encumbrance on any of the assets or properties of any of Guarantor, Parent or Purchaser pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument relating to such assets or properties to which any of Guarantor, Parent or Purchaser is a party or by which any of such assets or properties is bound or affected, except as would not, in the case of either (b) or (c) above, individually or in the aggregate, delay the consummation of the transactions contemplated by this Agreement or have a material adverse effect on the ability of any of Guarantor, Parent or Purchaser to consummate the transactions contemplated hereby.

SECTION 5.03. Consents and Approvals. No consent, approval, authorization, license, order or permit of, or declaration, filing or registration with, or notification to, any Governmental Entity, is required to be made or obtained by any of Guarantor, Parent or Purchaser or any of their respective Affiliates in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, except: (a) any applicable requirements of the ICCTA and the regulations of the STB and, if applicable, compliance with the HSR Act; (b) any applicable non-United States consents, approvals, authorizations, filings and notifications required under any applicable antitrust, competition or trade regulation Law; except where the failure to obtain such consents, approvals, authorizations, licenses, orders or permits, or to make such declarations, filings or registrations or notifications would not, (i) individually or in the aggregate, delay the consummation of the transactions contemplated hereby or thereby or (ii) have an adverse effect on the ability of any of Guarantor, Parent or Purchaser to consummate the transactions contemplated hereby or thereby and (c) as may be necessary as a result of any facts or circumstances relating solely to the Company.

SECTION 5.04. Absence of Litigation. No Action is pending or, to the knowledge of the General Counsel, Chief Executive Officer or the Chief Financial Officer of any of Guarantor, Parent or Purchaser, threatened, against any of Guarantor, Parent or Purchaser or any of the assets or properties of any of Guarantor, Parent or Purchaser that would, individually or in the aggregate, reasonably would be expected to prevent or delay the consummation of the transactions contemplated by this Agreement or have an adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

SECTION 5.05. Investment Purpose. Each of Parent and Purchaser is acquiring the Shares solely for the purpose of investment and not with a view to, or for offer or sale in connection with, any distribution thereof.

SECTION 5.06. Financing. Each of Parent and Purchaser will have at the Closing all funds necessary to consummate the transactions contemplated by this Agreement.

SECTION 5.07. Brokers. No broker, finder or investment banker other than Morgan Stanley & Co Incorporated and RBC Capital Markets is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any of Guarantor, Parent and Purchaser or any Person acting on their behalf.

ARTICLE VI

ADDITIONAL AGREEMENTS

SECTION 6.01. Conduct of Business Prior to the Closing. (a) Except as set forth in Section 6.01(a) of the Disclosure Schedule, or as permitted or required under this Agreement the Company agrees that it will from the date of this Agreement until the Closing, and shall cause each Subsidiary to, conduct its business in the ordinary course and consistent with past practice. Without limiting the generality of the foregoing, the Company shall, and shall cause each Subsidiary to, (i) use its commercially reasonable best efforts to (A) preserve intact its business organizations and the business organization of the Business, (B) keep available the services of the employees of the Company and each Subsidiary, (C) continue in full force and effect without material modification all existing policies or binders of insurance currently maintained in respect of the Company, each Subsidiary and the Business and (D) preserve its current relationships with its customers, suppliers and other persons with which it has significant business relationships; and (ii) exercise, but only after notice to Purchaser and receipt of Purchaser's prior written approval, any rights of renewal pursuant to the terms of any of the leases set forth in Section of the Disclosure Schedule which by their terms would otherwise expire.

(b) The Company agrees that, except as described in Section 6.01(b) of the Disclosure Schedule or except as permitted or required pursuant to the terms of this Agreement, from the date hereof until the Closing, without the prior written consent of Purchaser, neither the Company nor any Subsidiary will:

(i) permit or allow any of its assets or properties (whether tangible or intangible) to be subjected to any Encumbrance, other than Permitted Encumbrances and, other than Encumbrances that will be released at or prior to the Closing, other than in the ordinary course of business consistent with past practice;

(ii) make any loan to, guarantee any Indebtedness of or otherwise create, incur or assume, or agree to create, incur or assume, any Indebtedness on behalf of any Person, other than loans between the Company and any Subsidiary or between Subsidiaries;

(iii) enter into any transaction with any Equityholder or any Affiliate of any Equityholder or redeem any of the capital stock or declare, make or pay any dividends or distributions (whether in cash, securities or other property) to any Equityholder or otherwise, except for redemptions, dividends or distributions (whether in cash, securities or other property) by any Subsidiary solely to the Company or to another Subsidiary;

(iv) make any changes in the customary methods of operations of the Company or any Subsidiary, including, without limitation, practices and policies relating to purchasing, inventories, marketing, selling and pricing, other than in the ordinary course of business consistent with past practice;

(v) merge with, enter into a consolidation with, or acquire an interest, in any Person or acquire a substantial portion of the assets or business of any Person or any division or line of business thereof, or otherwise acquire any assets or acquire or condemn real property in connection with the PRB Expansion in an amount in excess of that set forth in Section 6.01(b)(v) of the Disclosure Schedule;

(vi) make any capital or other expenditure or commitment for any capital or other expenditure except as set forth in the 2007 Budgets;

(vii) sell, transfer, lease, sublease, license or otherwise dispose of any properties or assets, real, personal or mixed (including, without limitation, leasehold interests and intangible assets), other than in the ordinary course of business consistent with past practice;

(viii) issue or sell any capital stock, notes, bonds or other securities, or any option, warrant or other right to acquire the same, of, or any other interest in, the Company or any Subsidiary;

(ix) enter into, renew, extend, or renegotiate any agreement with any of its directors, officers, employees, labor organizations, or Equityholder (or with any relative, beneficiary, spouse or Affiliate of such Person) or take any action that has the effect of creating or triggering, any entitlement to benefits under the terms of any such agreement;

(x) (A) grant any increase, or announce any increase, in the wages, salaries, compensation, bonuses, incentives, pension or other benefits payable by the Company or any Subsidiary to any of its employees, including, without limitation, any increase or change pursuant to any Benefit Plan or (B) establish or increase or promise to increase any benefits under any Benefit Plan, except as required by Law or any collective bargaining agreement;

(xi) make any change in any method of accounting or accounting practice or policy used by the Company or any Subsidiary, other than such changes required by Law or GAAP;

(xii) allow any permit or Environmental Permit that was issued or relates to the Company or any Subsidiary or otherwise relates to any asset to lapse or terminate or fail to renew any such permit or Environmental Permit or any insurance policy that is scheduled to terminate or expire prior to the Closing, other than Encumbrances that will be released at or prior to the Closing, in each case other than in the ordinary course of business consistent with past practice;

(xiii) create, incur, guarantee or assume any Indebtedness other than under the Revolver;

(xiv) amend or restate the Certificate of Incorporation or the By-laws of the Company or any Subsidiary;

(xv) terminate, discontinue, close or dispose of any facility or other business operation, or lay off any employees (other than layoffs of less than 70 employees in any six-month period in the ordinary course of business consistent with past practice) or implement any early retirement or separation plan (other than any early retirement or separation plan or action already announced or in effect as of the date of this Agreement) or announce any such action or plan for the future;

(xvi) other than in the ordinary course of business consistent with past practice, make any express or deemed election or settle or compromise any liability, with respect to material Taxes of the Company or any Subsidiary;

(xvii) amend or otherwise modify the Warrant Purchase Agreement, the Termination Agreement or any Release Agreement;

(xviii) agree, whether in writing or otherwise, to take any of the actions specified in this Section 6.01 or grant any options to purchase, rights of first refusal, rights of first offer or any other similar rights or commitments with respect to any of the actions specified in this Section 6.01, except as expressly contemplated by this Agreement;

(xix) enter into any transaction, agreement or term sheet with any utility or energy company regarding a coal transportation contract or agreement related to the PRB Expansion;

(xx) enter into any contract for a term of more than one year with any customer; or

(xxi) agree, whether in writing or otherwise, to take any action or enter into any agreement which would have been required to be set forth on Section 4.13 of the Disclosure Schedule if in effect on the date hereof or otherwise enter into any other material transaction.

(c) Section 280G. To the extent practicable and as would be effective under applicable Law, prior to the Effective Time, the Company and the Stockholders' Representative shall, and shall cause each Subsidiary to, use commercially reasonable best efforts to take any and all action as shall be necessary to obtain the consent of any Affiliates, officers, employees or directors, so that amounts payable by the Company on account of the transactions contemplated by this Agreement, which otherwise would be "parachute payments" under Sections 280G(b)(2) of 4999 of the Internal Revenue Code are exempt from treatment as parachute payments pursuant to Section 280G(b)(5) of the Internal Revenue Code.

SECTION 6.02. Access to Information. (a) From the date hereof until the Closing, upon reasonable notice, the Company shall (i) afford the officers, employees and authorized agents and representatives of Purchaser reasonable access, during normal business hours, to the offices, properties, books and records of the Company and the Subsidiaries and (ii) furnish to the officers, employees and authorized agents and representatives of Purchaser such additional financial and operating data and other information regarding the assets, properties, goodwill and business of the Company and the Subsidiaries as Purchaser may from time to time

reasonably request in order to assist Purchaser in fulfilling its obligations under this Agreement and facilitating the consummation of the transactions contemplated hereby, subject to a customary confidentiality agreement to be entered into between the Company and Purchaser; provided, however, that Purchaser shall not unreasonably interfere with any of the businesses or operations of the Company or any Subsidiary.

(b) Parent and Purchaser agree that they shall preserve and keep all Books and Records relating to the business or operations of the Company and the Subsidiaries on or before the Closing in Purchaser's possession for a period of at least eight years from the Closing.

SECTION 6.03. Confidentiality. Subject to this Section 6.03, Guarantor, Parent, Purchaser and the Company hereby agree to keep this Agreement, including but not limited to, any amounts to be paid pursuant hereto, confidential. Guarantor, the Company and Parent shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or any of the transactions contemplated by the Definitive Agreements and shall not issue any such press release or make any such public statement without the prior consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that a party may, without the prior consent of the other party, issue such press release or make such public statement as may be required by Law (including pursuant to any application to be filed with the STB by Parent), the applicable rules of any stock exchange or any listing agreement with any stock exchange. In the event that Purchaser, Parent or the Company, or any of its or their Controlled Affiliates or advisors, otherwise are requested to disclose any other information concerning the Company which has not been previously disclosed publicly, then Parent, Purchaser, the Company or the Surviving Corporation and any such Controlled Affiliates and advisors agree to use commercially reasonable best efforts to provide the Company with prompt notice of such request or requirement in order to enable the Company to (i) seek an appropriate protective order or other remedy (and if such an order is sought, the Company, the Surviving Corporation, Parent or Purchaser, as applicable, will provide such cooperation as is reasonably requested), (ii) consult with Purchaser or Parent, as applicable, with respect to the taking of steps to resist or narrow the scope of such request or legal process, or (iii) waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or compliance, in whole or in part, with the terms of this agreement is waived, the party making such request will disclose only that portion of the information requested that such party is advised in writing by counsel is legally required to be disclosed and will use commercially reasonable best efforts, as applicable, to ensure that all such information so disclosed will be accorded confidential treatment. Notwithstanding the foregoing, the Company, the Stockholders' Representative, Parent and Purchaser may disclose to their respective Affiliates, and their Affiliates respective managers, partners, directors, officers, employees, agents and advisors any information which is otherwise restricted under this Section 6.03.

SECTION 6.04. Regulatory and Other Authorizations; Consents. (a) The Company, Parent and Purchaser shall each use its commercially reasonable best efforts to (i) consummate and make effective the Merger and the other transactions contemplated by this Agreement, (ii) obtain promptly all authorizations, consents, orders and approvals of and to make all filings with and to give all notices to all Governmental Entities and officials required to consummate the Merger and the other transactions contemplated by this Agreement; provided,

however, Parent and Purchaser shall use their commercially reasonable best efforts to prepare, and obtain the approval of the STB with respect to, the Voting Trust Agreement, (iii) cooperate fully with the other party in promptly seeking to obtain all such authorizations, consents, orders and approvals and to make such filings, (iv) provide such other information to any Governmental Entity as such Governmental Entity may reasonably request in connection therewith. Each of Parent, Purchaser and the Company agrees to make promptly, but in no event later than within 20 Business Days of the Date of this Agreement, and any required filings in connection with the Merger pursuant to the ICCTA and to the STB and, to the extent required by Law, file contemporaneously with the Federal Trade Commission and the Department of Justice, Antitrust Division, copies of all documents, application forms, and all written submissions of any type whatsoever provided to the STB. Each of Parent, Purchaser and the Company hereby agrees to (A) make, if applicable, any subsequent record filings with or presentations to the STB in connection with seeking any STB approval, exemption or other authorization necessary to permit Purchaser lawfully to exercise Control over the Company's Business and, to the extent required by Law, submit contemporaneously to the Federal Trade Commission and the Department of Justice Antitrust Division, copies of all such filings and presentations; (B) prosecute any such filings and other presentations with diligence, (C) oppose any objections to, appeals from or petitions to reconsider or reopen any such STB approval by persons not party to this Agreement, and (D) take all such further action as in Purchaser's judgment reasonably may facilitate obtaining any necessary final order or orders of the STB approving, exempting or otherwise authorizing such Control consistent with this Agreement. Purchaser will pay all fees or make all other payments to any Governmental Entity in order to obtain any such authorizations, consents, orders or approvals.

(b) Without limiting the generality of Parent's and Purchaser's undertakings pursuant to Section 6.04(a), Parent and Purchaser shall:

(i) use their commercially reasonable best efforts to take promptly any and all steps necessary to eliminate any objections or concerns asserted with respect to the transactions contemplated hereby by any Governmental Entity with jurisdiction over the enforcement of any Laws applicable to Purchaser's acquisition of the Shares so as to enable the parties hereto to consummate the Merger and the other transactions contemplated hereby prior to the Termination Date, including but not limited to: entering into negotiations, providing information, making proposals, entering into and performing agreements or submitting to judicial or administrative orders, or selling or otherwise disposing of, or holding separate (through the establishment of a trust or otherwise), particular assets or categories of assets, or businesses, of Purchaser or any of its subsidiaries or Affiliates or of the Company's assets or businesses to be acquired by Purchaser pursuant hereto;

(ii) use their commercially reasonable best efforts to take promptly, in the event that a permanent or preliminary injunction or order has been issued in a judicial or administrative proceeding brought under any Law by any Governmental Entity or any other party that would make consummation of the transactions contemplated at the Closing in accordance with the terms of this Agreement unlawful or that would prevent or delay such consummation prior to the Termination Date, any and all reasonable steps necessary to vacate, modify or suspend such injunction or order so as to permit such

consummation prior to the Termination Date, including, without limitation, entering into a voting trust arrangement and taking the steps contemplated by Section 6.04(b)(i); and

(iii) use their commercially reasonable best efforts to take promptly all other actions and do all other things necessary and proper to avoid or eliminate each and every impediment under any Law that may be asserted by any Governmental Entity or any other party to the consummation of the transactions contemplated at the Closing in accordance with the terms of this Agreement;

provided, however, that, notwithstanding anything set forth herein to the contrary, in no event shall Parent or Purchaser be obligated to agree, as a condition for resolving any such matter, (i) to dispose of or hold separate any of its properties or other assets, or the properties or other assets of the Company and its Subsidiaries after the Effective Time, (ii) to grant to any other carrier trackage rights, haulage rights or other commercial access to any rail lines of Parent, the Company, or their respective Affiliates or (iii) to subject itself to any material restriction on the operation of its business or the business of the Company and its Subsidiaries after the Effective Time.

(c) Prior to the Closing, each of Parent, Purchaser and the Company shall cooperate fully with one another in keeping the other party reasonably informed, including by providing the other party a copy of any communication it or any of its Affiliates receives from any Governmental Entity relating to the matters set forth in subsection (a) above to the extent related to the Merger. Parent, Purchaser and the Company will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other party may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods, including, if applicable, under the rules and regulations of the STB and, if applicable, under the HSR Act. Prior to the Closing, none of the parties to this Agreement shall agree to participate in any meeting with any Governmental Entity in respect of any filings, investigation (including any settlement of the investigation), litigation or other inquiry made in connection with the Merger, unless it consults with the other parties in advance and, to the extent permitted by such Governmental Entity, gives the other parties the opportunity to attend and participate at such meeting. Prior to the Closing, the parties to this Agreement will provide each other with copies of all correspondence, filings or communications between them or any of their representatives, on the one hand, and any Governmental Entity or members of its staff, on the other hand, prior to the Closing with respect to this Agreement and the transactions contemplated by this Agreement; provided, however, that materials may be redacted (x) to remove references concerning the valuation of the Business, (y) as necessary to comply with contractual arrangements, and (z) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns.

SECTION 6.05. Investigation. (a) Parent and Purchaser acknowledge and agree that (i) they have made their own inquiry and investigation into, and, based thereon, have formed an independent judgment concerning, the Company and the Business, (ii) they have been furnished with or given adequate access to such information about the Company, the Subsidiaries and the Business as it has requested and (iii) other than the representations and warranties made in Article III, none of the Company, its Affiliates, or any of their respective officers, directors, employees or representatives make or have made any representation or warranty, express or

implied, at law or in equity, with respect to the Company, the Subsidiaries, the Shares or the Business, including as to (A) merchantability or fitness for any particular use or purpose, (B) the operation of the Business by Purchaser after the Closing in any manner other than as used and operated by the Company and the Subsidiaries, (C) the probable success or profitability of the Business after the Closing or (D) the ability of the Company to complete the PRB Expansion.

(b) Certain information set forth in the Disclosure Schedule is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgement that such information is required to be disclosed in connection with the representations and warranties made by the Company in this Agreement, nor shall such information be deemed to establish a standard of materiality.

SECTION 6.06. Further Action. (a) Subject to the terms and conditions herein provided, each of the parties hereto covenants and agrees to use its commercially reasonable best efforts to deliver or cause to be delivered such documents and other papers and to take or cause to be taken such further actions as may be necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated hereby.

(b) The Company shall use its commercially reasonable best efforts to receive all consents or waivers necessary in connection with the Stockholders' Agreement in order to consummate and make effective the transactions contemplated hereby.

SECTION 6.07. Directors' and Officers' Indemnification. (a) For a period of six years from the Effective Time, the Certificate of Incorporation and By-laws of the Surviving Corporation shall contain provisions no less favorable with respect to indemnification than are set forth in the Certificate of Incorporation and By-laws of the Company, which provisions shall not be amended, repealed or otherwise modified for a period of six years from the Effective Time in any manner that would affect adversely the rights thereunder of individuals who, at or prior to the Effective Time, were directors or officers of the Company or any of its Subsidiaries, unless such modification shall be required by law and then only to the minimum extent required by law.

(b) After the Effective Time, the Surviving Corporation shall, to the fullest extent permitted under applicable law, indemnify and hold harmless, each present and former director and officer of the Company and each Subsidiary (collectively, the "Indemnified Parties") against all costs and expenses (including attorneys' fees), judgments, fines, losses, claims, damages, liabilities and settlement amounts paid in connection with any claim, action, suit, proceeding or investigation (whether arising before or after the Effective Time), whether civil, criminal, administrative or investigative, arising out of or pertaining to any action or omission in their capacity as an officer or director, whether occurring before or after the Effective Time, for a period of six years after the date hereof to the same extent as provided in the Certificate of Incorporation of the Company or any other applicable contract or agreement in effect on the date hereof. In the event of any such claim, action, suit, proceeding or investigation, (i) the Surviving Corporation shall pay the reasonable fees and expenses of counsel selected by the Indemnified Parties, which counsel shall be reasonably satisfactory to the Surviving Corporation, promptly after statements therefor are received and (ii) the Surviving

Corporation shall cooperate in the defense of any such matter; provided, however, that, in the event that any claim for indemnification is asserted or made within such six year period, all rights to indemnification in respect of such claim shall continue until the disposition of such claim.

(c) Parent shall cause the Surviving Corporation to perform all of the obligations of the Surviving Corporation under this Section 6.07.

SECTION 6.08. Stockholders' Representative Appointment. (a) On or prior to the Closing Date, the Board of Directors of the Company shall designate a Person (the "Stockholders' Representative") to serve as the Stockholders' Representative and the Stockholders' Representative shall execute and deliver to the Company, Purchaser and Parent a signature page to this Agreement, which shall constitute its acknowledgment and agreement that it is bound by the terms of this Agreement applicable to the Stockholders' Representative and thereafter the Stockholders' Representative shall be deemed a party hereto. The Stockholders' Representative shall be the initial agent, proxy and attorney-in-fact for each Equityholder to take all actions required or permitted under the Definitive Agreements (including full power and authority to act on such Equityholder's behalf under this Agreement). Without limiting the generality of the foregoing, but subject to the immediately preceding proviso and to Section 9.09, the Stockholders' Representative will be authorized to:

(i) in connection with the Closing, execute and receive all documents, instruments, certificates, statements and agreements on behalf of and in the name of the Equityholders necessary to effectuate the Closing and consummate the transactions contemplated by the Definitive Agreements;

(ii) take all actions on behalf of the Equityholders in connection with any claims made hereunder to defend or settle such claims and to make or receive and disburse payments in respect of such claims;

(iii) take all actions on behalf of the Equityholders in connection with the Escrow Account, the Gross-up Escrow Account and the Closing Date Payment Schedule and all distributions in connection with, and all adjustments and payments described in, Sections 3.04 and 3.05 of the Agreement; and

(iv) take all other actions to be taken by or on behalf of the Equityholders and exercise any and all rights which the Equityholders are permitted or required to do or exercise under the Definitive Agreements.

(b) Except as otherwise agreed by the Stockholders' Representative and the Equityholders, (i) the Stockholders' Representative will not be liable to any Equityholders for any action taken by it, or its failure to take any action, pursuant to this Agreement in good faith and without gross negligence or willful misconduct, and the Equityholders shall jointly and severally indemnify the Stockholders' Representative from any and all damages, dues, penalties, fines, costs, losses, and expenses ("Stockholders' Representative's Losses") arising out of its serving as the Stockholders' Representative hereunder except to the extent the Stockholders' Representative acts, or fails to act, other than in good faith or with gross negligence or willful

misconduct; provided, however, with respect to any Stockholders' Representative's Losses for which an Equityholder (a "Paying Equityholder") makes a payment to the Stockholders' Representative, the Paying Equityholder shall be indemnified and held harmless by each other Equityholder to the extent of the amount by which the Paying Equityholder's payment exceeds its Equityholder's Percentage of the Stockholders' Representative's Losses; (ii) each Equityholder shall pay to the Stockholders' Representative, promptly upon request and in any event within ten (10) days of such request, such Equityholder's Equityholder's Percentage of any amounts paid, or required to be paid, by the Stockholders' Representative on behalf of such Equityholder and agrees to pay its Equityholder's Percentage of any and all costs and expenses (including counsel and legal fees and expenses) incurred by the Stockholders' Representative in connection with the protection, defense, enforcement or other expense of any rights under this Agreement; and (iii) the Stockholders' Representative shall have a right of set off against any Milestone Payments with respect to its reasonable costs and expenses. Except as otherwise set forth in this Agreement or as required by Law, any and all payments made by any Equityholder under this Section 6.08 shall be made free and clear of any present or future taxes, deductions, charges or withholdings and all liabilities with respect thereto. The Stockholders' Representative shall serve in such capacity solely for purposes of administrative convenience, and shall not be deemed personally liable in such capacity for any of the obligations of the Equityholders hereunder, and Parent and Purchaser agree that they shall not look to the personal or corporate assets of the Stockholders' Representative, acting in such capacity, for the satisfaction of any obligations to be performed by the Equityholders hereunder.

(c) Any Person or Persons constituting the Stockholders' Representative may resign at any time or be removed by the vote or written consent of the Equityholders who collectively hold more than 50% (or such other percentage as may be agreed among the Equityholders from time to time) of the Equityholder's Percentages (the "Required Equityholders") provided however, that such resignation or removal shall not be effective until such time as the Person or Persons succeeding such individual shall have been elected. In the event of the death, resignation or removal of any of the Person or Persons who constitute the Stockholders' Representative, a successor shall be elected (and may be removed and replaced) by the remaining Person or Persons who constitute the Stockholders' Representative; provided that if no such Person or Persons remain, such successor shall be elected (and may be removed and replaced) (i) at any time prior to the Closing, by the Company and (ii) at any time after the Closing, by the vote or written consent of the Required Equityholders at such time, such election (or removal and replacement) to become effective upon the written acceptance thereof by such new Person or Persons. The election described in the preceding clause (ii) shall be conducted by the Equityholder who holds the greatest Equityholder's Percentage at such time who is willing to conduct the election, and shall be paid for by the Equityholders. Upon any such election or removal, the Company or the Required Equityholders, as appropriate, shall deliver to Parent and, if applicable, the Surviving Corporation a certificate identifying such newly elected Stockholders' Representative and Parent, the Surviving Corporation, the Escrow Agent, the Gross-up Escrow Agent and the Paying Agent and any other Person shall be entitled to rely on such certificate. The Stockholders' Representative shall, at the expense of the Equityholders, be entitled to engage such counsel, experts and other agents and consultants as he or she shall deem necessary in connection with exercising his or her powers and performing his or her function hereunder.

(d) All decisions and actions by the Stockholders' Representative will be binding upon each Equityholder and no Equityholder will have the right to object, dissent, protest or otherwise contest the same. Parent and Purchaser will be able to rely conclusively on the written instructions of the Stockholders' Representative as to such decisions and actions taken by the Stockholders' Representative hereunder.

SECTION 6.09. Preserve Accuracy of Representations and Warranties;
Notification of Certain Matters. Each party hereto shall refrain from taking any action which would render any representation or warranty contained in Article IV or V inaccurate as of the Closing Date. Each party shall promptly notify the other of (i) any event or matter that would reasonably be expected to cause any of its representations or warranties to be untrue in any material respect or (ii) any action, suit or proceeding that shall be instituted or threatened against such party to restrain, prohibit or otherwise challenge the legality of any transaction contemplated by this Agreement. During the period prior to the Closing Date, the Company will notify Purchaser of (i) any Material Adverse Effect, (ii) any lawsuit, claim, proceeding or investigation that is threatened, brought, asserted or commenced against the Company or any Subsidiary which would have been listed in Section 4.10 of the Disclosure Schedule if such lawsuit, claim, proceeding or investigation had arisen prior to the date hereof, (iii) any notice or other communication from any third Person alleging that the consent of such third Person is or may be required in connection with the transactions contemplated by this Agreement, and (iv) any material default under any material Contract or event which, with notice or lapse of time or both, would become such a default on or prior to the Closing Date and of which the Company has knowledge.

SECTION 6.10. Acquisition Proposals. Neither the Company nor any Subsidiary will, and neither the Company nor any Subsidiary will authorize or permit any officer, director or employee of the Company or any Subsidiary or any Affiliate of the Company or any Subsidiary or authorize any investment banker, attorney, accountant or other representative retained by the Company or any Subsidiary or any Affiliate of the Company or any Subsidiary to, directly or indirectly, solicit or encourage, or furnish information with respect to the Company or any Subsidiary, or engage in any discussions with any Person in connection with, any proposal for the acquisition of any portion of the capital stock or assets or properties of the Company or any Subsidiary, other than as contemplated by this Agreement. The Company and each Subsidiary will promptly cease or cause to be terminated any existing activities or discussions with any Person (other than Parent, Purchaser or their Affiliates) with respect to any of the foregoing and will promptly request the return of any confidential information provided to any Person in connection with a prospective acquisition of the capital stock, assets or properties of the Company or any Subsidiary.

SECTION 6.11. Indemnity.

(a) To the extent any Equityholders have not executed and delivered a Release and/or a Termination Agreement to which such Non-Releasing Equityholders are to be a party (each, a "Non-Releasing Equityholder") before the Construction Milestone Payment is due and payable under Section 3.05, an amount equal to two times the aggregate Per Share Merger Consideration which such Non-Releasing Equityholders were entitled to receive at the Closing

shall be deposited into the Escrow Account (the "Non-Releasing Equityholder Indemnity Amount").

(b) Parent, Purchaser, Surviving Corporation and their Affiliates shall be indemnified and held harmless from the Non-Releasing Equityholder Indemnity Amount from and against any and all losses, damages, costs and expenses (including reasonable attorneys fees) (a "Loss") arising out of or resulting from any written claim made by a Non-Releasing Equityholder, up to the amount of the Non-Releasing Equityholder Indemnity Amount, to the extent such claim arises out of the Merger or this Agreement and is solely related to such Non-Releasing Equityholder's status as a former Equityholder of the Company including, without limitation, claims made with respect to the following: (a) the capital structure of the Company and the Subsidiaries, including the number of outstanding shares, options, warrants, share units, (b) the issuance of any capital stock, warrants, share units or options by the Company or the Subsidiaries, (c) the violation of any covenants granting preemptive or similar rights with respect to the capital stock of the Company or the Subsidiaries, (d) all claims with respect to such Non-Releasing Equityholder's Preferred Stock, Share Units, and/or Company Options, (e) any action of the Board of Directors or any officer of the Company entering into the Merger Agreement, (f) any alleged breach by any director of the Company of his or her fiduciary duties to the Company or (g) the determination of the Equityholder's Percentage, the Closing Date Payment Schedule or Section 4.03 of the Disclosure Schedule (a "Claim"). Parent shall give the Stockholders' Representative prompt notice of any Claim, and in any event within 3 Business Days, after receipt. The Stockholders' Representative shall be entitled to participate in the defense of any Claim and neither Parent and its Affiliates nor the Stockholders' Representative shall settle any Claim without the consent of Parent or its Affiliates, on the one hand, or the Stockholders' Representative, on the other hand, as applicable which shall not be unreasonably withheld or delayed. If the Stockholders' Representative acknowledges in writing its obligation to indemnify Parent against any Losses that may result from such Claim, the Stockholders' Representative shall be entitled to assume the defense of such Claim at its own cost. In any case, the Stockholders' Representative and Parent and its Affiliates shall cooperate in the defense of any such Claim.

(c) Parent, Purchaser, Surviving Corporation and their Affiliates shall be indemnified and held harmless from any and all Losses arising out of the transactions (the "Koch Transactions") which are the subject of the Track Maintenance Agreement, dated as of October 15, 2005, by and among DM&E, IC&E and KM Strategic Investments, LLC, as amended through the date of this Agreement (the "Track Maintenance Agreement"), including, without limitation, any amount that KM Strategic Investments, LLC or its permitted successors or assigns draws down from the Letter of Credit, or a similar letter of credit established by the Surviving Corporation or Parent to replace the Letter of Credit (provided such replacement letter of credit contains a similar draw amount and is implemented in accordance with the terms of the Track Maintenance Agreement), on or prior to the expiration of DM&E's and IC&E's indemnification obligations thereunder (the "LC Amount"); provided, however, the foregoing indemnification obligations shall terminate immediately if the Surviving Corporation or any of its Affiliates enters into any transaction similar to the Koch Transaction with any Affiliate of KM Strategic Investments Inc. or Koch Industries Inc.

SECTION 6.12. Guaranty. Guarantor irrevocably and unconditionally guarantees to the Stockholders' Representative, Equityholders and the Company (a) the due and punctual payment of each payment required to be made by Parent or Purchaser pursuant to Section 2.02(b) or Article III hereof, all of which payments, whether made by the Guarantor, Parent or Purchaser, shall be made from an entity formed under the laws of a state within the United States of America, and (b) the due and punctual performance, observance of, and compliance with, all covenants, agreements and obligations of Parent and Purchaser in this Agreement, as the foregoing may be amended from time to time (all obligations referred to in the proceeding clauses (a) and (b) being collectively referred therein as the "Guaranteed Obligations"). This is a guaranty of full and punctual performance and payment and not merely a guaranty of collection, is in no way conditional or contingent and the Guarantor is liable as a primary obligor. If any of the Guaranteed Obligations are not punctually performed or paid when due the Guarantor shall immediately perform or cause the performance of the Guaranteed Obligations that are required and performable. The Guarantor's obligations under this Section 6.12 shall continue to be in effective or be reinstated, as the case may be, if any payment from any source of the Guaranteed Obligations must be refunded for any reason including any bankruptcy proceeding.

SECTION 6.13. Consents; Reports.

(a) If requested by Purchaser or Parent, the Company shall, from the date of this Agreement through the Closing Date, (i) seek the consents, in form and substance reasonably satisfactory to Purchaser, to the transactions contemplated hereby from the parties to the contracts identified on Section 6.13 of the Disclosure Schedule (the "Applicable Contracts") or (ii) take such steps as are necessary under the terms of the Applicable Contracts to terminate any such Applicable Contract. If the Company is unable to obtain the consent or terminate any Applicable Contract as requested by Purchaser or Parent prior to the date on which the Closing Date would have occurred, either Purchaser or the Company shall be entitled to make a one-time election to delay the Closing Date for up to 15 days from such date (the "Extended Consent Closing Date") and if such delayed Closing Date would occur on or after the Termination Date, the Termination Date shall be deemed to be the first Business Day after the Extended Consent Closing Date. Notwithstanding the fact that each Applicable Contract may not have been terminated or the consent described in clause (i) above obtained as Parent or Purchaser has requested by the Extended Consent Closing Date, the Closing shall occur on the Extended Consent Closing Date, or if such day is not a Business Day then on the Business Day next succeeding the Extended Consent Closing Date, provided the other conditions set forth in Sections 7.01 and 7.02 and the provisions set forth in clause (b) below have been satisfied or waived. If this Agreement is terminated by the Company, Parent or Purchaser pursuant to Section 8.01, Parent and Purchaser shall indemnify and hold harmless the Company for any and all Losses of the Company arising from the Company's termination of any Applicable Contract at the request of Parent or Purchaser.

(b) Prior to the Closing, the Company shall use its commercially reasonable best efforts to obtain each of (i) the FIRPTA Report and (ii) the 280G Report (collectively, the "Expert Reports"). If the Company is unable to obtain any Expert Report prior to the date on which the Closing Date would have occurred, either Purchaser or the Company shall be entitled to make a one-time election to delay the Closing Date for up to 15 days from such date (the

"Extended Report Closing Date") and if such delayed Closing Date would occur on or after the Termination Date, the Termination Date shall be deemed to be the first Business Day after the Extended Report Closing Date. Notwithstanding the fact that each Expert Report may not have been obtained by the Extended Report Closing Date, the Closing shall occur on the Extended Report Closing Date, or if such day is not a Business Day then on the Business Day next succeeding the Extended Report Closing Date, provided the other conditions set forth in Sections 7.01 and 7.02 and the provisions set forth in clause (a) above have been satisfied or waived.

SECTION 6.14. Gross-Up Escrow Account. (a) If at any time amounts are distributed from the Gross-Up Escrow Account to the Stockholders' Representative, the Stockholders' Representative shall distribute such amounts to the Equityholders according to their respective Equityholder's Percentages or as otherwise agreed among the Equityholders and the Stockholders' Representative.

(b) The parties to the Gross-Up Agreement shall amend and modify the Gross-Up Agreement to the extent reasonably necessary to reflect the principles set forth on Schedule 6.14 of the Disclosure Schedule; provided, however, that if the Gross-Up Agreement as so amended and modified does not in Parent's good faith judgment reasonably reflect the principles set forth on Schedule 6.14 of the Disclosure Schedule, the parties to the Gross-Up Agreement shall amend and modify the Gross-Up Agreement as reasonably directed by Parent to reflect the principles set forth on Schedule 6.14 of the Disclosure Schedule and to retain the economic intent of the Gross Up Agreement as between Kevin Schieffer and the Equityholders.

ARTICLE VII

CONDITIONS TO CLOSING

SECTION 7.01. Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver, at or prior to the Closing, of each of the following conditions:

(a) Representations and Warranties; Covenants. (i) Each of the representations and warranties of the Parent and Purchaser contained in this Agreement (A) that are not qualified as to "materiality" shall be true and correct in all material respects as of the Closing and (B) that are qualified as to "materiality" shall be true and correct in all respects as of the Closing, except to the extent such representations and warranties are made as of another date, in which case such representations and warranties shall be true and correct in all material respects or true and correct in all respects, as the case may be, as of such other date, and (ii) Parent and Purchaser shall have performed and complied in all material respects with all of their respective covenants and agreements required by this Agreement to be performed or complied with by them prior to or at the Closing and (iii) the Company shall have received a certificate of Purchaser as to the matters set forth in clauses (i) and (ii) above signed by a duly authorized officer of Purchaser;

(b) Payments. Parent or Purchaser shall have made the payments to the Company described in Section 2.02(b).

(c) No Order. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise prohibiting consummation of such transactions. No Action shall have been instituted prior to the Closing by any Governmental Entity relating to this Agreement or any of the transactions contemplated hereby, the result of which would prevent or make illegal the consummation of any such transactions.

(d) Approvals. The STB shall have approved the Voting Trust and the Voting Trust Agreement pursuant to which the Shares shall be placed into an irrevocable voting trust as of the Effective Time pending final STB approval or exemption, as the case may be.

SECTION 7.02. Conditions to Obligations of Parent and Purchaser. The obligations of Parent and Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver, at or prior to the Closing, of each of the following conditions:

(a) Representations and Warranties; Covenants. (i)(A) Except with respect to the representations and warranties addressed in clauses (B) and (C) below, each of the representations and warranties of the Company contained in this Agreement without giving effect to any "materiality" or "Material Adverse Effect" qualifiers contained therein shall be true and correct as of the Closing Date (other than such representations and warranties that are made as of another date, in which case such representations and warranties shall be true and correct as of such other date), except where any failure of such representations and warranties to be so true and correct, individually or in the aggregate, has resulted in, or is reasonably expected to result in, (y) a reduction in operating income in 2007 or 2008 as compared to the 2007 Budget in an amount equal to or greater than \$10,000,000 or (z) a reduction of \$50,000,000 or more in the net worth of the Company, determined in accordance with GAAP, consistently applied; (B) the representations and warranties of the Company set forth in Section 4.01 shall be true and correct as of the Closing; and (C) the representations and warranties of the Company set forth in Section 4.06(b) shall be true and correct; (ii) the Company shall have performed and complied in all material respects with all of its covenants and agreements required by this Agreement to be performed or complied with by it prior to or at the Closing; and (iii) Purchaser shall have received a certificate of the Company as to the matters set forth in clauses (i) and (ii) above signed by a duly authorized officer of the Company.

(b) No Order. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise prohibiting consummation of such transactions and no Action shall have been instituted or threatened at or prior to the Closing by any Governmental Entity, relating to this Agreement or any of the transactions contemplated hereby, the result of which would prevent or make illegal the consummation of any such transactions; provided, however, that prior to asserting the failure of the condition set forth in this Section 7.02(b) to be satisfied, Parent and Purchaser must have complied with their obligations under Section 6.04.

(b) Approvals. The STB shall have approved the Voting Trust and the Voting Trust Agreement pursuant to which the Shares shall be placed into an irrevocable voting trust as of the Effective Time pending final STB approval or exemption, as the case may be.

(c) Agreements. (i) One-hundred percent of the members of the Company's Board of Directors, and the Equityholders they represent and their respective Controlled Affiliates, (ii) one-hundred percent of the employees of the Company to whom Bonus Shares have been granted and (iii) fifty percent of the remaining Equityholders (other than the members of the Company's Board of Directors (and the Equityholders they represent and their respective Controlled Affiliates) and the employees of the Company to whom Bonus Shares have been granted), in each case shall have executed and delivered each of the Releases and/or the Termination Agreement to which such member and such employee is to be a party.

(d) No Material Adverse Effect. Between the date hereof and the Closing Date, there shall have been no Material Adverse Effect.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

SECTION 8.01. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the Company, Parent or Purchaser if the Effective Time shall not have occurred by October 31, 2007 (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 8.01(a) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date, including Parent's or Purchaser's failure to fulfill its obligations under Section 6.04;

(b) by the mutual written consent of Parent, Purchaser and the Company;

(c) by the Company, Parent or Purchaser if any Governmental Entity with jurisdiction over such matters shall have issued a Governmental Order restraining, enjoining or otherwise prohibiting any of the transactions contemplated by Article II hereof, and such order, decree, ruling or other action shall have become final and unappealable; provided, however, that prior to asserting the failure of the condition set forth in this Section 8.01(c) to be satisfied, Parent and Purchaser must have complied with their obligations under Section 6.04;

(d) by the Company if a failure to perform any covenant or agreement on the part of Parent or Purchaser set forth in this Agreement (including an obligation to consummate the Closing) shall have occurred that would, if occurring or continuing on the Closing Date, cause the conditions set forth in Sections 7.01(a) or (b) not to be satisfied, and such condition is not cured, or is incapable of being cured, within 20 days (but not later than the Termination Date) of receipt of written notice by the Company to Purchaser of such breach or failure provided that the Company shall not have the right to terminate this Agreement pursuant to this

Section 8.01(d) if the Company is then in material breach of any of its representations, warranties, covenants or agreements hereunder; or

(e) by Purchaser if a failure to perform any covenant or agreement on the part of the Company set forth in this Agreement (including an obligation to consummate the Closing) shall have occurred that would, if occurring or continuing on the Closing Date, cause the condition set forth in Section 7.01(a) not to be satisfied, and such condition is not cured, or is incapable of being cured, within 20 days (but not later than the Termination Date) of receipt of written notice by the Company to Purchaser of such breach or failure provided that Purchaser shall not have the right to terminate this Agreement pursuant to this Section 8.01(e) if Purchaser is then in material breach of any of its representations, warranties, covenants or agreements hereunder.

SECTION 8.02. Effect of Termination. In the event of termination of this Agreement as provided in Section 8.01, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except that (a) Sections 4.17, 5.07, 6.03 and Article IX shall survive any termination and (b) that nothing herein shall relieve any party from liability for any breach hereof prior to the date of such termination.

SECTION 8.03. Waiver. At any time prior to the Closing, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or (c) waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

ARTICLE IX

GENERAL PROVISIONS

SECTION 9.01. Expenses. Except as provided in Article II with respect to the Consulting Fees Payable, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors, engineering consultants and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; provided, however, that Purchaser shall be responsible for, and shall pay, all transfer and similar Taxes arising as a result of the transactions contemplated by this Agreement

SECTION 9.02. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by courier service, by cable, by telecopy, by telegram, by telex or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.02:

- (a) if to the Company:

c/o DM&E Railroad
140 N. Phillips Avenue
Sioux Falls, SD 57104
Attention: President & CEO
Telecopier: (605) 782-1213
Telephone: (605) 782-1214

with a copy to:

Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Attention: Peter D. Lyons, Esq.
Telecopier: (212) 848-7179
Telephone: (212) 848-7666

- (b) if to the Stockholders' Representative:

to an address to be specified by the Stockholders' Representative
designated pursuant to Section 6.08.

with a copy to:

Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Attention: Peter D. Lyons, Esq.
Telecopier: (212) 848-7179
Telephone: (212) 848-7666

- (c) if to Parent or Purchaser:

c/o Soo Line Holding Company
501 Marquette Ave. South, Suite 420
Minneapolis, MN 55402
Attention: Vice-President and Controller
Telecopier: (612) 851-5619
Telephone: (612) 851-5658

with a copy to:

Leonard Street and Deinard
150 South 5th Street, Suite 2300
Minneapolis, Minnesota 55402
Attention: James J. Bertrand, Esq.
Telecopier: (612) 335-1657
Telephone: (612) 335-1651

And

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
Attention: Michael A. Gordon, Esq.
Telecopier: (312) 853-7036
Telephone: (312) 853-2217

SECTION 9.03. Survival. The representations and warranties of the parties hereto contained herein shall not survive the Closing.

SECTION 9.04. Public Announcements. The parties shall jointly announce the transaction contemplated hereby when they mutually determine it is reasonably appropriate to do so, and the parties shall cooperate as to the timing and contents of any such announcement.

SECTION 9.05. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 9.06. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

SECTION 9.07. Entire Agreement. This Agreement (including the Disclosure Schedule and Definitive Agreements) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral between the Company and Purchaser with respect to the subject matter hereof and except as otherwise expressly provided herein.

SECTION 9.08. Assignment. Neither this Agreement nor any of the rights and obligations of the parties hereunder may be assigned by any of the parties hereto without the prior consent of each other parties hereto, except that Purchaser may assign any or all of its rights

hereunder to any of Parent's direct or indirect wholly-owned subsidiaries, and any such subsidiary may assign such rights to another direct or indirect wholly-owned subsidiary of Purchaser or of Parent to Purchaser or to Parent. Notwithstanding the foregoing, Purchaser shall remain liable for all of its obligations under this Agreement. Subject to the first sentence of this Section 9.08, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and no other person shall have any right, obligation or benefit hereunder.

SECTION 9.09. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Company, Parent, Purchaser and the Stockholders' Representative (solely in such Person's capacity as the Stockholders' Representative) and their permitted assigns and nothing herein, expressed or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except (a) for the right of (i) the Equityholders to receive the Per Share Merger Consideration as a result of the Merger and any Construction Milestone Payment or Coal Milestone Payment which becomes payable under Section 3.05(b), and (ii) the holders of the Preferred Stock to receive the Preferred Redemption Amount immediately prior to the Merger, and, in each case, to recover damages from Parent for their failure to receive such amounts, and (b) for the officers and directors of the Company for purposes of enforcing Section 6.07. In the case of clauses (a)(i) and (ii) above, (a) prior to the Closing, only the Company shall be permitted to determine whether to bring an action against Parent or Purchaser, and only the Company may be permitted to bring such action, on behalf of the Equityholders and the Preferred Stockholders hereunder and (b) following the Closing only the Stockholders' Representative shall be permitted to determine whether to bring an Action against Parent, Purchaser or the Surviving Corporation on behalf of the Equityholders and only the Stockholders' Representative may be permitted to bring such an action.

SECTION 9.10. Waivers and Amendments. This Agreement may be amended or modified, and the terms and conditions hereof may be waived, only by a written instrument signed by the parties hereto or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any other right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies which any party may otherwise have at law or in equity.

SECTION 9.11. Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement required to be performed prior to the Closing was not performed in accordance with the terms hereof and that, prior to the Closing, the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity.

SECTION 9.12. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.
(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in that State.
EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, ALL ACTIONS AND

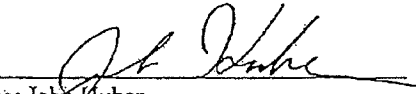
PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE HEARD AND DETERMINED IN A NEW YORK STATE OR FEDERAL COURT SITTING IN THE CITY OF NEW YORK, AND THE PARTIES HERETO HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING.

(b) Each of the parties hereto hereby waives to the fullest extent permitted by applicable Law any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement, the Merger or the transactions contemplated hereby. Each of the parties hereto (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver and (ii) acknowledges that it and the parties other hereto have been induced to enter into this Agreement, the Merger and the transactions contemplated hereby, as applicable, by, among other things, the mutual waivers and certifications in this Section 9.12.

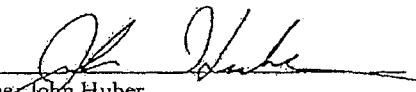
SECTION 9.13. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

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

SOO LINE HOLDING COMPANY

By: 
Name: John Huber
Title: Vice-President Finance and Controller

SOO LINE PROPERTIES COMPANY

By: 
Name: John Huber
Title: Vice-President Finance and Controller

CANADIAN PACIFIC RAILWAY COMPANY

By: _____
Name: Fred Green
Title: President and Chief Executive Officer

By: _____
Name: Mike Lambert
Title: Chief Financial Officer

DAKOTA, MINNESOTA & EASTERN
RAILROAD COMPANY

By: _____
Name: Kevin V. Schieffer
Title: President and Chief Executive Officer

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

SOO LINE HOLDING COMPANY

By: _____
Name: John Huber
Title: Vice-President Finance and Controller

SOO LINE PROPERTIES COMPANY

By: _____
Name: John Huber
Title: Vice-President Finance and Controller

CANADIAN PACIFIC RAILWAY COMPANY

By: _____
Name: Fred Green
Title: President and Chief Executive Officer

By: _____
Name: Mike Lambert
Title: Chief Financial Officer

DAKOTA, MINNESOTA & EASTERN
RAILROAD COMPANY

By: _____
Name: Kevin V. Schieffer
Title: President and Chief Executive Officer

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

SOO LINE HOLDING COMPANY

By: _____
Name: John Huber
Title: Vice-President Finance and Controller

SOO LINE PROPERTIES COMPANY

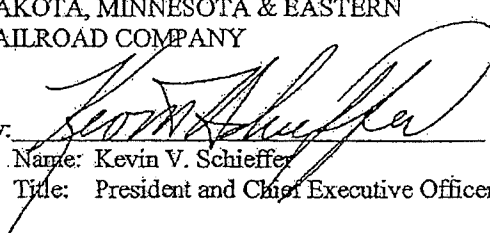
By: _____
Name: John Huber
Title: Vice-President Finance and Controller

CANADIAN PACIFIC RAILWAY COMPANY

By: _____
Name: Fred Green
Title: President and Chief Executive Officer

By: _____
Name: Mike Lambert
Title: Chief Financial Officer

DAKOTA, MINNESOTA & EASTERN
RAILROAD COMPANY

By: 
Name: Kevin V. Schieffer
Title: President and Chief Executive Officer

Acknowledged and agreed as of the date first written
above:

DM&E PARTNERS, LLP, as Stockholders'
Representative

By: its Partners

By: DM&E PARTNERS, LLC, as attorney-in-fact

By: _____
Name: _____
Title: _____

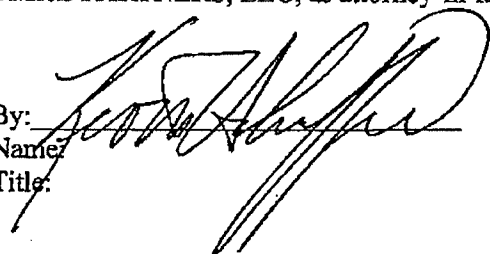


EXHIBIT E-2

AMENDED AND RESTATED
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
WARRANT DATED NOVEMBER 4, 2005

This Amended And Restated Dakota, Minnesota & Eastern Railroad Corporation Warrant dated November 4, 2005 (the "Warrant"), is made effective this 3rd day of October, 2007 by and between DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION (the "Company") and KEVIN V. SCHIEFFER ("Schieffer").

WHEREAS, Dakota, Minnesota & Eastern Railroad Corporation (the "Company") issued the Warrant to Schieffer in 2005; and

WHEREAS, the Company has entered into an AGREEMENT AND PLAN OF MERGER dated as of September 4, 2007, with Soo Line Holding Company, Soo Line Properties Company and Canadian Pacific Railway Company (solely for the purposes set forth therein); and

WHEREAS, recently enacted Section 409A of the Internal Revenue Code (the "Code") requires changes to the Warrant to comply with such law; and

WHEREAS, Treasury Regulations interpreting Code Section 409A authorize revisions to existing deferred compensation arrangements pursuant to transition rules through December 31, 2007; and

WHEREAS, the parties hereto have agreed to convert the Warrant to a deferred compensation arrangement payable in cash.

NOW, THEREFORE, the parties hereto amend and restate the Warrant as follows:

ARTICLE 1. DEFINITIONS

As used herein, unless the context otherwise requires, the following shall have the following respective meanings:

1.01 "Affiliate" means, when used with respect to a specified Person, another Person that, either directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

1.02 "Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City of New York.

1.03 "Closing" means the completion of the transaction pursuant to the Merger Agreement.

1.04 "Closing Date" means the date on which the Closing occurs.

1.05 "Code" means the Internal Revenue Code of 1986, as amended.

1.06 "Control" (including the terms "Controlling," "Controlled by" and "under common Control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or otherwise.

1.07 "Disclosure Schedule" means the Disclosure Schedule delivered to Purchaser by the Company pursuant to the Merger Agreement.

1.08 "Effective Time" means the date and time of filing of a certificate of merger of Purchaser into DM&E with the Secretary of State of the State of Delaware.

1.09 "Escrow Agent" shall mean J.P. Morgan Trust Company, National Association, as designated in the Escrow Agreement.

1.10 "Escrow Agreement" means the Escrow Agreement, initially dated as of a date prior to the Closing Date, between the Company, Parent, Purchaser, Stockholder's Representative and J.P. Morgan Trust Company, National Association.

1.11 "Governmental Entity" means any United States or foreign federal, national, supra-national, state, provincial, or local government, governmental, regulatory, self-regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body or political or other subdivision, department or branch of any of the foregoing.

1.12 "Law" means any United States or foreign federal, national, supra-national, state, provincial, local, municipal or similar constitution, statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including any rules of any self-regulatory organization, securities exchange or clearinghouse or common law).

1.13 "Merger Agreement" means the Agreement and Plan of Merger dated as of September 4, 2007, among Soo Line Holding Company, Soo Line Properties Company, Canadian Pacific Railway Company, (solely for the purposes set forth therein) and Dakota, Minnesota & Eastern Railroad Corporation.

1.14 "Milestone Payment" means payment made after the Effective Time pursuant to Section 3.05(b) of the Merger Agreement.

1.15 "New Construction"

1.16 "Parent" means Soo Line Holding Company, a Delaware Corporation and an indirect wholly owned subsidiary of Canadian Pacific Railway Company, a company organized under the laws of Canada.

1.17 "Person" means any individual, partnership, firm, corporation, association, trust, limited liability company, unincorporated organization, a Governmental Entity or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

1.18 "PRB Expansion"

1.19 "Purchaser" means Soo Line Properties Company, a Delaware Corporation and a wholly owned subsidiary of Parent.

1.20 "Stockholder's Representative" the Person designated, on or prior to the Closing Date, by the Board of Directors of the Company to serve as the Stockholder's Representative.

1.21 "Subsidiaries" means Cedar American Rail Holdings, Inc., a Delaware corporation, the IC&E, and Wyoming Dakota Railroad Properties, Inc., a Delaware corporation.

1.22 "Surviving Corporation" means the Company as the surviving corporation of the merger of Purchaser with and into the Company in accordance with the terms of the Merger Agreement and the applicable provisions of the General Corporation Law of the State of Delaware.

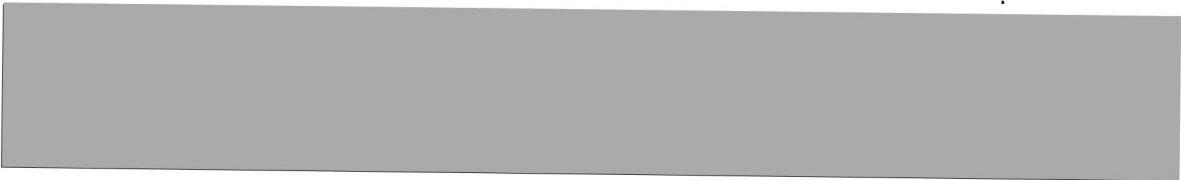
1.23 "Tax" or "Taxes" means (i) any and all income, gross receipts, sales, use, employment, franchise, profits, property or other taxes, duties, assessments or other governmental charges in the nature of a tax (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority with respect thereto and (ii) any liability of the Company or any of its Subsidiaries for the payment of amounts determined by reference to amounts described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of the Company or any of its Subsidiaries under any Tax sharing agreement or arrangement.

Capitalized terms used and not otherwise defined herein have the meanings given to them in the Merger Agreement.

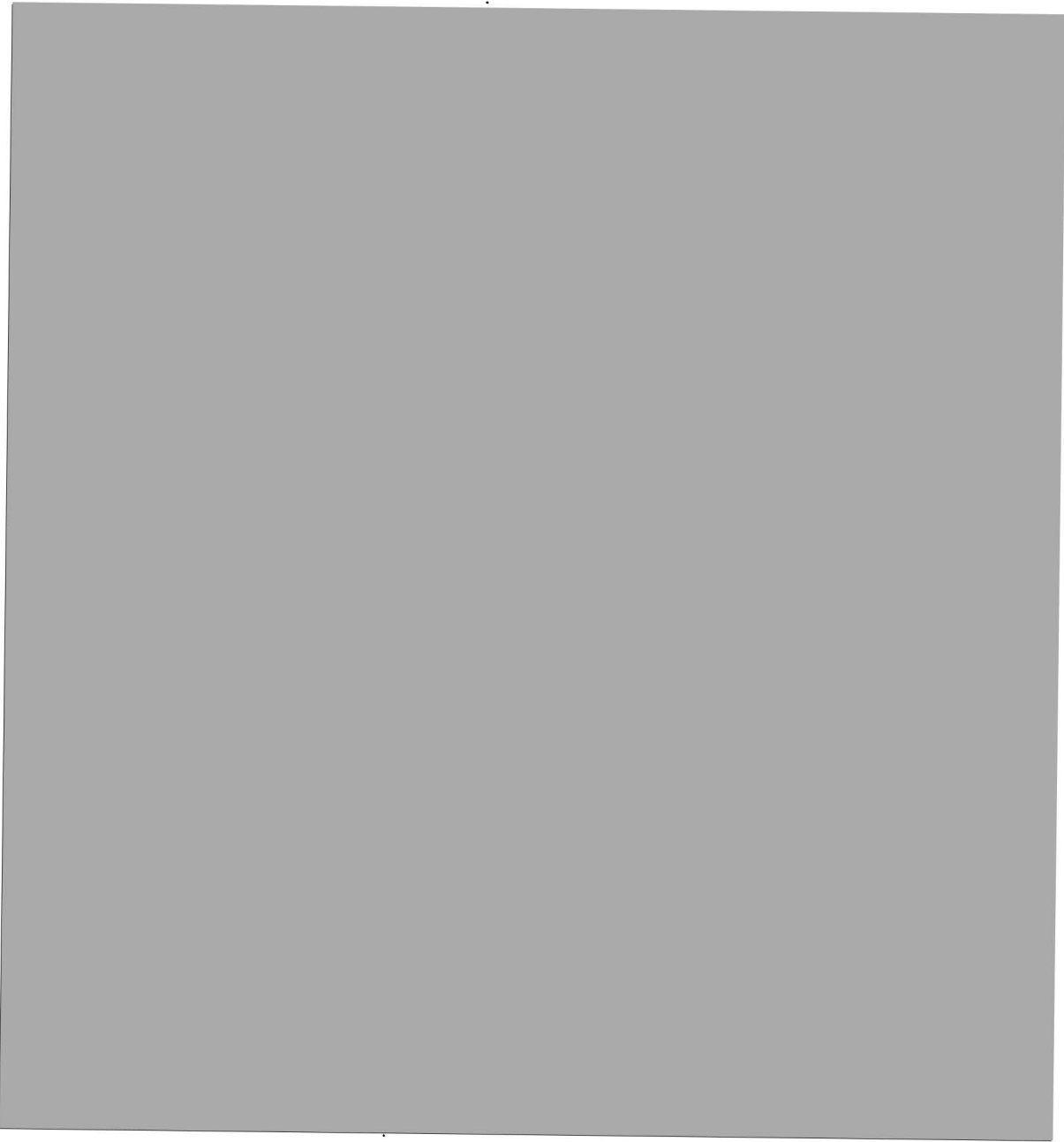
ARTICLE 2. AMOUNT OF DEFERRAL, PAYMENTS, TIMING

SECTION 2.01 Deferral of Compensation.

SECTION 2.02 Initial Payments in Connection with Closing.



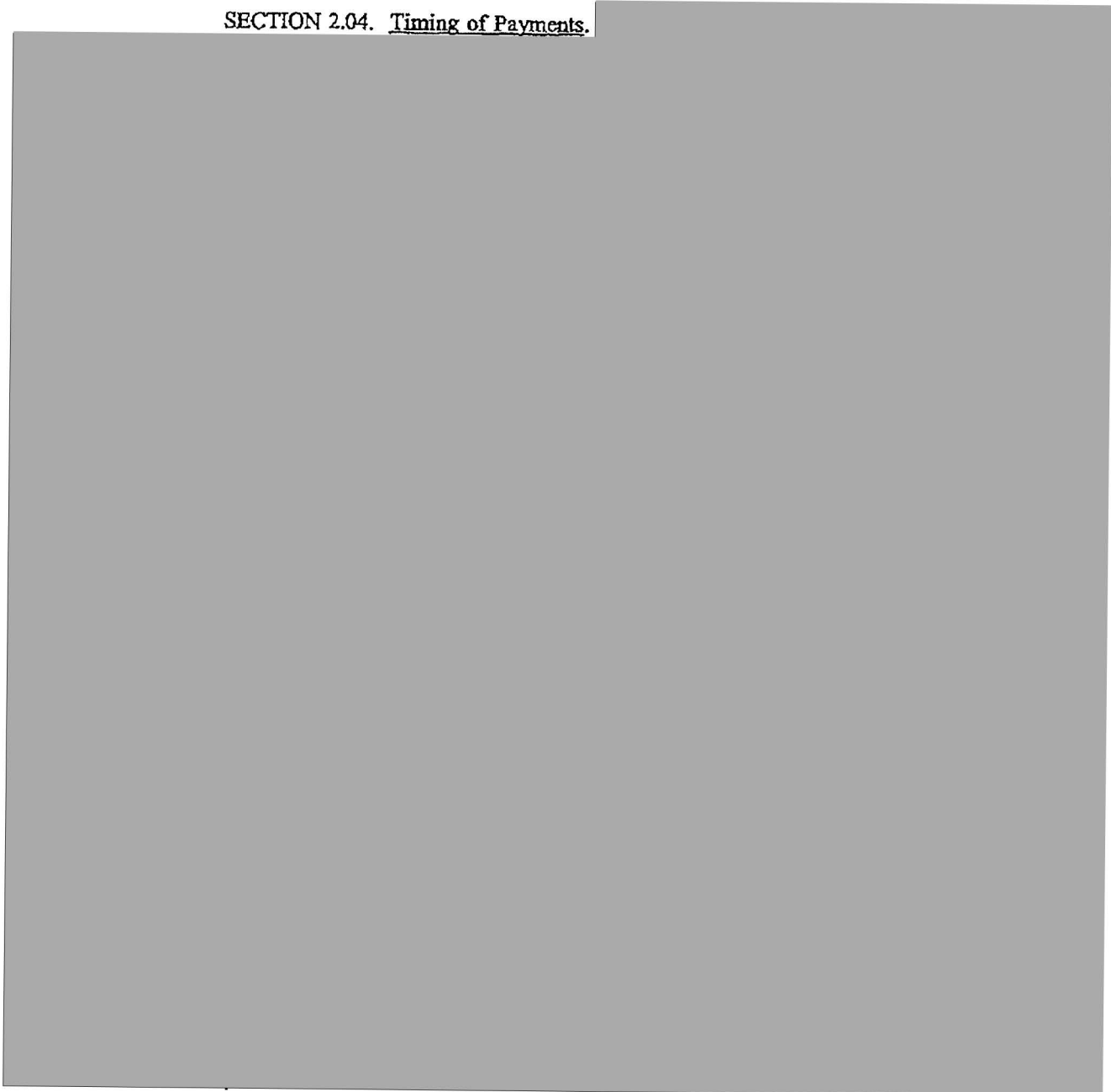
SECTION 2.03 Milestone Payments.







SECTION 2.04. Timing of Payments.





SECTION 2.05 Withholding Taxes. Parent, Purchaser, the Surviving Corporation and the Paying Agent referenced in the Merger Agreement shall be entitled to withhold and deduct Taxes on payments made pursuant to Sections 2.02 through 2.04 hereof to the extent required by applicable Law. Any amounts withheld shall be timely paid to the Person required to remit the withheld amounts to the appropriate Governmental Entity, and such Person shall timely remit such amounts to the appropriate Governmental Entity.

SECTION 2.06 No Acceleration. Neither the Company nor Schieffer may accelerate the time of any payment except as Code Section 409A and regulations issued pursuant to such section and applicable guidance may permit and with the consent of the other party.

SECTION 2.07 Interpretations. Notwithstanding anything to the contrary herein, no provision in this Warrant shall obligate the Company, the Surviving Corporation, the Purchaser or the Parent, or any of their Affiliates, to take any actions or make any payments other than the actions or payments required under the Merger Agreement or the Escrow Agreement, nor shall any provision of this Warrant be interpreted as an abrogation or modification of any rights of the Surviving Corporation, the Purchaser, the Parent or any of their Affiliates under the Merger Agreement, Escrow Agreement or the Gross-Up Agreement. In furtherance thereof, the procedures set forth in this Article 2 for determining payment obligations are intended to be in accord with and reflect the procedures set forth in the Merger Agreement in all respects and, to the extent any term hereof is inconsistent with the terms of the Merger Agreement or the Escrow Agreement, the Merger Agreement or Escrow Agreement shall prevail. All provisions of this Warrant shall be interpreted in a manner intended to avoid the application of Section 409A(a)(1)(B) of the Code. In furtherance thereof, any payments due pursuant to Section 2.03 hereof shall be deemed to be subject to a substantial risk of forfeiture within the meaning of Section 409A(d)(4) of the Code and Treasury Regulation § 1.409A-1(d).

ARTICLE 3. MISCELLANEOUS

SECTION 3.01 Unfunded Agreement



[REDACTED]

SECTION 3.02 Non-Assignable Rights. No right or benefit under this Warrant shall be subject to anticipation, alienation, sale, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, assign, pledge, encumber, or charge the same shall be void. No right or benefit hereunder shall in any manner be liable for or subject to the debts, contracts, liabilities, or torts of the person entitled to such benefits. If Schieffer should become bankrupt or attempt to anticipate, alienate, sell, assign, pledge, encumber, or charge any right or benefit hereunder, then such right or benefit shall, in the discretion of the Company, cease and terminate, and in such event, the Company may hold or apply the same or any part thereof for the benefit of Schieffer, his spouse, children, or other dependents, or any of them, in such manner and in such proportion as the Board may deem proper.

SECTION 3.03 Not Employment Contract. This Warrant is not a contract for employment between the Company and Schieffer.

SECTION 3.04 Severability. If any provision of this Warrant is determined by a proper authority to be invalid, the remaining portions of this Warrant will continue in effect and will be interpreted consistent with the elimination of the invalid provision.

SECTION 3.05 Notice. Any notice given under this Warrant must be in writing and must be delivered in person or mailed by certified mail, to the Company or to Schieffer as appropriate. Any notice will be deemed given as of the date of delivery, or if given by certified mail, as of three (3) business days after mailing.

SECTION 3.06 Applicable Law. This Warrant and all rights hereunder shall be governed by the laws of Delaware, except to the extent such laws are preempted by the laws of the United States.

SECTION 3.07 Counterparts. This Warrant may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Warrant the day and year first above written.

[REDACTED]

By: [Signature]
Its: SENIOR VP FINANCIAL AFFAIRS
[Signature]
KEVIN V. SCHIEFFER

EXHIBIT E-3

**FIRST AMENDMENT TO
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
DIRECTOR CHANGE IN CONTROL AGREEMENT**

THIS FIRST AMENDMENT to the Dakota, Minnesota & Eastern Railroad Corporation (the "Company") Director Change In Control Agreement by and between _____, Director, and the Company, dated the ____ day of December, 2006, (the "Agreement") is made effective this ____ day of September, 2007.

WHEREAS, the Company has entered into an AGREEMENT AND PLAN OF MERGER dated as of September 4, 2007, with Soo Line Holding Company, Soo Line Properties Company and Canadian Pacific Railway Company (solely for the purposes set forth therein) (the "Merger Agreement"); and

WHEREAS, the Company will be the surviving corporation; and

WHEREAS, the closing of the Merger Agreement will constitute a change in control as such term is defined in Section 1.05 of the Agreement; and

WHEREAS, the contingent payment structure of the Agreement and Plan of Merger requires amendments to the Director Change In Control Agreement to comply with Code §409A.

NOW, THEREFORE, the Company and Director agree to the following amendments to the Agreement:

Part 1. Deletions. Sections 1.08 and 2.05 of the Agreement are deleted.

Part 2. Definitions. The following definitions in Article I of the Agreement are amended:

1.05 "Change of Control" means the occurrence of one of the following events that occurs prior to December 31, 2007: (a) a change in the ownership of a corporation occurs on the date that any one person, or more than one person acting as a group as determined in Treas. Reg. 1.409A-3(i)(5)(v)(B), acquires ownership of stock of the corporation that, together with stock held by such person or group, constitutes more than 50 percent of the total fair market value or total voting power of the stock of such corporation, (b) a change in the effective control of the corporation occurs only on the date any one person, or more than one person acting as a group as determined in Treas. Reg. 1.409A-3(i)(5)(v)(B), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing 30 percent or more of the total voting power of the stock of such corporation or the date a majority of members of the corporation's board of directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the corporation's board of directors before the date of the appointment or election, or (c) a change in the ownership of a substantial portion of a

corporation's assets occurs on the date that any one person, or more than one person acting as a group as determined in Treas. Reg. 1.409A-3(i)(5)(v)(B), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total gross fair market value equal to or more than 40 percent of the total gross fair market value of all of the assets of the corporation immediately before such acquisition or acquisitions.

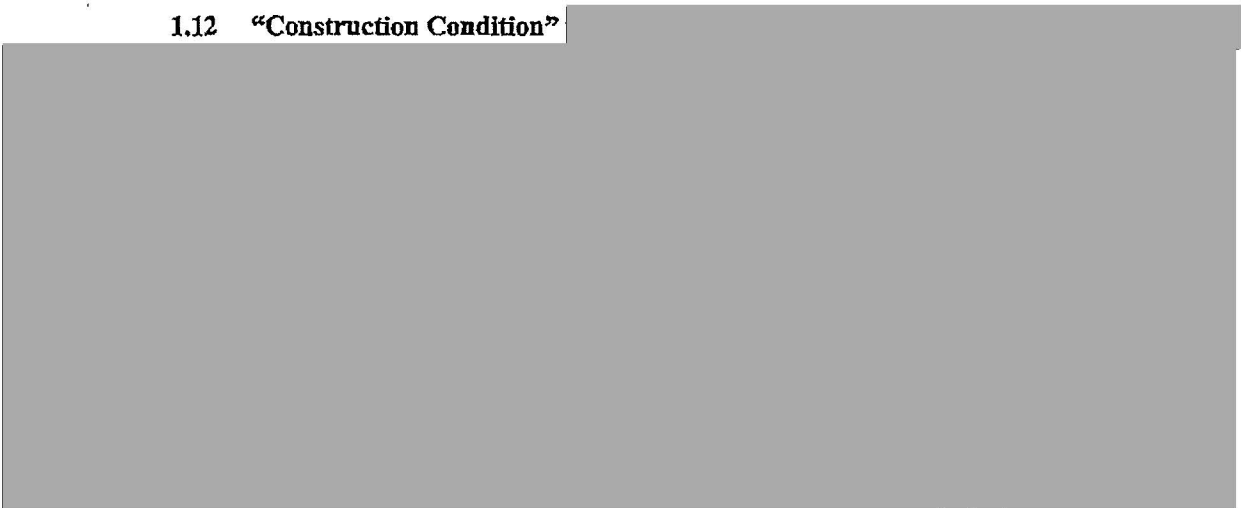
The following definitions are added to Article I:

1.09 "Affiliate" means, when used with respect to a specified Person, another Person that, either directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

1.10 "Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City of New York.

1.11 "Closing Date" means the date on which the Merger Agreement Closing occurs.

1.12 "Construction Condition"



1.13 "Controls" (including the terms "Controlling," "Controlled by" and "under common Control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or otherwise.

1.14 "Definitive Agreements" means the Merger Agreement and the Escrow Agreement, the Gross-up Escrow Agreement, the Termination Agreement, the Warrant Purchase Agreement, the Release Agreements referenced in the Merger Agreement, and any contracts or agreements executed pursuant or related thereto, including any documents or certificates delivered pursuant to the Merger Agreement or to carry out the transactions contemplated under any Definitive Agreement.

1.15 "Effective Time" means the date and time of filing a certificate of merger with the Secretary of State of the State of Delaware reflecting the merger of Soo Line Properties Company, a Delaware Corporation, with and into DM&E.

1.16 "Equityholders" means the holders of shares, share units, warrants and DM&E options, in each case outstanding immediately prior to the Effective Time, as identified in Schedule 4.03 attached hereto.

1.17 "Merger Agreement" means the Agreement and Plan of Merger dated as of September 4, 2007, among Soo Line Holding Company, Soo Line Properties Company, Canadian Pacific Railway Company, (solely for the purposes set forth therein) and Dakota, Minnesota & Eastern Railroad Corporation.

1.18 "New Construction" [REDACTED]

1.19 "Parent" means Soo Line Holding Company, a Delaware Corporation and an indirect wholly owned subsidiary of Canadian Pacific Railway Company, a company organized under the laws of Canada.

1.20 "Person" means any individual, partnership, firm, corporation, association, trust, limited liability company, unincorporated organization, a Governmental Entity or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

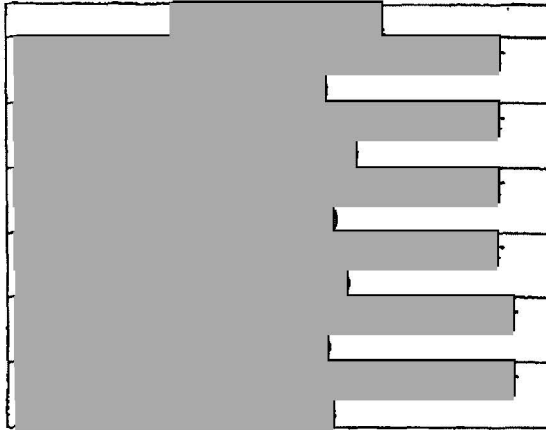
1.21 "PRB Expansion" [REDACTED]

1.22 "Stockholder's Representative" the Person designated, on or prior to the Closing Date, by the Board of Directors of the Company to serve as the Stockholder's Representative.

1.23 "Subsidiaries" means Cedar American Rail Holdings, Inc., a Delaware corporation, the IC&E, and Wyoming Dakota Railroad Properties, Inc., a Delaware corporation.

1.24 "Surviving Corporation" means the Company as the surviving corporation of the Merger.

1.25 [REDACTED]



Any tonnage that is under contract with either railroad (i.e., BNSF or Union Pacific Railroad, or their successors) serving the PRB (the "Incumbent Carriers") and moves on an emergency basis via any portion of the lines that may be constructed or improved pursuant to the PRB Expansion ("Emergency Tonnage") shall not be included in measuring whether a Tonnage Condition has been met. Any tonnage under contract with Incumbent Carrier(s) that is moved over any portion of the PRB Expansion for less than six months shall be assumed to be Emergency Tonnage, unless there is a preponderance of the evidence to the contrary. Any tonnage under contract with Incumbent Carrier(s) that is diverted for more than six months shall be assumed to be other than Emergency Tonnage and shall be included in measuring whether a Tonnage Condition has been met, unless there is a preponderance of the evidence to the contrary. The terms and conditions of any contract and agreement entered into after the Closing Date and related to the shipment of coal shall be determined by Parent in its sole discretion.

Part 3. Amended and Added Sections. Sections 2.01 and 2.02 of Article II of the Agreement are amended and sections 2.01.01, 2.01.02 and 2.01.03 are added to Article II of the Agreement as follows:

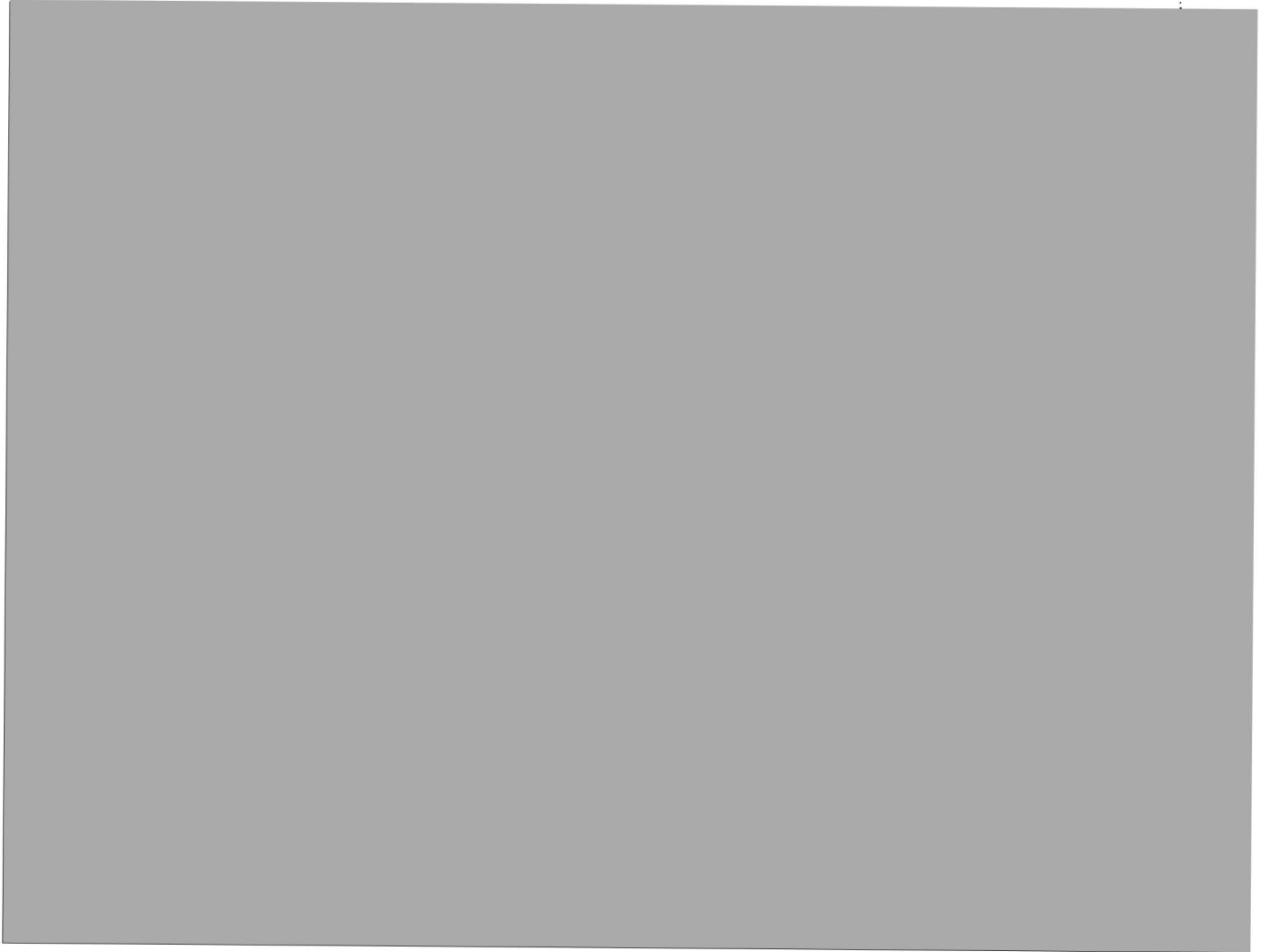
2.01 Payment.

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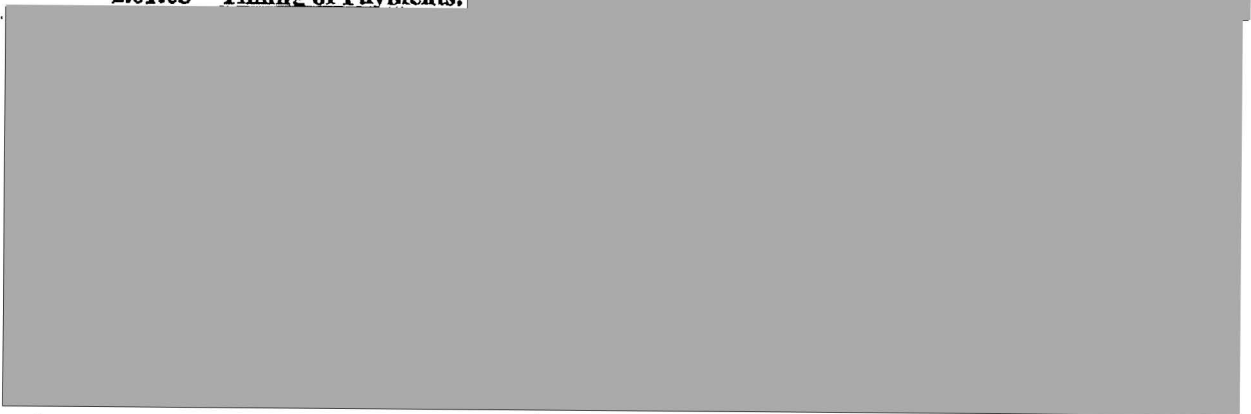
2.01.01 Closing Date Payment.

[Redacted text block]

2.01.02 Milestone Payments.



2.01.03 Timing of Payments.



CM : TADDEO

PHONE NO. : 14158519681

Sep. 18 2007 05:02PM P2

09/24/2007 17:10 650-7236494

MICHAEL BOSKIN

PAGE 09

Boskin

2.02 Shareholder Approval. No payment shall be made to Director under Sections 2.01, 2.01.01 or 2.01.02 unless the Agreement and this First Amendment to the Agreement are approved by a majority vote of the common shareholders of the Company prior to the Closing Date.

Part 4. Remaining Provisions. All other provisions of the Agreement remain in effect, except if there is a conflict or inconsistency between the Agreement and this First Amendment, the provisions of this First Amendment shall control.

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

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____
Its: _____

Michael Boskin

Michael Boskin

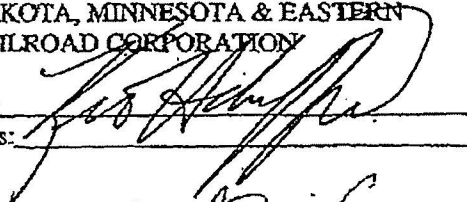
[REDACTED]

2.02 Shareholder Approval. No payment shall be made to Director under Sections 2.01, 2.01.01 or 2.01.02 unless the Agreement and this First Amendment to the Agreement are approved by a majority vote of the common shareholders of the Company prior to the Closing Date.

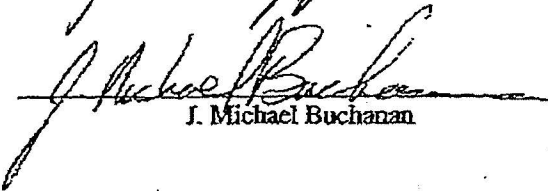
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DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: 

Its: _____

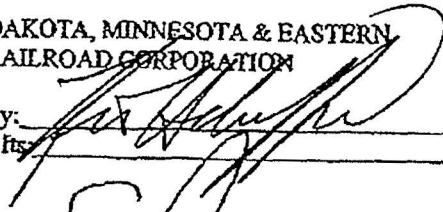

J. Michael Buchanan

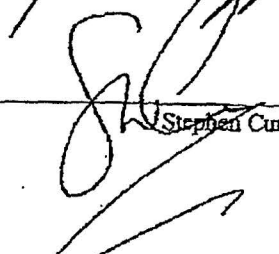
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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: 

Its: 

Stephen Curran

2.02 Shareholder Approval. No payment shall be made to Director under Sections 2.01, 2.01.01 or 2.01.02 unless the Agreement and this First Amendment to the Agreement are approved by a majority vote of the common shareholders of the Company prior to the Closing Date.

Part 4. Remaining Provisions. All other provisions of the Agreement remain in effect, except if there is a conflict or inconsistency between the Agreement and this First Amendment, the provisions of this First Amendment shall control.

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

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____

Its: _____

Lee Foster



2.02 Shareholder Approval. No payment shall be made to Director under Sections 2.01, 2.01.01 or 2.01.02 unless the Agreement and this First Amendment to the Agreement are approved by a majority vote of the common shareholders of the Company prior to the Closing Date.

Part 4. Remaining Provisions. All other provisions of the Agreement remain in effect, except if there is a conflict or inconsistency between the Agreement and this First Amendment, the provisions of this First Amendment shall control.

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

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____
Its: _____

Robert B. Fraser

Robert B. Fraser

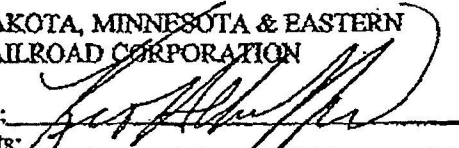
FIRST Amendment

2.02 Shareholder Approval. No payment shall be made to Director under Sections 2.01, 2.01.01 or 2.01.02 unless the Agreement and this First Amendment to the Agreement are approved by a majority vote of the common shareholders of the Company prior to the Closing Date.

Part 4. Remaining Provisions. All other provisions of the Agreement remain in effect, except if there is a conflict or inconsistency between the Agreement and this First Amendment, the provisions of this First Amendment shall control.

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

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: 

Its: 

Russell Hagberg

[REDACTED]

2.02 Shareholder Approval. No payment shall be made to Director under Sections 2.01, 2.01.01 or 2.01.02 unless the Agreement and this First Amendment to the Agreement are approved by a majority vote of the common shareholders of the Company prior to the Closing Date.

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

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____
Its: _____

Wm. J. Mumford
Wm. J. Mumford

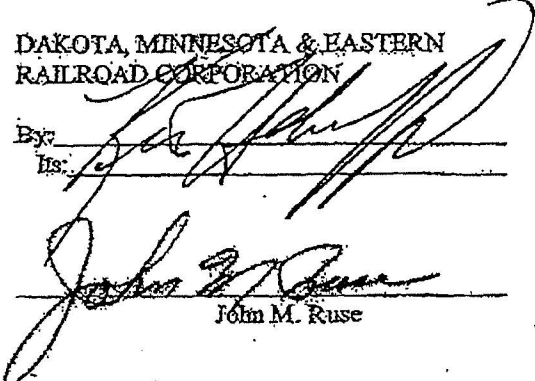
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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____
Its: _____


John M. Ruse

2.02 Shareholder Approval. No payment shall be made to Director under Sections 2.01, 2.01.01 or 2.01.02 unless the Agreement and this First Amendment to the Agreement are approved by a majority vote of the common shareholders of the Company prior to the Closing Date.

Part 4. Remaining Provisions. All other provisions of the Agreement remain in effect, except if there is a conflict or inconsistency between the Agreement and this First Amendment, the provisions of this First Amendment shall control.

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

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____

Its: _____

Matthew Taylor

2.02 Shareholder Approval. No payment shall be made to Director under Sections 2.01, 2.01.01 or 2.01.02 unless the Agreement and this First Amendment to the Agreement are approved by a majority vote of the common shareholders of the Company prior to the Closing Date.

Part 4. Remaining Provisions. All other provisions of the Agreement remain in effect, except if there is a conflict or inconsistency between the Agreement and this First Amendment, the provisions of this First Amendment shall control.

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

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____
Its: _____

JOSEPH CHULICK, III, Trustee of the Diana
Chulick Survivors Trust, as successor to 50% of
the interest of Joseph Chulick, Jr. (Deceased)

Director

JOSEPH CHULICK, III, Trustee of the Joseph
Chulick, Jr. Administrative Trust, as successor
to 50% of the interest of Joseph Chulick, Jr.
(Deceased)

Director

**ADDENDUM TO
DIRECTOR CHANGE IN CONTROL AGREEMENT
FOR JOSEPH CHULICK, JR.**

THIS ADDENDUM to the Dakota, Minnesota & Eastern Railroad Corporation (the "Company") Director Change in Control Agreement is by and between the Company and JOSEPH CHULICK III, Trustee of the Joseph and Diana Chulick Living Trust dated June 20, 1995 (herein, the "Trustee").

WHEREAS, Joseph Chulick, Jr. was a director of the Company and passed away in December 2006;

WHEREAS, it was the intention of the Company that, under the Director Change in Control Agreement, the estate of any deceased director would receive the payments under the Director Change in Control Agreement (the "Agreement");

WHEREAS, by Order Confirming Certain Assets are Trust Property issued by the Superior Court of the State of California on April 2, 2007, the interest and rights of Joseph Chulick, Jr. under the Director Change in Control Agreement were assigned to the Trustee;

WHEREAS, as the Trustee has provided the Company with a Certificate that the trustee has further assigned its interest in the Agreement, 50% to Joseph Chulick, III, as Trustee of the Diana Chulick Survivors Trust (the "Survivors Trust") and 50% to Joseph Chulick, III, as Trustee of the Joseph Chulick, Jr. Administrative Trust (the "Administrative Trust");

WHEREAS, the Board of Directors of the Company, at its September 20, 2007, Board meeting, confirmed that the Company should pay to the trust of Joseph Chulick, Jr. the payments set forth under the Director Change in Control Agreement;

NOW, THEREFORE, the Company and the Trustee acknowledge and agree that the Trustee of the Survivors Trust and the Trustee of the Administrative Trust may execute any documents, amendments or restatements relating to the Director Change in Control Agreement and that the payments to Joseph Chulick, Jr. thereunder shall be made to the Trustee of the Survivors Trust and the Trustee of the Administrative Trust.

OCT 01 2007 18:48 FR

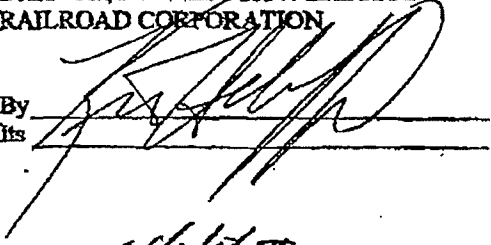
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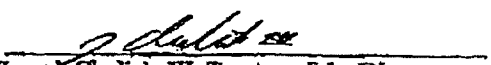
P.04/07

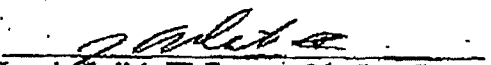
IN WITNESS WHEREOF, the parties have executed this Addendum effective as of the day and year first written above.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By
Its


Joseph Chulick, III, Trustee of the Joseph and
Diana Chulick Living Trust dated June 20, 1995


Joseph Chulick, III, Trustee of the Diana
Chulick Survivors Trust


Joseph Chulick, III, Trustee of the Joseph
Chulick, Jr. Administrative Trust

EQUIPMENT SUPPLY AND SERVICES AGREEMENT

THIS EQUIPMENT SUPPLY AND SERVICES AGREEMENT, dated as of the ____ day of _____, 201_, between RAPID CITY, PIERRE & EASTERN RAILROAD, INC. (“Buyer”) and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation, d/b/a Canadian Pacific (“Seller”); sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties”.

RECITALS

A. Seller and Buyer are Parties to the Transaction Agreement (“Transaction Agreement”) and related transaction documents pursuant to which Seller is selling and Buyer is purchasing certain railroad properties, rights and facilities relating to a rail line referred to as the “DME West End” as defined therein.

B. The Parties wish to provide for the supply of equipment to enhance rail service to shippers.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the Parties hereto hereby agree as follows:

I. DEFINITIONS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings as specified herein:

i. “Main System” – As defined in Recital A of the Transaction Agreement.

ii. “Cars” means

iii. “Request” means

iv. “Order” means

v. “Want Dates” means

II. CAR HIRE & CAR SERVICE

2.01 The AAR’s Code of Car Hire and Car Service Rules and Tariff RIC 6007 or any successor rules or tariffs shall govern all rolling stock and equipment subject to this Agreement.

2.02 Each Party shall be financially responsible to the car owner, or such entity as designated in the Official Railway Equipment Register, for those car hire and private company mileage charges it incurs for its movement of rolling stock or other equipment pursuant to the rules and tariffs identified in the preceding section.

III. SERVICE STANDARDS

3.01 Buyer and Seller shall accept, handle and deliver interline traffic interchanged between them on a non-discriminatory basis, provided that neither Party shall be responsible for loss or delay caused by matters or circumstances beyond its reasonable control.

IV. EQUIPMENT SUPPLY

4.01

4.02

4.03

4.04

4.05

[Redacted]

4.06

[Redacted]

[Redacted]

4.07

[Redacted]

[Redacted]

4.08

[Redacted]

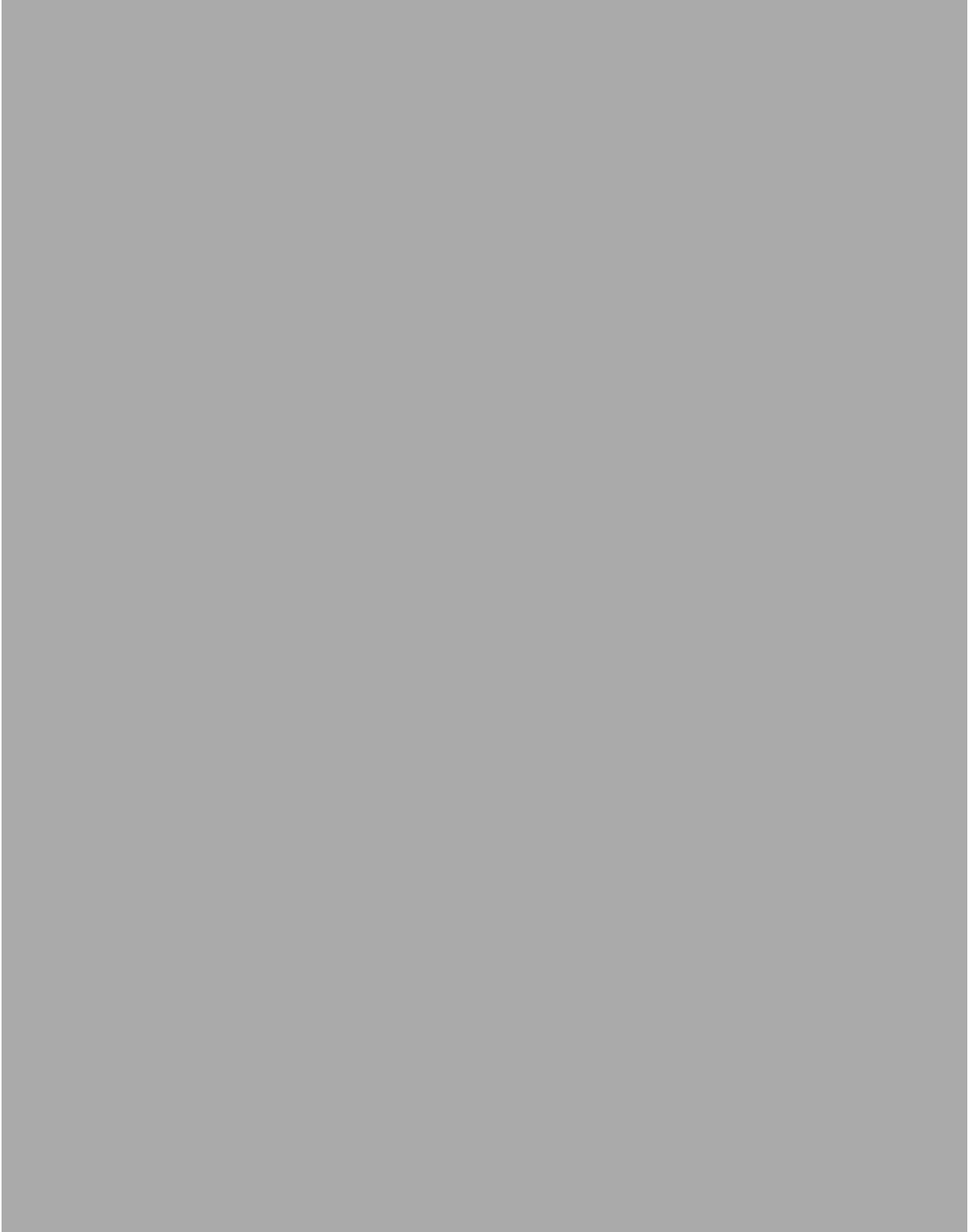
[Redacted]

4.09

[Redacted]

[Redacted]

4.10 Storage of surplus Cars





4.11 AAR rules shall apply for any mechanical repairs or inspections that may be required while the Cars are on the Main System.

V. CONFIDENTIALITY:

5.01 The Parties agree that the terms of this Agreement are confidential and, except as may be required by law, regulation or order of a court of competent jurisdiction, the contents shall be kept strictly confidential and shall not be disclosed to any other person, other than a parent or subsidiary, without the prior written consent of the other Party.

VI. TERM AND TERMINATION:

6.01



[REDACTED]

6.02 [REDACTED]

[REDACTED]

6.03 [REDACTED]

[REDACTED]

VII. FORCE MAJEURE

7.01 A Party's duties and obligations under this Agreement shall be excused and a Party shall not be liable to the other Party for any delay, loss or damage resulting from circumstances or causes beyond its reasonable control including, without limitation: an Act of God, inclement weather conditions, storms, blizzard, flood, washout, avalanche, snow slide, rockslide, earthquake, expropriation, fire or explosion, natural catastrophe of any kind, strike, lockout, walkout or other labor dispute; war; vandalism or sabotage, riot, or other civil commotion, insurrection, act of terrorism or other violence, derailment, track outage, labor shortage, electric utility power outage, locomotive or fuel shortage; any law, order or requirement of any governmental agency or authority; blockade; embargo or AAR service order; closure of origin or destination for any reason. Force majeure declarations by either Party may be limited to specific origins or destinations or railroad routes to more specifically identify the

force majeure event. The Party declaring force majeure shall promptly notify the other Party of the nature of the condition and the commencement and cessation thereof.

VIII. MISCELLANEOUS:

8.01 Applicable Law:

[REDACTED]

8.02 Dispute Resolution:

[REDACTED]

[REDACTED]

8.03 Inurement and Assignment:

8.04 No amendment or waiver of this Agreement shall be binding unless the Parties have agreed to such an amendment by an exchange of correspondence by letter, facsimile or electronic mail, indicating that each Party has agreed to the amendment to this Agreement.

8.05 This Agreement contains the entire agreement of the Parties with respect to the subject matter herein and supersedes all prior negotiations, agreements and understandings, oral or written, with respect thereto.

8.06 If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable under any applicable law of any jurisdiction, that provision shall be severed from this Agreement insofar as that jurisdiction is concerned, and all the

remaining provisions of this Agreement shall continue to have full force and effect in that jurisdiction as if the said provision had never been included; provided that the original intent of the Parties to this Agreement is not affected by such severance, unless that intent itself shall be declared invalid, illegal or unenforceable.

8.07 Any waiver at any time of a breach of any provision, condition, obligation or requirement of this Agreement shall extend only to the particular breach so waived and shall not impair or affect the existence of any provision, condition or requirement of this Agreement or the right of Seller or Buyer thereafter to avail itself of any breach, subject to such waiver.

8.08 All section headings are inserted for convenience of reference only and shall not affect any construction or interpretation of this Agreement.

8.09 Any notice required or permitted to be given by one Party to the other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If to Buyer:

Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020
Attention President
with a copy to :



If to Seller:

Dakota, Minnesota & Eastern Railroad Corporation
120 S. 6th Street, Suite 700
Minneapolis, MN 55402
Facsimile No.: 612 904-5981

with copies to:



9.10 This Agreement may be executed by the Parties by facsimile and in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one instrument.

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

WITNESS:

**DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION**

As to Seller

By:_____

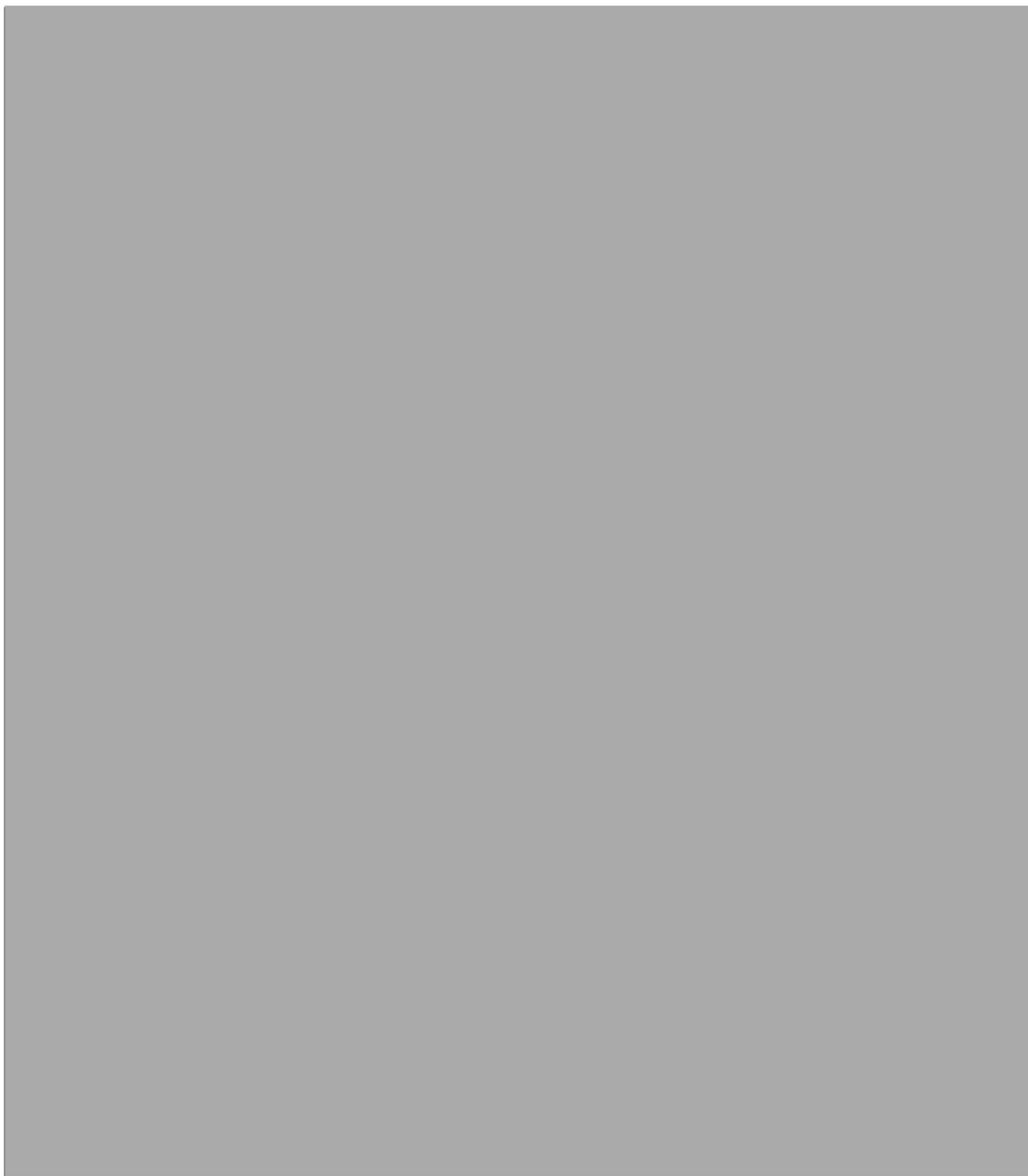
WITNESS:

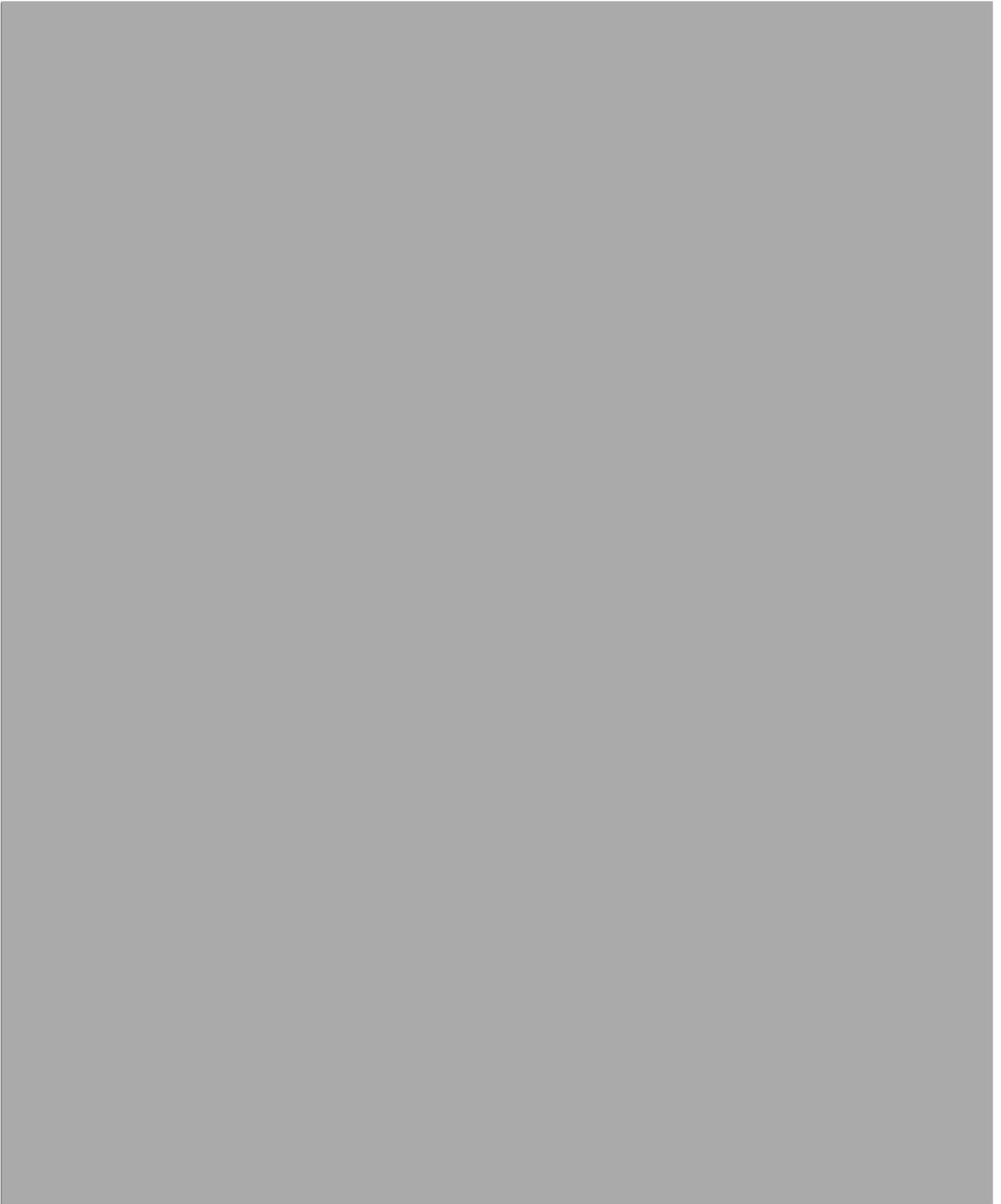
**RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.**

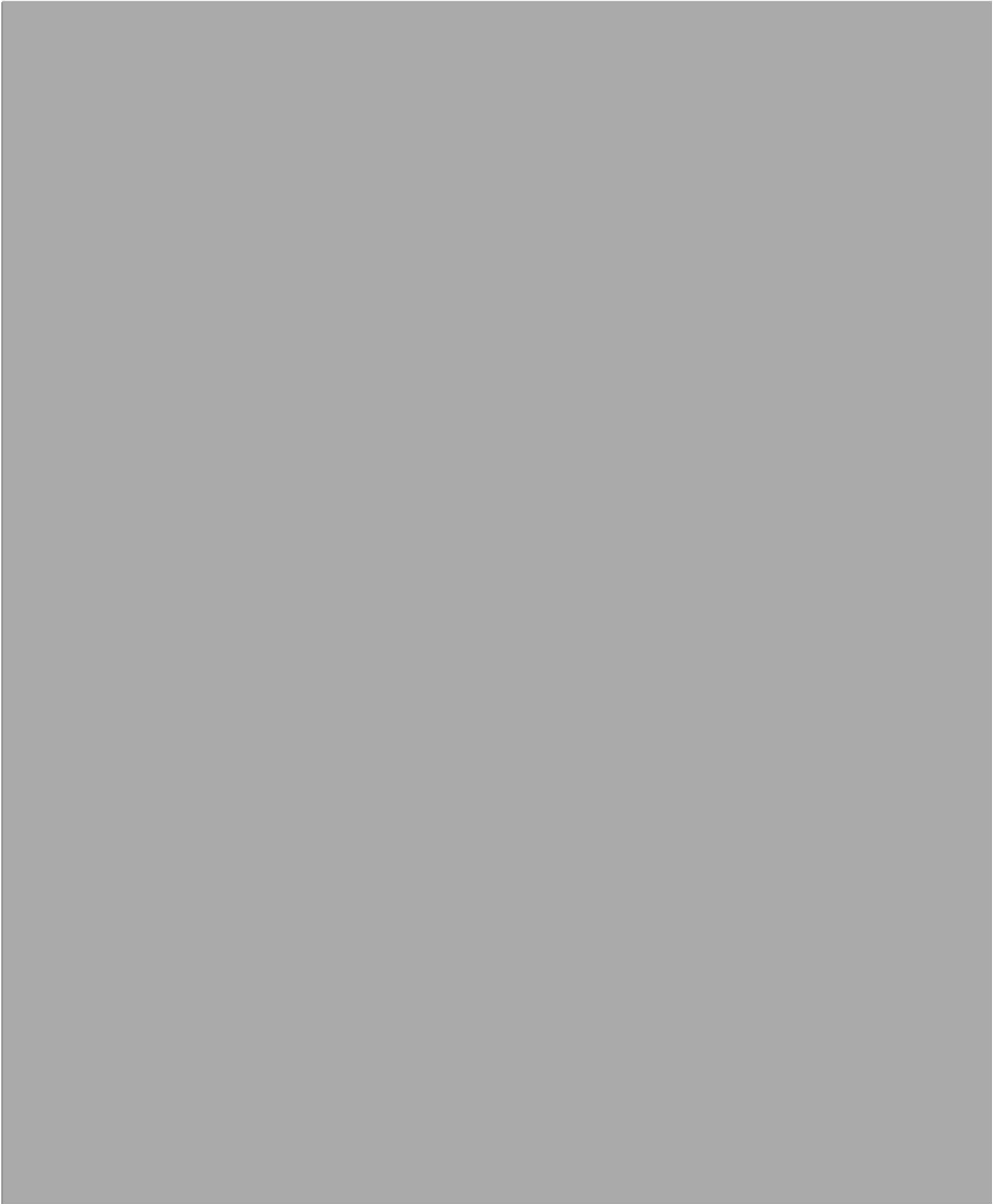
As to Buyer

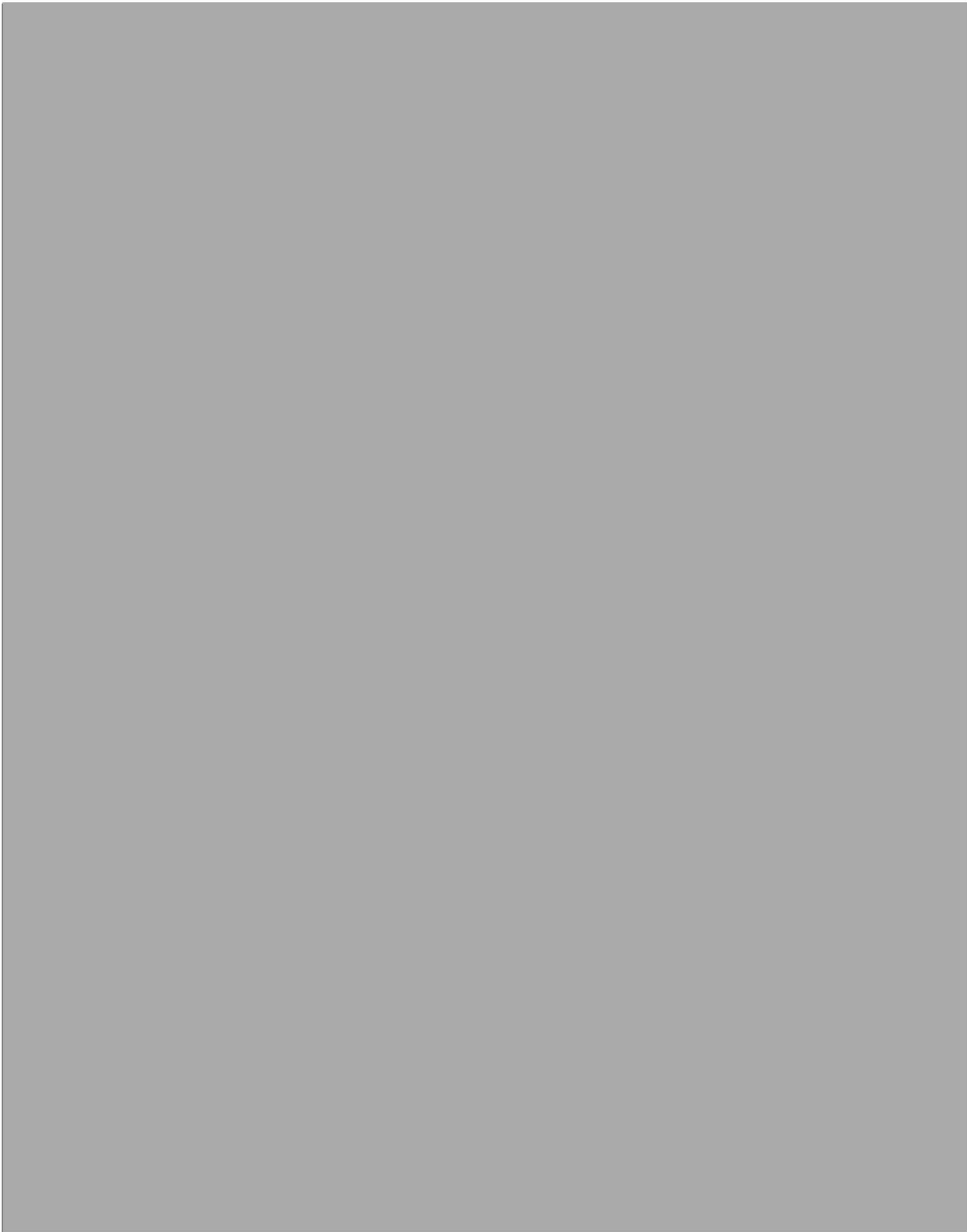
By:_____

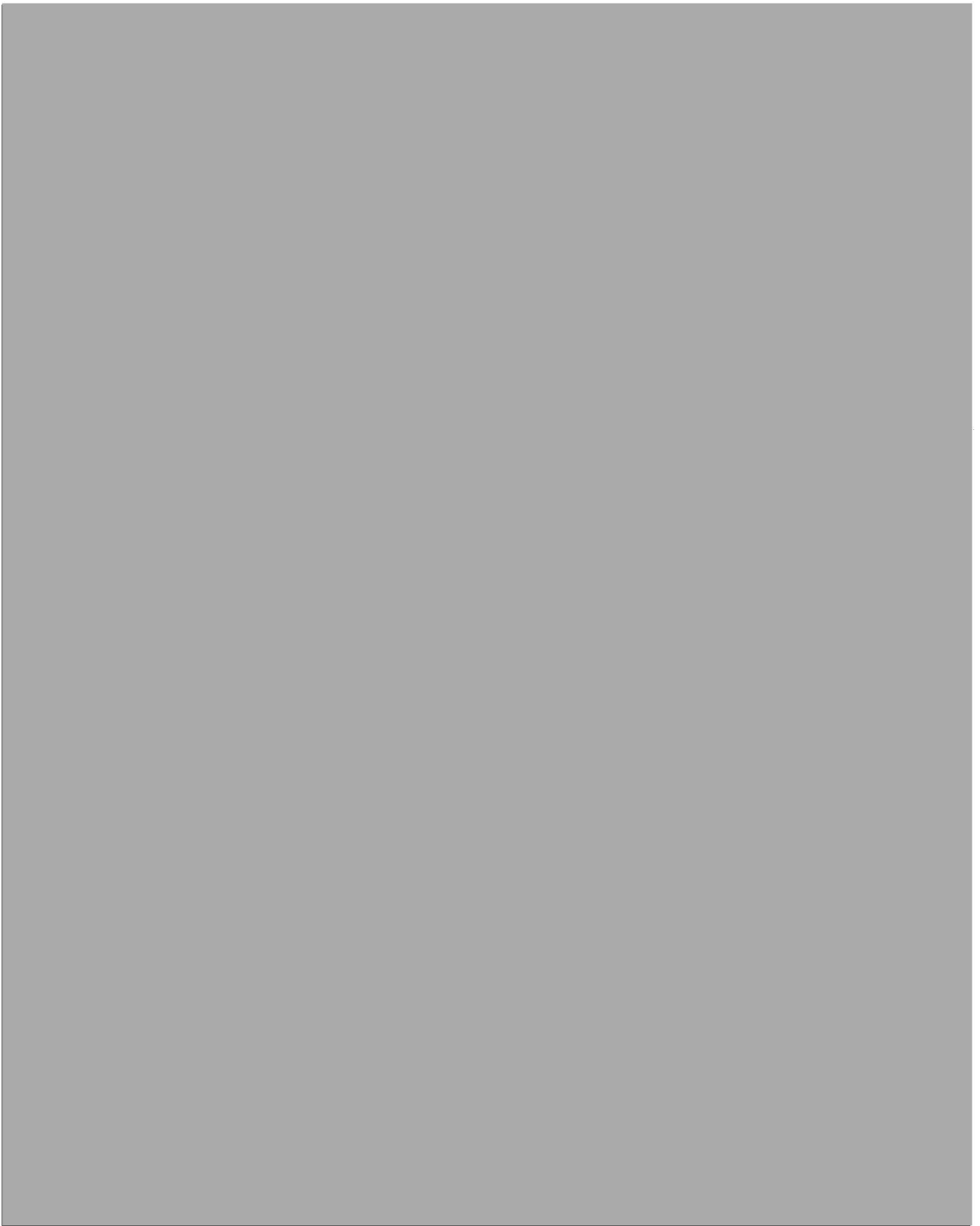
Excluded Assets



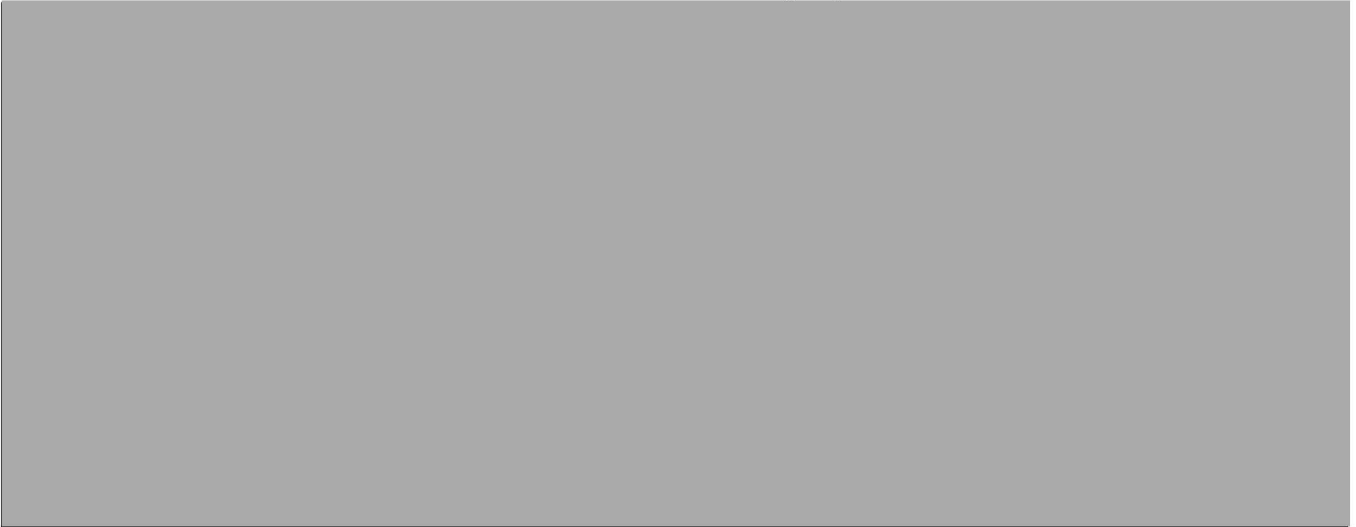








Excluded Real Property



A-1

A-2

HAULAGE AGREEMENT

THIS HAULAGE AGREEMENT is entered into as of this ___ day of _____, 201_, by and between RAPID CITY, PIERRE & EASTERN RAILROAD, INC., a Delaware corporation, hereinafter referred to as "RCP&E", and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation, d/b/a CANADIAN PACIFIC, hereinafter referred to as "CP." Sometimes hereinafter, each may be referred to as "Party" and sometimes collectively referred to as "the Parties."

WITNESSETH:

WHEREAS, CP has entered into an arrangement with RCP&E to sell the line of railroad between MP 231.5+/- in Tracy, MN and MP 174.7+/- in Colony, WY, between MP 97.1+/- in Rapid City, SD and MP 0.4+/- in Dakota Junction, NE, and between MP 0.4+/- in Dakota Junction, NE and MP 432.5+/- in Crawford, NE; and



NOW THEREFORE, in consideration of the mutual covenants of the Parties and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree:

ARTICLE 1 **DEFINITIONS AND INTERPRETATION**

1.1 Defined Terms

Where used herein or in any schedule hereto, unless there is something in the subject matter or text inconsistent therewith the following terms shall have the following meanings respectively:

- (a) **"AAR"** means the Association of American Railroads;
- (b) **"AAR Freight Claim Division"** means the Association of American Railroads' Freight Claim and Damage Prevention Division;
- (c) **"AAR Rules and Procedures"** means the Association of American Railroads Rules of Order, Principles and Practices, and Freight Claim Rules, including (i) the Field and the Office Manual of the AAR Interchange Rules, (ii) the AAR Railway Accounting Rules, (iii) the Manual of Standards and Recommended Practices, and (iv) the Car Repair Billing Exchange Procedures Manual, together with all successor or replacement rules and all arbitration decisions interpreting or construing any of them;
- (d) **"AEI Reader"** means an Automatic Equipment Identification Reader that reads and records the movements of railway engines and cars;

- (e) **"Agreement"** means this Haulage Agreement and all of the schedules attached to it;
- (f) [REDACTED]
- (g) [REDACTED]
- (h) **"CP Yard"** means CP's Tracy Yard in Tracy, MN;
- (i) **"Default Event"** has the meaning ascribed to it in Section 9.2;
- (j) **"Engines and Trains"** means all engines, trains, Cars or equipment owned, leased, used or otherwise in the possession of, control of or under operation by RCP&E;
- (k) **"Exchange Track"** means the track or tracks within Tracy Yard designated by CP from time to time for the exchange of Haulage Traffic;
- (l) **"Haulage Fees"** means the fees specified in Section 3.1, as adjusted from time to time pursuant to Section 3.2;
- (m) [REDACTED]
- (n) [REDACTED]
- (o) **"Operations pursuant to this Agreement"** means any operations conducted by RCP&E pursuant to any provision of this Agreement and includes without limitation the provision of any Haulage Services;
- (p) **"Person"** shall be broadly interpreted and includes an individual, body corporate, partnership, joint venture, trust, association unincorporated organization, any government authority or any other entity recognized by law;
- (q) **"Railway Line"** means the former CP line, including all sidetracks, spur tracks, and yard tracks appurtenant thereto, between MP 231.5+/- in Tracy, MN and MP 174.7+/- in Colony, WY and between MP 97.1+/- in Rapid City, SD and MP 0.4+/- in Dakota Junction, NE and between MP 0.4+/- in Dakota Junction, NE and MP 432.5+/- in Crawford, NE, which RCP&E intends to operate as a railway line; and
- (r) **"Transaction Agreement"** means the Transaction Agreement between CP and RCP&E dated as of January 2, 2014, in respect of, inter alia, the purchase and sale of the Railway Line.

1.2 **Capitalized Terms**

All capitalized terms used and not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Transaction Agreement.

1.3 Industry Terms

All words, terms and phrases used in this Agreement and not otherwise defined herein or in the Transaction Agreement shall be construed in accordance with the General Code of Operating Rules (GCOR) Definitions. If such words, terms or phrases are not defined in this Agreement, the Transaction Agreement or the GCOR Definitions, they shall be construed in accordance with the generally accepted definition or meaning of such words, terms or phrases in the North American railroad industry.

1.4 Schedules

The following schedules are attached to and form a part of this Agreement:

Schedule A -- Haulage Fees
Schedule B -- Service Standards
Schedule C -- Map

1.5 Construction

In this Agreement, unless otherwise expressly stated:

- (a) "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Agreement as a whole and not to any particular section, subsection or schedule;
- (b) "Article", "Section", "subsection", "clause" or "Schedule" are references to an Article, Section, subsection, clause or Schedule of or to this Agreement;
- (c) dollar amounts are references to United States currency;
- (d) each definition in this Agreement includes the singular and the plural, and references in this Agreement to gender include the masculine, feminine and neuter genders;
- (e) the division of this Agreement into sections and subsections and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation hereof;
- (f) where a word or phrase is defined, its derivatives or other grammatical forms have a corresponding meaning;
- (g) where a word or phrase appears in quotations or parenthesis or both, that word or phrase is deemed to be a defined word or phrase and gets its meaning from the words or phrases that immediately precede or follow that word or phrase;
- (h) references to a statute, regulation or other legal enactment include all of its amendments and re-enactments;
- (i) references to any agreement or contract mean such agreement or contract as amended;

- (j) references to a manner of conduct include any omission, representation, statement or undertaking, whether or not in writing; and
- (k) the word "including" means "including without limitation".

1.6 Applicable Law



1.7 Amendment

This Agreement may not be varied, modified, amended, supplemented or replaced except by written agreement executed by all Parties to this Agreement.

1.8 Entire Agreement

This Agreement constitutes the entire agreement between the Parties relating to its subject matter and no other representations, warranties or agreements, oral or written, will be binding on the Parties with respect to such subject matter.

1.9 Severability

If any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable, such provision or provisions shall be distinct and severable and the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired.

1.10 Mutual Negotiation

This Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

**ARTICLE 2
HAULAGE SERVICES**

2.1 Haulage Services



2.2 Service Level



2.3 Cessation of RCP&E Railway Operations



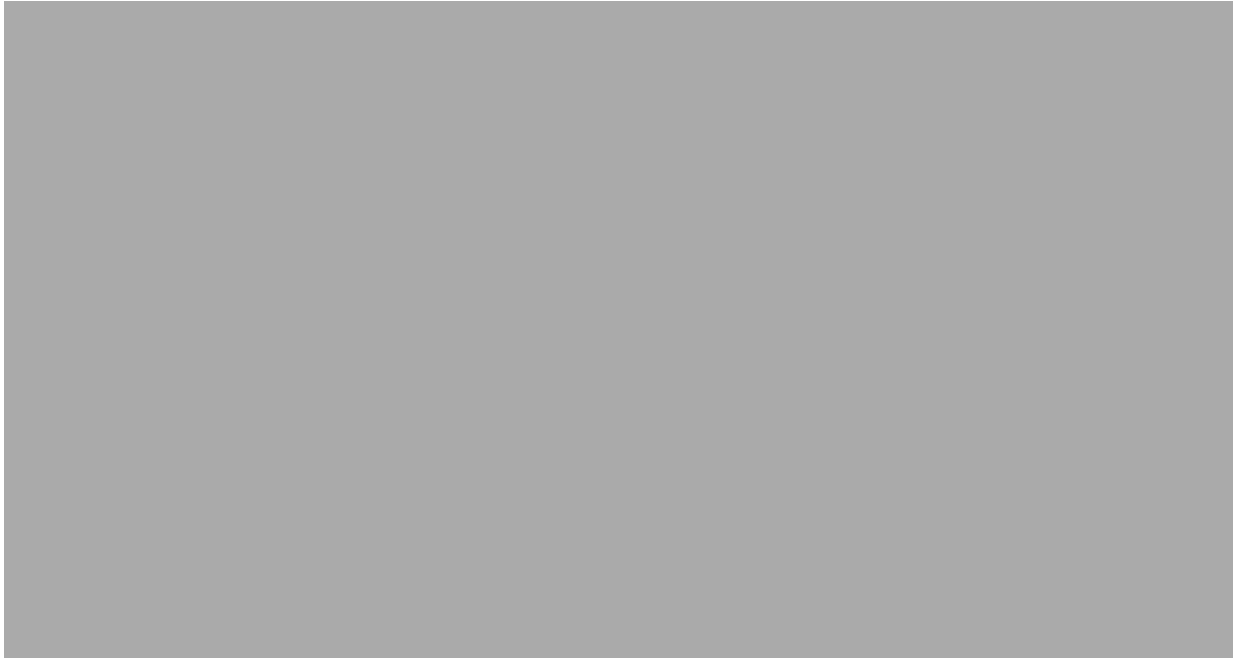
**ARTICLE 3
COMPENSATION AND PAYMENT**

3.1 Haulage Fees



3.2 Haulage Fee Adjustment





3.3 Payment of Haulage Fees



**ARTICLE 4
AUDIT**

4.1 Audit



ARTICLE 5
EXCHANGE OF TRAFFIC

5.1 Exchange Location



5.2 Time of Exchange of Cars Delivered



5.3 Car Hire and Reclaim



ARTICLE 6
MAINTENANCE, IMPROVEMENTS, ADDITIONS AND BETTERMENTS

6.1 Maintenance and Renewals

RCP&E shall be responsible for the routine maintenance and renewal of the Railway Line at its own expense.

ARTICLE 7
OPERATIONAL MATTERS

7.1 Compliance with Laws and Rules



7.2 Technology



as the same may be amended from time to time (the "Interchange Agreement").

7.3 Compliance with AAR Rules

Unless otherwise agreed herein, all movement of Haulage Traffic or Engines and Trains under this Agreement shall be governed by the AAR Rules and Procedures.

**ARTICLE 8
LIABILITY AND INDEMNIFICATION**

8.1 Definitions



8.2 Liability and Indemnity



would otherwise be restricted in AAR interchange, for example on

8.3 Continuing Liability

8.4 Limitation of Liability

**ARTICLE 9
TERM AND TERMINATION**

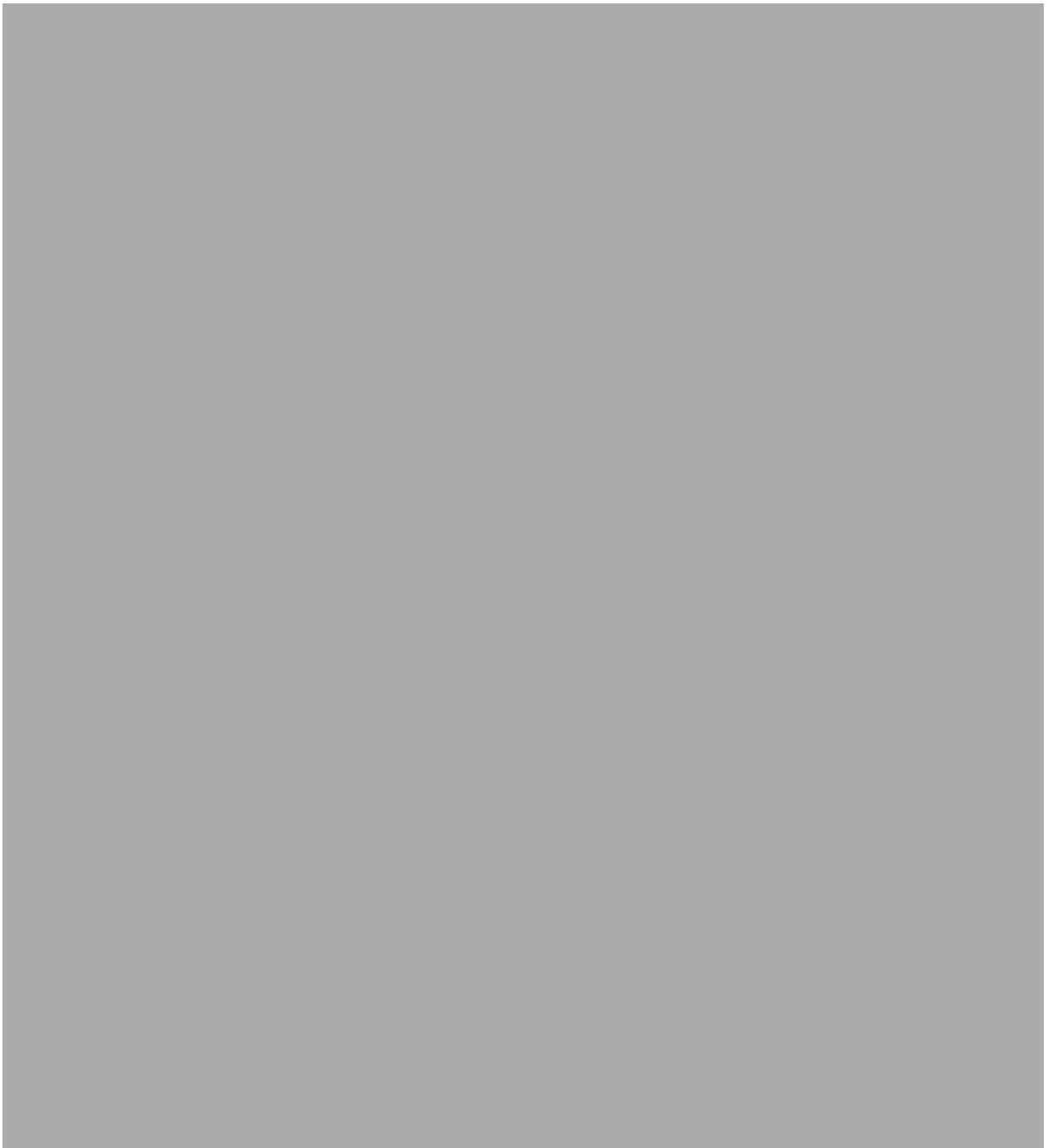
9.1 Term

9.2 Termination on Default

9.3 Rights and Obligations on Termination

ARTICLE 10
INSURANCE

10.1 Insurance Coverage



10.2 Replacement Insurance



10.3 Notice to CP



10.4 Certificate of Insurance



10.5 No Limitation



10.6 CP Insurance



10.7 Limitation of Damages



**ARTICLE 11
DISPUTES**

11.1 Resolution of Disputes



ARTICLE 12
GENERAL PROVISIONS

12.1 Approvals

RCP&E at its own cost and expense shall initiate and thereafter diligently prosecute any appropriate application or petition to secure all required regulatory approvals in connection with any Operations pursuant to this Agreement. RCP&E shall notify CP prior to any application for regulatory approval and RCP&E and CP shall co-operate in any such application.

12.2 Confidentiality and Disclosure

(a) The terms and conditions of this Agreement shall be kept confidential by both Parties, their lawyers, professional advisors and consultants.

(b)



12.3 Sole Benefit

All provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the Parties and nothing in this Agreement is intended or shall be construed to give any person, firm, corporation, or other entity, other than the Parties and their respective officers, agents, employees, directors, affiliates, successors and assigns, any right pursuant to any provision or term of this Agreement.

12.4 Force Majeure

Whenever a period of time is provided in this Agreement for either Party to do or perform any act or thing, unless otherwise specified in this Agreement, such Party shall not be liable or responsible for any delays due to strikes, lockouts, acts of God, war, court orders, work stoppages, nuclear incidents, riots, public disorder, criminal acts of other entities, or other such causes beyond the reasonable control of such Party (excepting always the failure or inability to make payments of amounts due under this Agreement), and in any such event, such time period shall be extended for the amount of time such Party is so delayed; provided that this Section 12.4 shall not be construed to affect the responsibilities of such Party hereunder to so perform such act or thing once such delays have been removed. Lack of funds shall not be an event of force Majeure.

12.5 Time

Time shall be of the essence of this Agreement.

12.6 Assignment and Subcontracting



12.7 Notices

Any notices, requests, demands and other communications under this Agreement shall be in writing and shall be furnished to the Parties at the addresses given below. Such notices and other communications shall be deemed to have been duly given if delivered by courier, or by facsimile (with confirmation of receipt), or mailed by registered mail, prepaid, return receipt requested, to:

CP: Dakota, Minnesota & Eastern Railroad Corporation
120 S. 6th Street, Suite 700
Minneapolis, MN 55402
Facsimile No.: 612 904-5981

with a copies to:





RCP&E: Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020
Attention President
Facsimile No. []

with a copy to :



Such notices and other communications duly given shall be deemed to be effective if given by courier, upon such delivery; if given by facsimile upon the date that a confirmation of receipt of the facsimile was recorded by the sender, and if given by registered mail, upon receipt by the addressee.

12.8 Inurement



12.9 Modifications, Approvals and Consents

No modification, supplement, termination or waiver of any provision of this Agreement will be effective unless in writing signed by the appropriate Party and then only in the specific instance and for the specific purpose given.

12.10 Waiver

Each of the Parties shall be entitled to waive compliance with any of the terms and conditions for its exclusive benefit, in whole or in part, without prejudice to any right of termination it may have in the event of non-performance or non-fulfillment of any such term or condition, and without prejudice to its right to claim damages with respect to breaches, non-compliance or non-fulfillment of any other term or condition, provided that every such waiver shall be in writing.

12.11 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together constitute one and the same agreement.

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

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
d/b/a CANADIAN PACIFIC

By: _____
Name:
Title:

By: _____
Name:
Title:

RAPID CITY, PIERRE & EASTERN RAILROAD, INC.

By: _____
Name:
Title:

SCHEDULE A
HAULAGE FEES



**SCHEDULE B
SERVICE STANDARDS**



**SCHEDULE C
MAP**



HAULAGE AGREEMENT

THIS HAULAGE AGREEMENT is entered into as of this ___ day of _____, 201_, by and between RAPID CITY, PIERRE & EASTERN RAILROAD, INC., a Delaware corporation, hereinafter referred to as "RCP&E", and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation, d/b/a CANADIAN PACIFIC, hereinafter referred to as "CP." Sometimes hereinafter, each may be referred to as "Party" and sometimes collectively referred to as "the Parties."

WITNESSETH:

WHEREAS, CP has entered into an arrangement with RCP&E to sell the line of railroad between MP 231.5+/- in Tracy, MN and MP 174.7+/- in Colony, WY, between MP 97.1+/- in Rapid City, SD and MP 0.4+/- in Dakota Junction, NE, and between MP 0.4+/- in Dakota Junction, NE and MP 432.5+/- in Crawford, NE; and

[REDACTED]

NOW THEREFORE, in consideration of the mutual covenants of the Parties and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree:

ARTICLE 1 **DEFINITIONS AND INTERPRETATION**

1.1 Defined Terms

Where used herein or in any schedule hereto, unless there is something in the subject matter or text inconsistent therewith the following terms shall have the following meanings respectively:

- (a) **"AAR"** means the Association of American Railroads;
- (b) **"AAR Freight Claim Division"** means the Association of American Railroads' Freight Claim and Damage Prevention Division;
- (c) **"AAR Rules and Procedures"** means the Association of American Railroads Rules of Order, Principles and Practices, and Freight Claim Rules, including (i) the Field and the Office Manual of the AAR Interchange Rules, (ii) the AAR Railway Accounting Rules, (iii) the Manual of Standards and Recommended Practices, and (iv) the Car Repair Billing Exchange Procedures Manual, together with all successor or replacement rules and all arbitration decisions interpreting or construing any of them;
- (d) **"AEI Reader"** means an Automatic Equipment Identification Reader that reads and records the movements of railway engines and cars;
- (e) **"Agreement"** means this Haulage Agreement and all of the schedules attached to it;

- (f) **"Car"** means each loaded or empty railway freight car or similar equipment, handled by RCP&E in the account of CP pursuant to this Agreement;
- (g) **"CP Yard"** means CP's Tracy Yard in Tracy, MN;
- (h) **"Default Event"** has the meaning ascribed to it in Section 9.2;
- (i) **"Engines and Trains"** means all engines, trains, Cars or equipment owned, leased, used or otherwise in the possession of, control of or under operation by RCP&E;
- (j) **"Exchange Track"** means the track or tracks designated by the Parties from time to time for the exchange of Haulage Traffic;
- (k) **"Haulage Fees"** means the fees specified in Section 3.1, as adjusted from time to time pursuant to Section 3.2;
- (l) **"Haulage Services"** means [REDACTED]
- (m) **"Haulage Traffic"** means [REDACTED]
- (n) **"Main System"** has the meaning as defined in the Transaction Agreement.
- (o) **"Operations pursuant to this Agreement"** means any operations conducted by RCP&E pursuant to any provision of this Agreement and includes without limitation the provision of any Haulage Services;
- (p) **"Person"** shall be broadly interpreted and includes an individual, body corporate, partnership, joint venture, trust, association unincorporated organization, any government authority or any other entity recognized by law;
- (q) **"Railway Line"** means the former CP line, including all sidetracks, spur tracks, and yard tracks appurtenant thereto, between MP 231.5+/- in Tracy, MN and MP 174.7+/- in Colony, WY and between MP 97.1+/- in Rapid City, SD and MP 0.4+/- in Dakota Junction, NE and between MP 0.4+/- in Dakota Junction, NE and MP 432.5+/- in Crawford, NE, which RCP&E intends to operate as a railway line; and
- (r) **"Trainload movement"** means [REDACTED]
- (s) **"Transaction Agreement"** means the Transaction Agreement between CP and RCP&E dated as of January 2, 2014, in respect of, inter alia, the purchase and sale of the Railway Line;

1.2 Capitalized Terms

All capitalized terms used and not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Transaction Agreement.

1.3 Industry Terms

All words, terms and phrases used in this Agreement and not otherwise defined herein or in the Transaction Agreement shall be construed in accordance with the General Code of Operating Rules (GCOR) Definitions. If such words, terms or phrases are not defined in this Agreement, the Transaction Agreement or the GCOR Definitions, they shall be construed in accordance with the generally accepted definition or meaning of such words, terms or phrases in the North American railroad industry.

1.4 Schedules

The following schedules are attached to and form a part of this Agreement:

Schedule A -- Haulage Fees
Schedule B -- Service Standards
Schedule C -- Map

1.5 Construction

In this Agreement, unless otherwise expressly stated:

- (a) "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Agreement as a whole and not to any particular section, subsection or schedule;
- (b) "Article", "Section", "subsection", "clause" or "Schedule" are references to an Article, Section, subsection, clause or Schedule of or to this Agreement;
- (c) dollar amounts are references to United States currency;
- (d) each definition in this Agreement includes the singular and the plural, and references in this Agreement to gender include the masculine, feminine and neuter genders;
- (e) the division of this Agreement into sections and subsections and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation hereof;
- (f) where a word or phrase is defined, its derivatives or other grammatical forms have a corresponding meaning;
- (g) where a word or phrase appears in quotations or parenthesis or both, that word or phrase is deemed to be a defined word or phrase and gets its meaning from the words or phrases that immediately precede or follow that word or phrase;
- (h) references to a statute, regulation or other legal enactment include all of its amendments and re-enactments;

- (i) references to any agreement or contract mean such agreement or contract as amended;
- (j) references to a manner of conduct include any omission, representation, statement or undertaking, whether or not in writing; and
- (k) the word "including" means "including without limitation".

1.6 Applicable Law

[REDACTED]

1.7 Amendment

This Agreement may not be varied, modified, amended, supplemented or replaced except by written agreement executed by all Parties to this Agreement.

1.8 Entire Agreement

This Agreement constitutes the entire agreement between the Parties relating to its subject matter and no other representations, warranties or agreements, oral or written, will be binding on the Parties with respect to such subject matter.

1.9 Severability

If any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable, such provision or provisions shall be distinct and severable and the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired.

1.10 Mutual Negotiation

This Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

ARTICLE 2 HAULAGE SERVICES

2.1 Haulage Services

[REDACTED]

2.2 Service Level



2.3 Cessation of RCP&E Railway Operations



**ARTICLE 3
COMPENSATION AND PAYMENT**

3.1 Haulage Fees



3.2 Haulage Fee Adjustment





3.3 Payment of Haulage Fees



**ARTICLE 4
AUDIT**

4.1 Audit





ARTICLE 5
EXCHANGE OF TRAFFIC

5.1 Exchange Location



5.2 Time of Exchange of Cars Delivered



5.3 Car Hire and Reclaim



ARTICLE 6
MAINTENANCE, IMPROVEMENTS, ADDITIONS AND BETTERMENTS

6.1 Maintenance and Renewals

RCP&E shall be responsible for the routine maintenance and renewal of the Railway Line at its own expense.

6.2 Improvements, Additions and Betterments





ARTICLE 7
OPERATIONAL MATTERS

7.1 Compliance with Laws and Rules



7.2 Technology



7.3 Compliance with AAR Rules

Unless otherwise agreed herein, all movement of Haulage Traffic or Engines and Trains under this Agreement shall be governed by the AAR Rules and Procedures.

**ARTICLE 8
LIABILITY AND INDEMNIFICATION**

8.1 Definitions



8.2 Liability and Indemnity







8.3 Continuing Liability



8.4 Limitation of Liability



**ARTICLE 9
TERM AND TERMINATION**

9.1 Term



9.2 Termination on Default



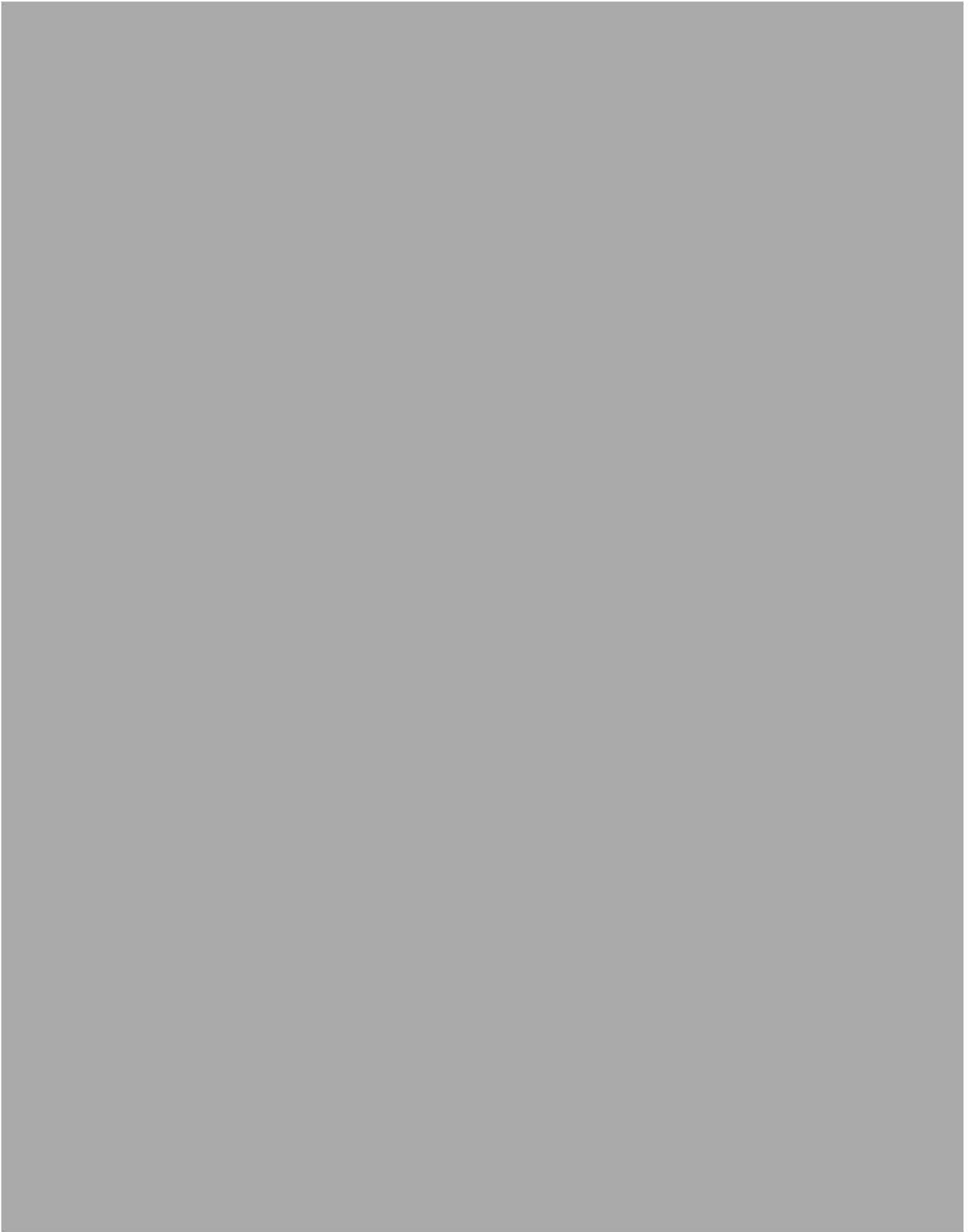
9.3 Rights and Obligations on Termination



ARTICLE 10
INSURANCE

10.1 Insurance Coverage





10.2 Replacement Insurance



10.3 Notice to CP



10.4 Certificate of Insurance



10.5 No Limitation



10.6 CP Insurance



10.7 Limitation of Damages



ARTICLE 11
DISPUTES

11.1 Resolution of Disputes



invoke

arbitration is to be made in writing as prescribed in Section 12.7 herein.

ARTICLE 12
GENERAL PROVISIONS

12.1 Approvals

RCP&E at its own cost and expense shall initiate and thereafter diligently prosecute any appropriate application or petition to secure all required regulatory approvals in connection with any Operations pursuant to this Agreement. RCP&E shall notify CP prior to any application for regulatory approval and RCP&E and CP shall co-operate in any such application.

12.2 Confidentiality and Disclosure

- (a) The terms and conditions of this Agreement shall be kept confidential by both Parties, their lawyers, professional advisors and consultants.

(b)



12.3 Sole Benefit

All provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the Parties and nothing in this Agreement is intended or shall be construed to give any person, firm, corporation, or other entity, other than the Parties and their respective officers, agents, employees, directors, affiliates, successors and assigns, any right pursuant to any provision or term of this Agreement.

12.4 Force Majeure

Whenever a period of time is provided in this Agreement for either Party to do or perform any act or thing, unless otherwise specified in this Agreement, such Party shall not be liable or responsible for any delays due to strikes, lockouts, acts of God, war, court orders, work stoppages, nuclear incidents, riots, public disorder, criminal acts of other entities, or other such causes beyond the reasonable control of such Party (excepting always the failure or inability to make payments of amounts due under this Agreement), and in any such event, such time period shall be extended for the amount of time such Party is so delayed; provided that this Section 12.4 shall not be construed to affect the responsibilities of such Party hereunder to so perform such act or thing once such delays have been removed. Lack of funds shall not be an event of force Majeure.

12.5 Time

Time shall be of the essence of this Agreement.

12.6 Assignment and Subcontracting

12.7 Notices

Any notices, requests, demands and other communications under this Agreement shall be in writing and shall be furnished to the Parties at the addresses given below. Such notices and other communications shall be deemed to have been duly given if delivered by courier, or by facsimile (with confirmation of receipt), or mailed by registered mail, prepaid, return receipt requested, to:

CP: Dakota, Minnesota & Eastern Railroad Corporation
120 S. 6th Street, Suite 700
Minneapolis, MN 55402
Facsimile No.: 612 904-5981

with a copies to:



RCP&E: Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020
Attention President
Facsimile No. []

with a copy to :



Such notices and other communications duly given shall be deemed to be effective if given by courier, upon such delivery; if given by facsimile upon the date that a confirmation of receipt of the facsimile was recorded by the sender, and if given by registered mail, upon receipt by the addressee.

12.8 Inurement



12.9 Modifications, Approvals and Consents

No modification, supplement, termination or waiver of any provision of this Agreement will be effective unless in writing signed by the appropriate Party and then only in the specific instance and for the specific purpose given.

12.10 Waiver

Each of the Parties shall be entitled to waive compliance with any of the terms and conditions for its exclusive benefit, in whole or in part, without prejudice to any right of termination it may have in the event of non-performance or non-fulfillment of any such term or condition, and without prejudice to its right to claim damages with respect to breaches, non-compliance or non-fulfillment of any other term or condition, provided that every such waiver shall be in writing.

12.11 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together constitute one and the same agreement.

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

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
d/b/a CANADIAN PACIFIC

By: _____
Name:
Title:

By: _____
Name:
Title:

RAPID CITY, PIERRE & EASTERN RAILROAD, INC.

By: _____
Name:
Title:

SCHEDULE A
HAULAGE FEES



**SCHEDULE B
SERVICE STANDARDS**



**SCHEDULE C
MAP**



INTERCHANGE AGREEMENT

THIS INTERCHANGE AGREEMENT is made this ____ day of _____, 2013, between RAPID CITY, PIERRE & EASTERN RAILROAD, INC. (“RCP&E”) and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation, d/b/a Canadian Pacific (“CP”); sometimes individually referred to as a “Party” and sometimes collectively referred to below as the “Parties.”

WITNESSETH

WHEREAS, RCP&E and CP are parties to the Asset Purchase Agreement (“APA”) and related transaction documents pursuant to which CP is selling and RCP&E is purchasing certain railroad properties, rights and facilities relating to a rail line referred to as the “DME West End” as defined therein;

WHEREAS, CP and RCP&E desire to interchange loaded and empty freight cars originating or terminating on the DME West End (hereinafter referred to as “Cars”) at CP’s Tracy Yard in Tracy, Minnesota;

WHEREAS, in order to interchange freight traffic with CP at the Tracy Yard, RCP&E will require operating rights over approximately 7.5 miles of CP’s trackage in the vicinity of Tracy between Milepost 231.5+/- and Milepost 224+/-;

WHEREAS, to allow RCP&E access to the interchange facilities at Tracy, MN, CP is willing to grant RCP&E operating rights from Milepost 231.5+/- to Milepost 224+/- for the sole purpose of interchanging freight traffic with CP as herein described, subject to the terms and conditions set forth;

WHEREAS, CP shall have sole responsibility to coordinate operation of the Parties’ trains on the interchange trackage;

NOW, THEREFORE, in consideration of the premises, the mutual promises, and the other good and valuable consideration set forth herein, the Parties agree as follows:

Section 1. GRANT OF OPERATING RIGHTS FOR INTERCHANGE

1.1

[REDACTED]

[REDACTED]

1.2 Subject to the terms and conditions herein provided, CP grants RCP&E the non-exclusive right to operate its trains, locomotives and freight cars over the Subject Trackage for the sole purpose of interchanging freight rail cars with CP at Tracy Yard in Tracy, MN.

1.3 [REDACTED]

1.4 [REDACTED]

1.5 CP may request an investigation if a RCP&E employee working on the Subject Trackage is alleged to have violated CP's rules, regulations, orders, practices, or instructions, or if an incident occurs which requires an investigation under applicable laws, regulations or agreement rules. RCP&E will schedule the investigation and notify CP's Local Transportation Officer in the territory. RCP&E must schedule the investigation within the time limits provided in the applicable agreement on RCP&E's railroad. CP will provide its regulations, supplements, and safety rules to RCP&E at no cost.

1.6 If CP requests an investigation, CP shall have the right to exclude from the Subject Trackage any employee of RCP&E, except officers, who CP determines to be in

violation of CP's rules, regulations, orders, practices, or instructions as the result of CP's investigation or hearing described below.

1.7 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein CP desires to bar RCP&E's employee from service on the Subject Trackage pending an investigation by CP, immediate verbal notification will be given to the appropriate Transportation Officer of RCP&E so that proper written notice can be issued to the employee.

1.8 If CP requests an investigation, an officer of RCP&E will conduct the investigation, but an officer of CP may be present. After the investigation is concluded, a Transportation Officer of RCP&E will arrange to assess discipline, within the applicable time limits. If CP recommends dismissal, RCP&E reserves the right to change the recommendation to the extent of barring the individual from operating over the Subject Trackage. RCP&E shall release, indemnify, defend, and save harmless CP and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

1.9 If the disciplinary action is appealed by the employee of RCP&E to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Subject Trackage by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds CP's continued exclusion of such employee).

Section 2. CLEARING OF WRECKS

2.1 Whenever RCP&E's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CP shall perform or provide such service, including the repair and restoration of roadbed, track and structures, except that CP in its sole discretion may request a third party to perform such rerailling service at RCP&E's sole expense.

2.2 Subject to the provisions of Section 6, the cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be invoiced to RCP&E and paid by RCP&E in accordance with CP's current billing practices. All locomotives, Cars, and equipment that are

owned by or under the management and control of or used by RCP&E at the time of such wreck, shall be promptly delivered to RCP&E, unless the parties otherwise agree.

2.3 In the event that a train of RCP&E shall be forced to stop on the Subject Trackage due to mechanical failure of RCP&E's equipment or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of RCP&E fails to maintain the speed required by CP on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of RCP&E's trains on the Subject Trackage, CP shall have the option to furnish motive power or such other assistance as may be necessary to crew, haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and RCP&E shall reimburse CP for the actual cost of rendering any such assistance.

2.4 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, CP shall have the option of performing such work and RCP&E shall reimburse CP for the cost thereof.

Section 3. ENVIRONMENTAL

3.1

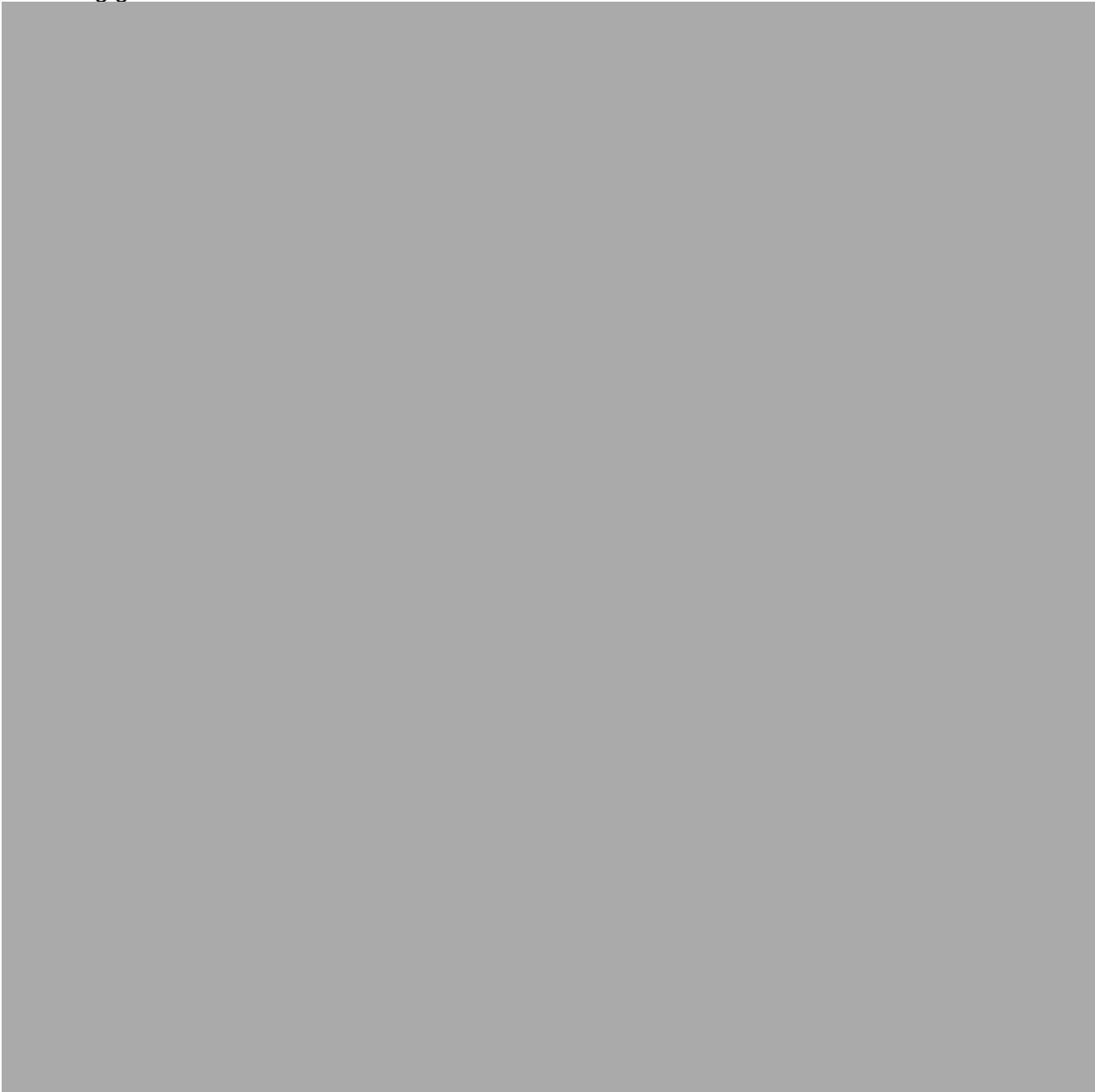


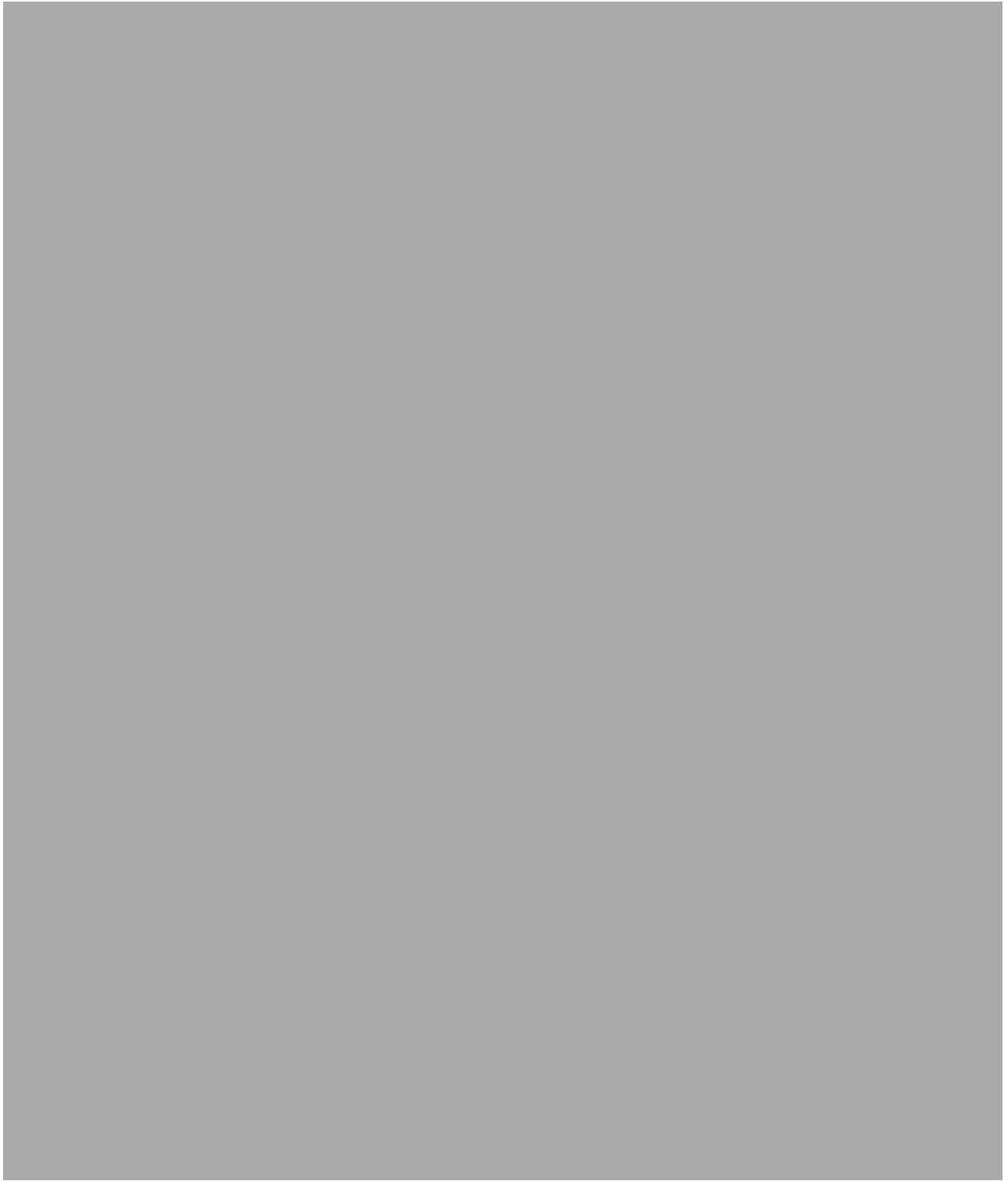
3.2





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3.4



3.5 The provisions of this Section 3 shall survive the expiration or earlier termination of this Agreement.

Section 4. MAINTENANCE OF THE SUBJECT TRACKAGE

Section 5. INTERCHANGE RULES; INTERCHANGE TIME AND PLACE

5.1 (i)

(ii) CP shall be responsible to manage the interchange at Tracy and movement of haulage or trackage rights trains through Tracy. CP will manage the Tracy area to provide efficient and non-discriminatory movement of RCP&E and CP trains and to ensure the operation of the interchange track at Tracy remains fluid.

5.2 Except as specifically provided for herein, the rules of the Association of American Railroads ("AAR") governing interchange of cars between railroads shall govern the interchange of cars hereunder.

5.3

[Redacted content]

5.4

[Redacted content]

5.5

[Redacted content]

5.6

[Redacted content]

5.7 The delivering Party shall have all necessary documentation required by law, regulation, AAR Rules, or railroad industry practice on the train for the receiving Party.

5.8

5.9

5.10

Section 6. LIABILITY



6.2



6.3



6.4



6.5



6.6



[Redacted]

6.7 [Redacted]

[Redacted]

6.8 [Redacted]

[Redacted]

6.9 [Redacted]

[Redacted]

6.10 [Redacted]

[Redacted]

[REDACTED]

6.11

[REDACTED]

[REDACTED]

6.13

[REDACTED]

6.14

[REDACTED]

Section 7. DISPUTE RESOLUTION

[REDACTED]



Section 8. DEFAULTS

8.1



8.2



Section 9. INSURANCE

9.1





[Redacted]

9.2

[Redacted]

9.3

[Redacted]

9.4

[Redacted]

9.5

[Redacted]

9.6

[Redacted]

9.7

[Redacted]

Section 10. NOTICES

All written notices shall be forwarded via certified mail to the appropriate party as follows:

If to RCP&E:

Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020
Attention President
Facsimile No. []

with a copy to :



If to CP:

Dakota, Minnesota & Eastern Railroad Corporation
120 S. 6th Street, Suite 700
Minneapolis, MN 55402
Facsimile No.: 612 904-5981

Canadian Pacific Railway Company
Building 1
7550 Ogden Dale Road SE
Calgary, AB
T2C 4X9
Attention: Vice President, Operations

with copies to:



Section 11. FORCE MAJEURE

11.1 A Party's duties and obligations under this Agreement shall be excused and a Party shall not be liable to the other Party for any delay, loss or damage resulting from circumstances or causes beyond its reasonable control including, without limitation: an Act of God, inclement weather conditions, storms, blizzard, flood, washout, avalanche, snow slide, rockslide, earthquake, expropriation, fire or explosion, natural catastrophe of any kind, strike, lockout, walkout or other labor dispute; war; vandalism or sabotage, riot, or other civil commotion, insurrection, act of terrorism or other violence, derailment, track outage, labor shortage, electric utility power outage, locomotive or fuel shortage; any law, order or requirement of any governmental agency or authority; blockade; embargo or AAR service order; closure of origin or destination for any reason. Force majeure declarations by either Party may be limited to specific origins or destinations or railroad routes to more specifically identify the force majeure event. The Party declaring force majeure shall promptly notify the other Party of the nature of the condition and the commencement and cessation thereof.

Section 12. MISCELLANEOUS PROVISIONS

12.1 [REDACTED]

12.2 This Agreement constitutes the entire agreement of the parties with respect to the subject herein and supersedes and cancels all prior agreements and understandings, oral or written, with respect thereto. This Agreement may be modified only by an instrument in writing signed by an authorized officer of CP and of RCP&E.

12.3 The language used in this Agreement should be deemed the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against either Party.

12.4 All section headings are inserted for convenience of reference only and shall not affect any construction or interpretation of this Agreement.

12.5 [REDACTED]

12.6 Any waiver at any time of a breach of any provision, condition, obligation or requirement of this Agreement shall extend only to the particular breach so waived and shall not impair or affect the existence of any provision, condition or requirement of this Agreement or the right of CP or RCP&E thereafter to avail itself of any breach, subject to such waiver.

12.7 This Agreement may not be assigned by either Party without the prior written consent of the other Party, which may not be unreasonably withheld or delayed. This Agreement will be binding upon and inure to the benefit of their respective successors and permitted assigns.

12.8



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on the dates indicated.

**DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION
d/b/a Canadian Pacific**

By _____

Its _____

Date _____

**RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.**

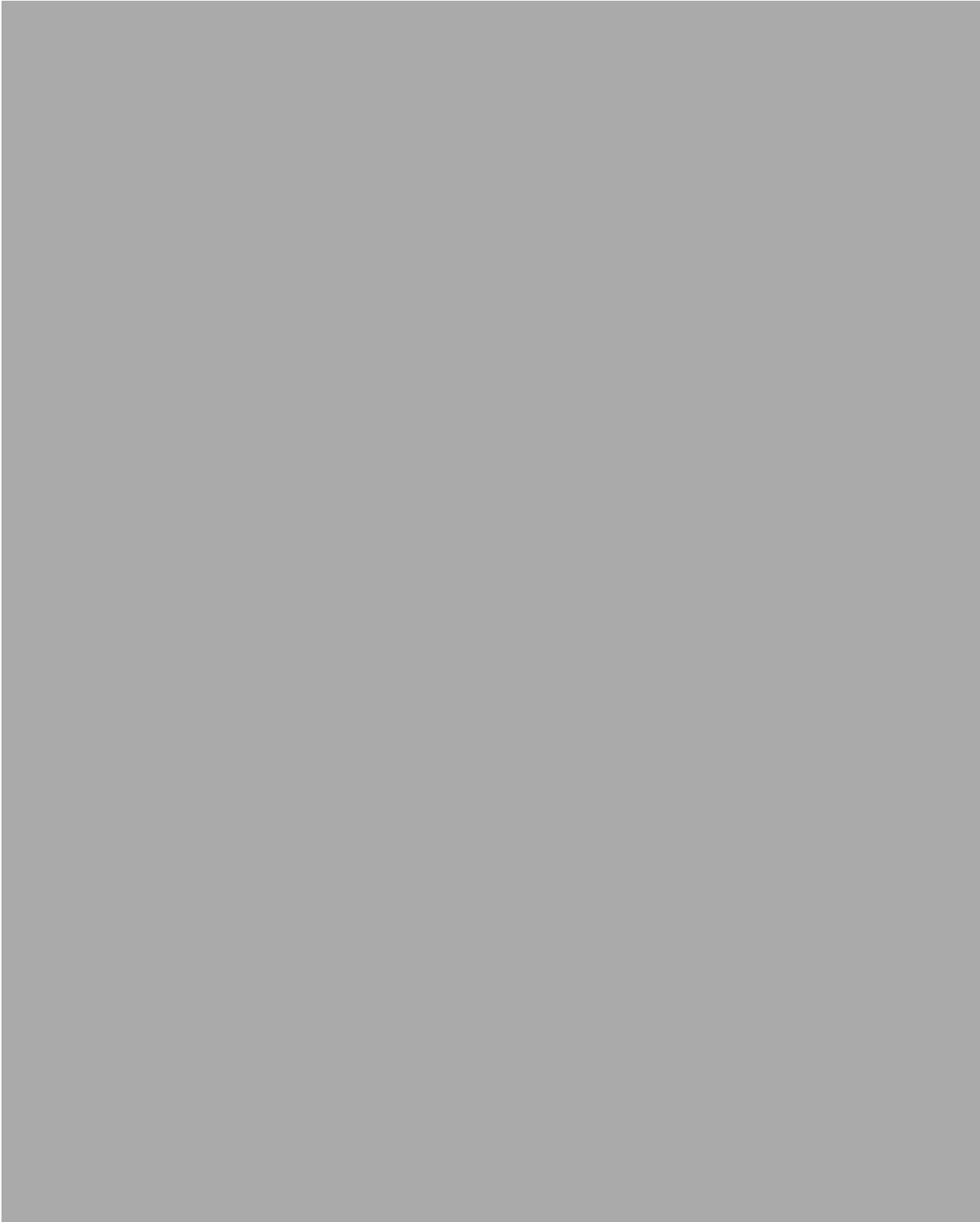
By _____

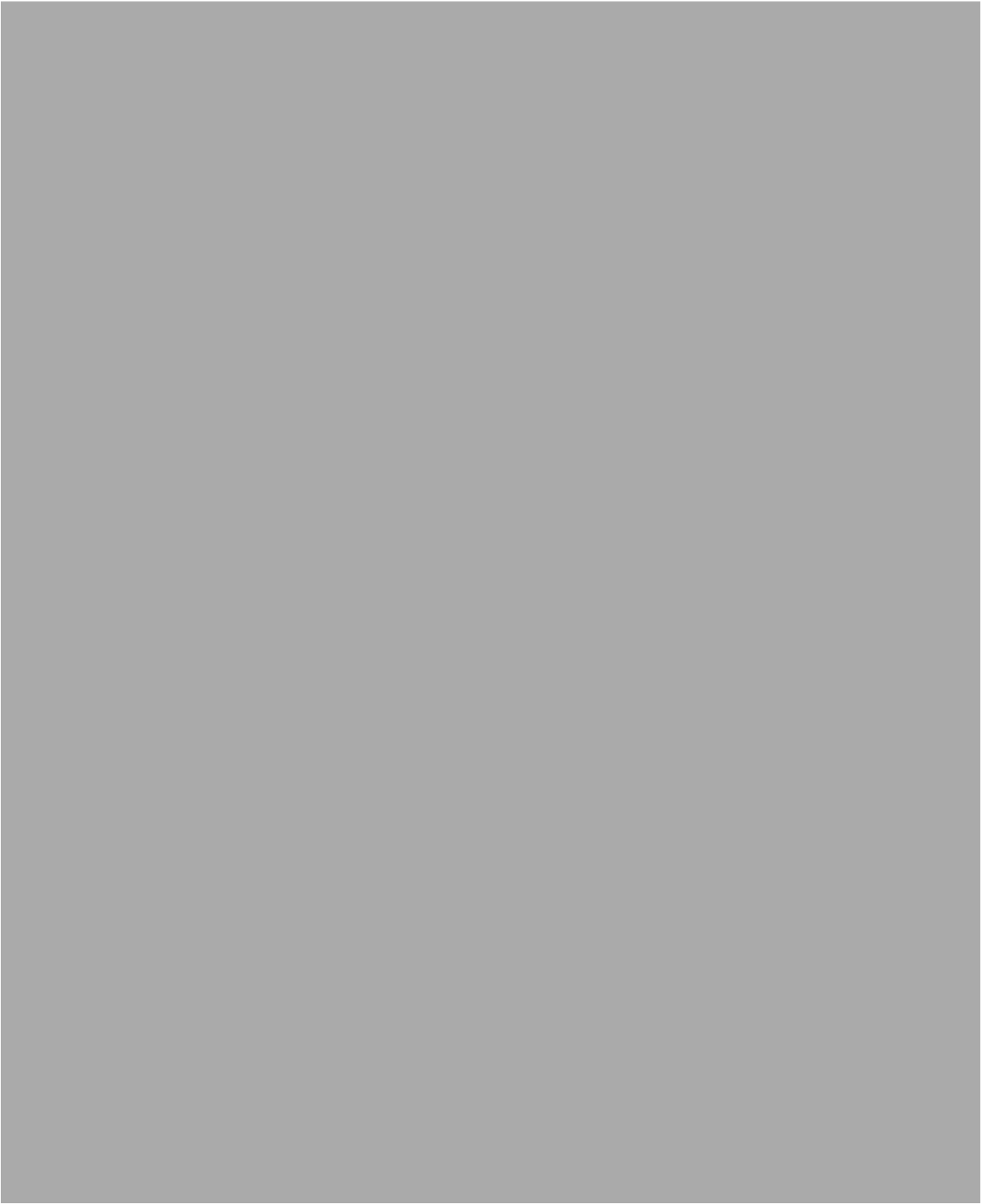
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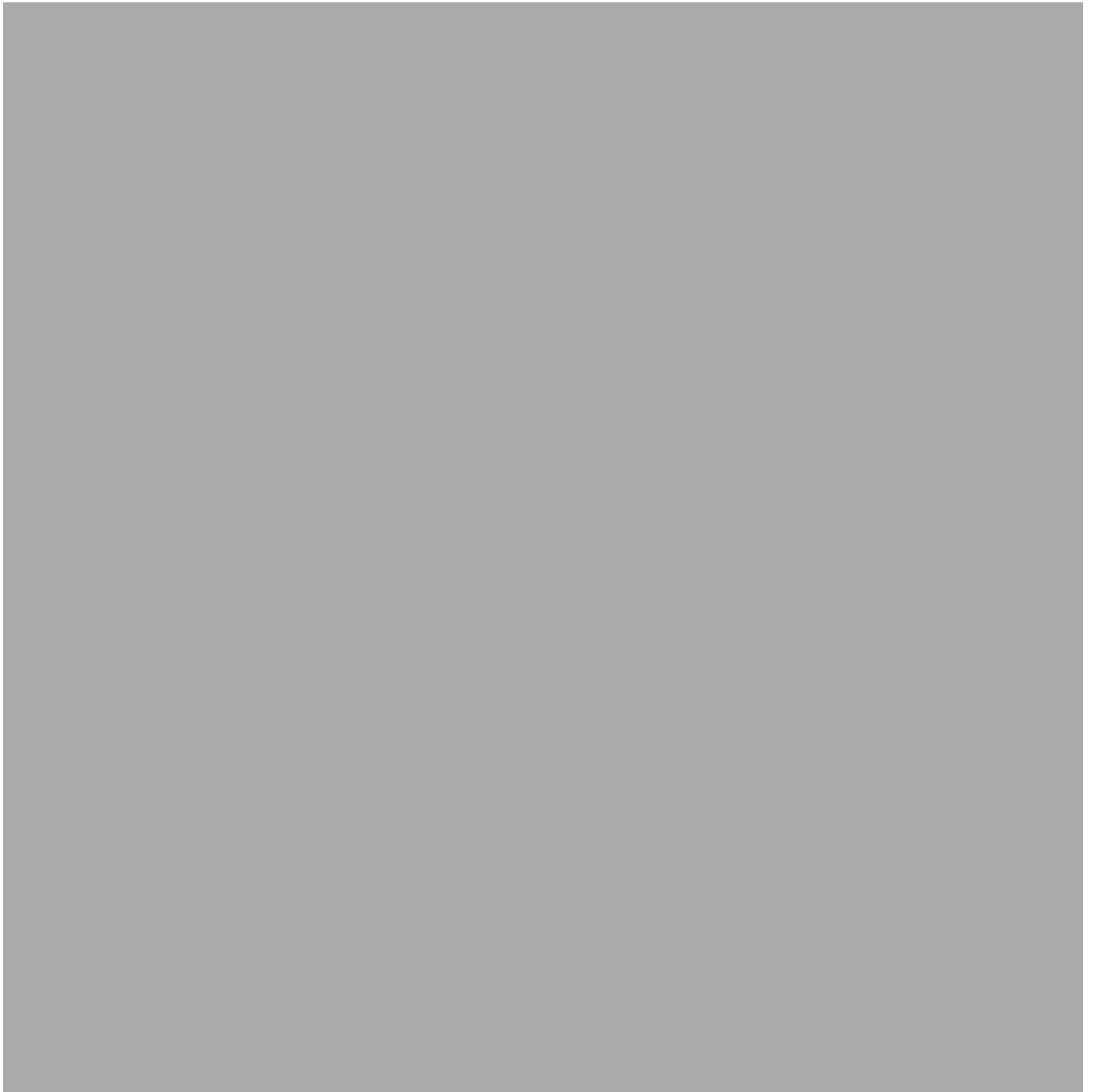
Date _____

EXHIBIT A
Subject Trackage

EXHIBIT B
Operating Plan

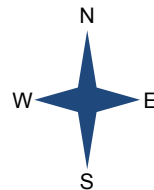
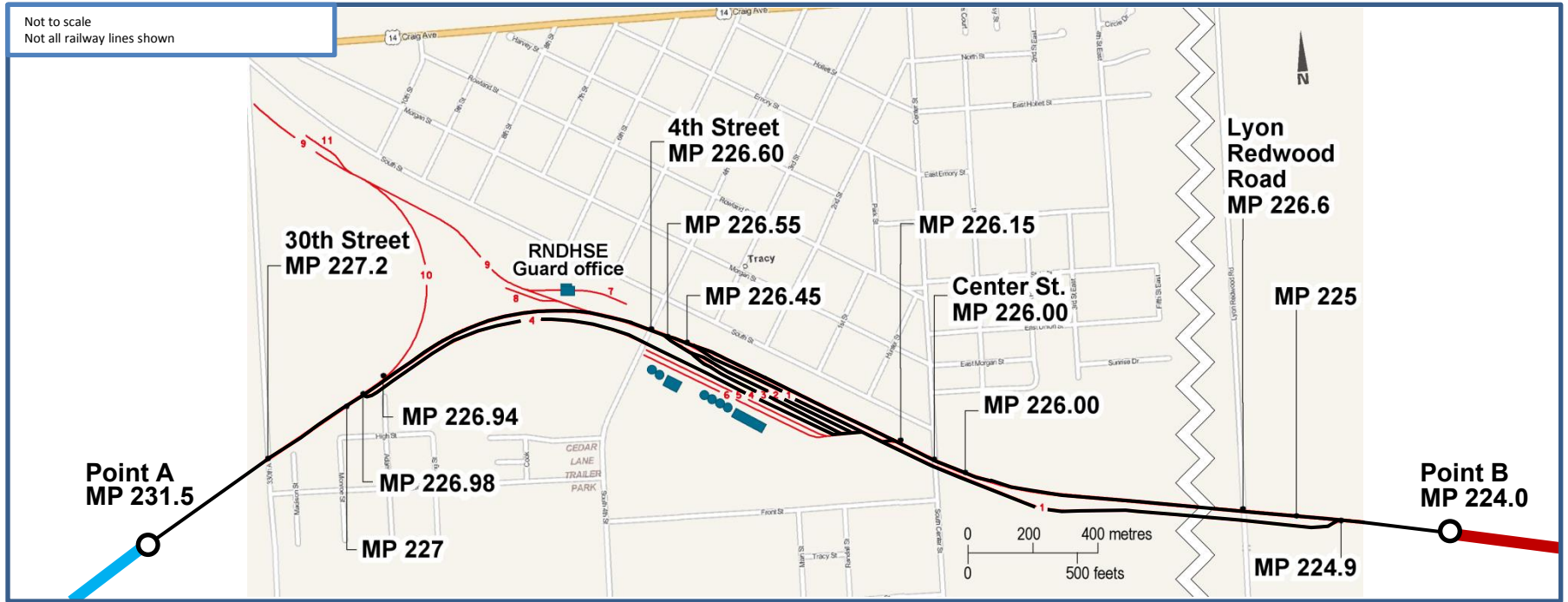






Interchange Agreement– Exhibit J

Exhibit A Subject Trackage



- Subject Trackage
- CP
- NEWCO

EXHIBIT K
Dakota, Minnesota & Eastern Railroad Corporation
Inventories

[REDACTED]

[REDACTED]

* All 118 pages of Exhibit K have
been redacted and removed.

MARKETING AND DIVISIONS AGREEMENT

THIS MARKETING AND DIVISIONS AGREEMENT, dated as of the ____ day of _____, 201_, between RAPID CITY, PIERRE & EASTERN RAILROAD, INC. (“Buyer”) and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation, d/b/a Canadian Pacific (“DM&E”); sometimes individually referred to as a “Party” and sometimes collectively referred to below as the “Parties”.

RECITALS

A. DM&E and Buyer are parties to the Transaction Agreement and related transaction documents pursuant to which DM&E is selling and leasing to Buyer, and Buyer is purchasing and leasing from DM&E, certain railroad properties, rights and facilities relating to a rail line referred to as the “DM&E West End” as defined therein.

B. Buyer and DM&E desire to work together to provide efficient and competitive rail service to rail shippers, and to market and promote the interchange of traffic described herein.

D.

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E.

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F.



NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the Parties hereto hereby agree as follows:

I. DEFINITIONS

1.01 Defined Terms. As used herein, the following terms shall have the meanings specified in this Section 1.01 as follows:



“Closing Date” -- As defined in Section 3.10 of the Transaction Agreement.

“Environmental Law” or “Environmental Laws” means the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Clean Water Act, 33 U.S.C. §§ 1321 et seq., The Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Toxic

Substances Control Act, 33 U.S.C. §§ 1251 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.



“Hazardous Materials” means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other

chemical, substance or material listed or identified in or regulated by any Environmental Law including Poison Inhalation Hazard (PIH)/Toxic Inhalation Hazard (TIH) materials considered poisonous or toxic by inhalation in the Canadian Transportation of Dangerous Goods Regulations, the United States Hazardous Materials Regulations, or the Association of American Railroads circular OT-55i (<http://boe.aar.com/boe-download.htm>). The terms PIH and TIH are used interchangeably.



“Main System” – As defined in Recital A of the Transaction Agreement.



II. MARKETING COMMITMENT

2.01

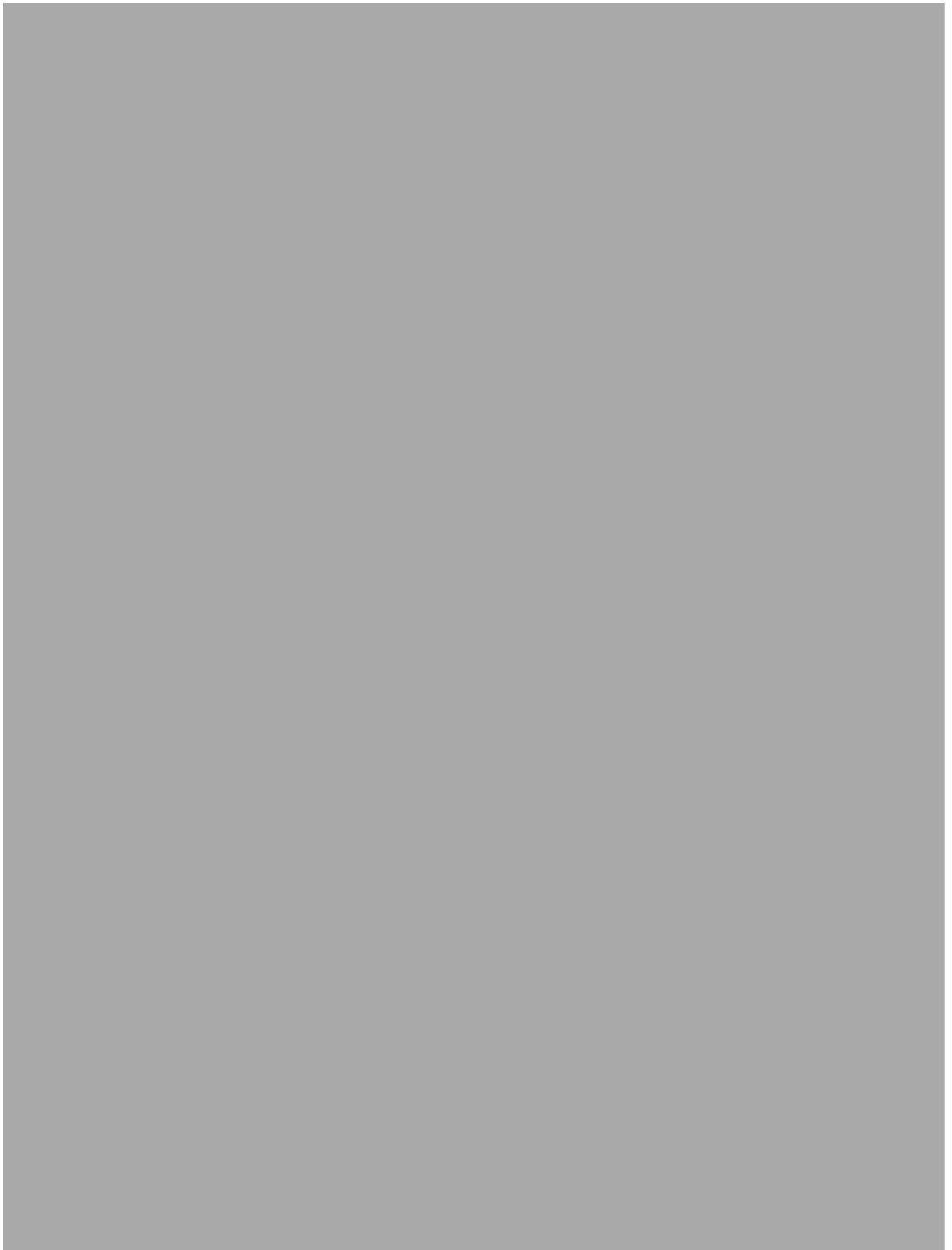


2.02



2.03







2.04



[REDACTED]

2.05 [REDACTED]

[REDACTED]

2.06 [REDACTED]

[REDACTED]

2.07 [REDACTED]

[REDACTED]



2.08



2.09



[REDACTED]

2.10 [REDACTED]

[REDACTED]

2.11 [REDACTED]

[REDACTED]

III. RATES AND REVENUE ALLOCATION

3.01



3.02



IV. CAR HIRE & CAR SERVICE:

4.01 The AAR's Code of Car Hire and Car Service Rules and Tariff RIC 6007 or any successor rules or tariffs shall govern all rolling stock and equipment used in the movement of Joint Traffic.

4.02 Each Party shall be financially responsible to the car owner, or such entity as designated in the Official Railway Equipment Register, for those car hire and private company mileage charges it incurs for its movement of rolling stock or other equipment pursuant to the rules and tariffs identified in the preceding section.

V. SERVICE STANDARDS:

5.01 Buyer and DM&E shall accept, handle and deliver interline traffic interchanged between them on a non-discriminatory basis, provided that neither Party shall be responsible for loss or delay caused by matters or circumstances beyond its reasonable control.

VI. CONFIDENTIALITY:

6.01

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VII. TERM AND TERMINATION; DEFAULT:

7.01

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7.02

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7.03

[REDACTED]

VIII. MISCELLANEOUS:

8.01

[REDACTED]

8.02

[REDACTED]

[REDACTED]



8.03



8.04 No amendment or waiver of this Agreement shall be binding unless the Parties have agreed to such an amendment by an exchange of correspondence by letter, facsimile or electronic mail, indicating that each Party has agreed to the amendment to this Agreement.

8.05 This Agreement contains the entire agreement of the Parties with respect to the subject matter herein and supersedes all prior negotiations, agreements and understandings, oral or written, with respect thereto.

8.06 If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable under any applicable law of any jurisdiction, that provision shall be severed from this Agreement insofar as that jurisdiction is concerned, and all the remaining

provisions of this Agreement shall continue to have full force and effect in that jurisdiction as if the said provision had never been included; provided that the original intent of the Parties to this Agreement is not affected by such severance, unless that intent itself shall be declared invalid, illegal or unenforceable.

8.07 Any waiver at any time of a breach of any provision, condition, obligation or requirement of this Agreement shall extend only to the particular breach so waived and shall not impair or affect the existence of any provision, condition or requirement of this Agreement or the right of DM&E or Buyer thereafter to avail itself of any breach, subject to such waiver.

8.08 All section headings are inserted for convenience of reference only and shall not affect any construction or interpretation of this Agreement.

8.09 Any notice required or permitted to be given by one Party to the other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If to Buyer:

Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020
Attention President
Facsimile No. _____

with a copy to:



If to DM&E:

Canadian Pacific Railway Company
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9
Attention: Manager Interline Agreements

with a copy to:



8.10 This Agreement may be executed by the Parties by facsimile and in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one instrument.

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

WITNESS:

**DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION**

As to DM&E

By: _____

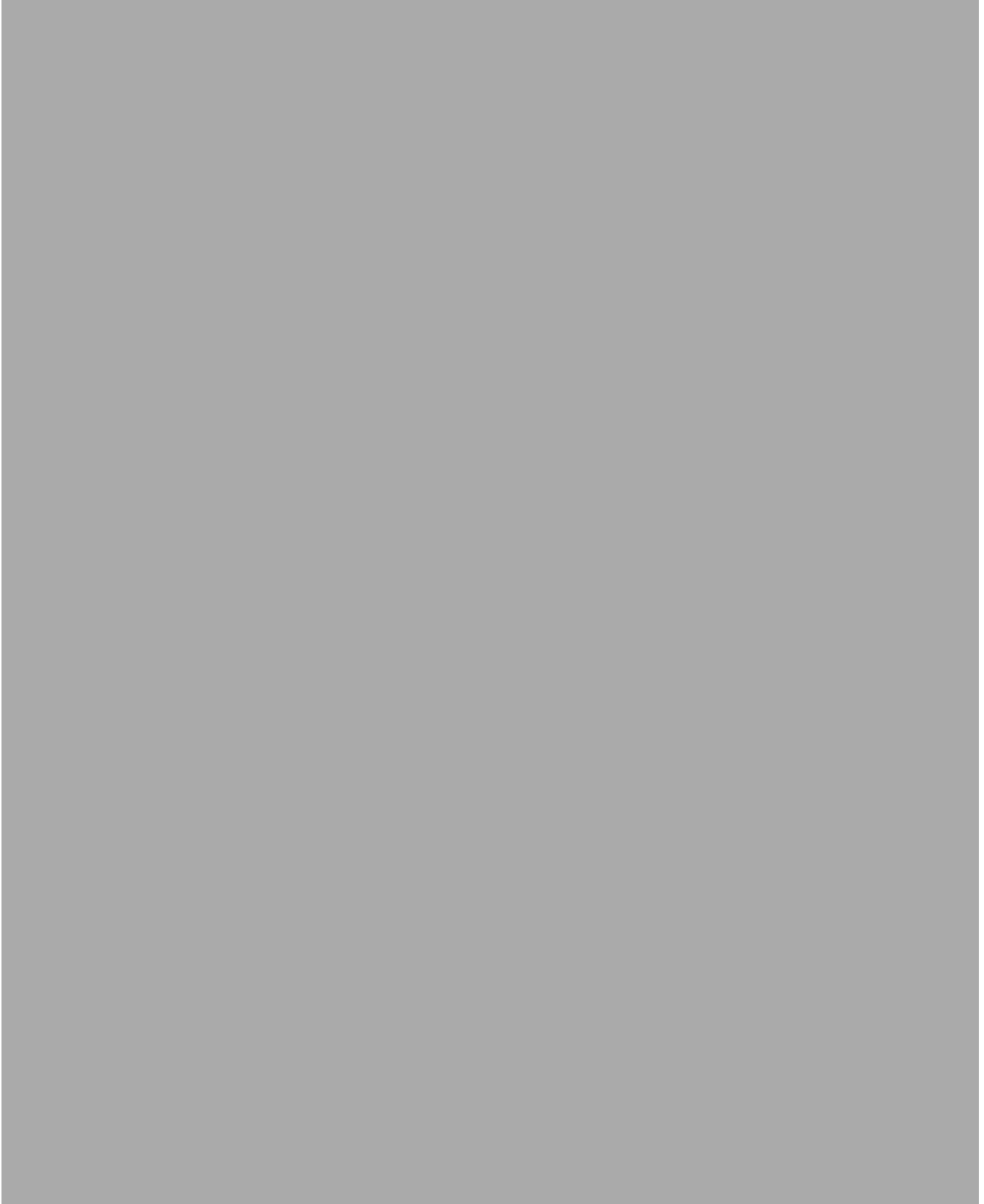
WITNESS:

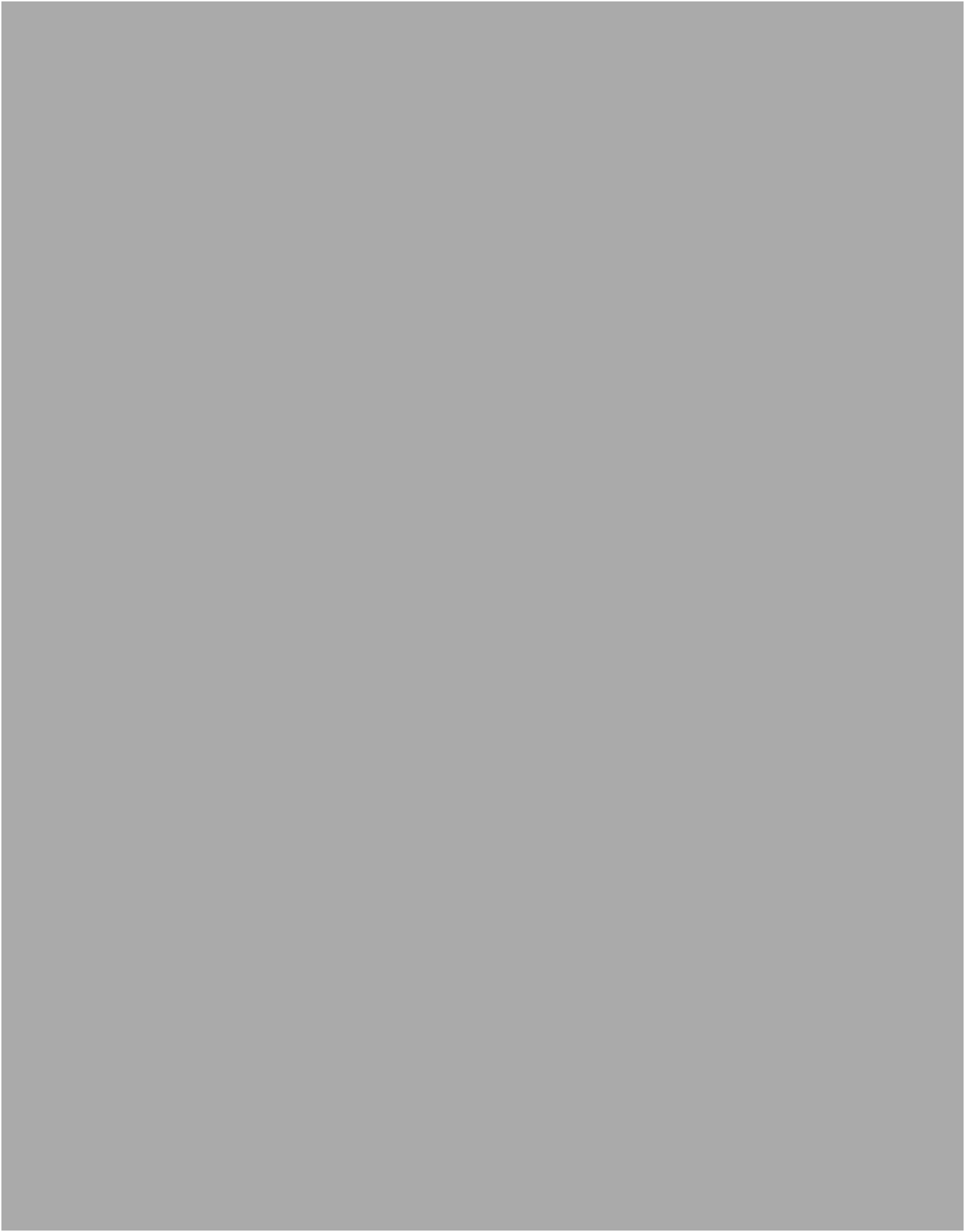
**RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.**

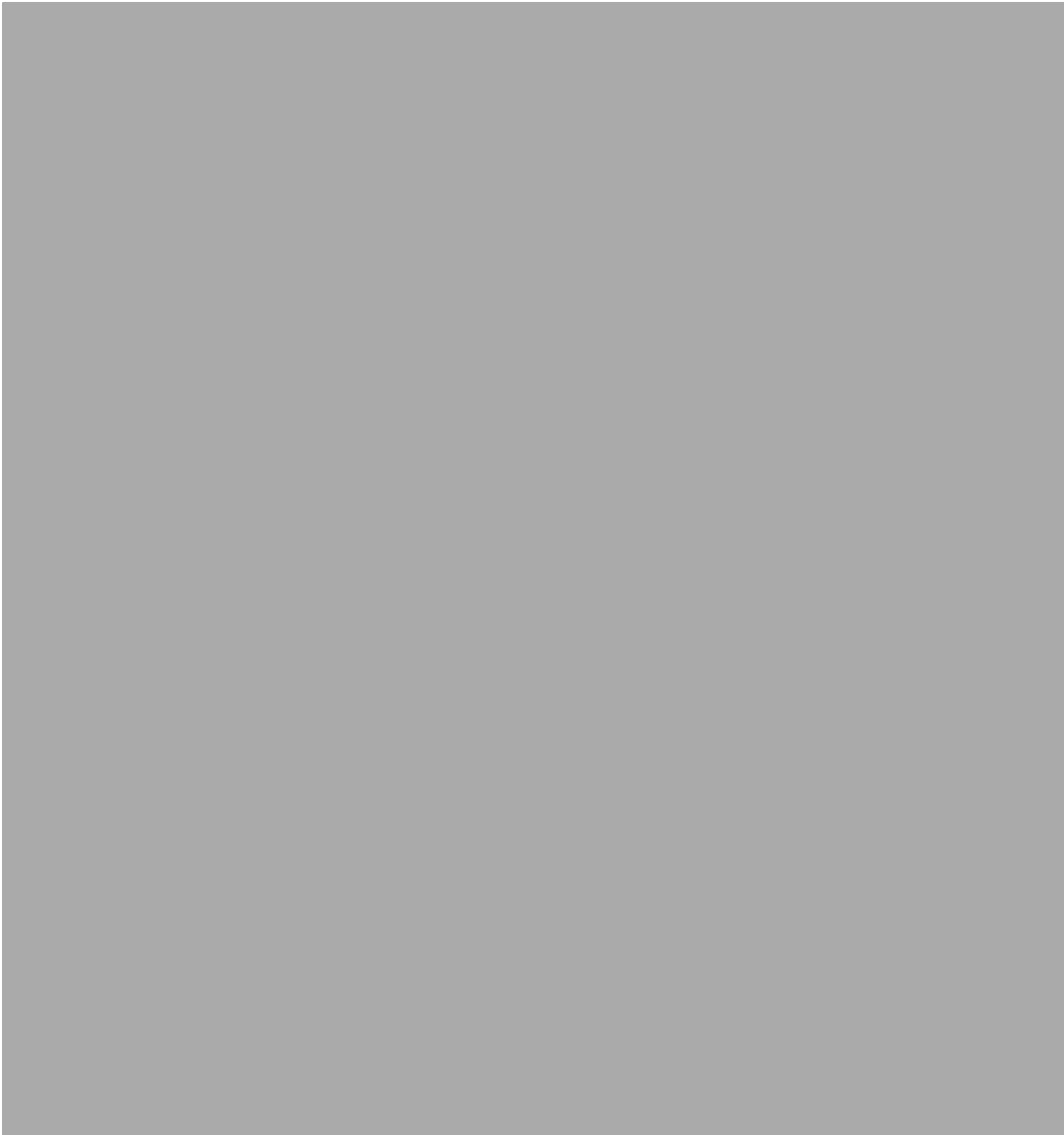
As to Buyer

By: _____

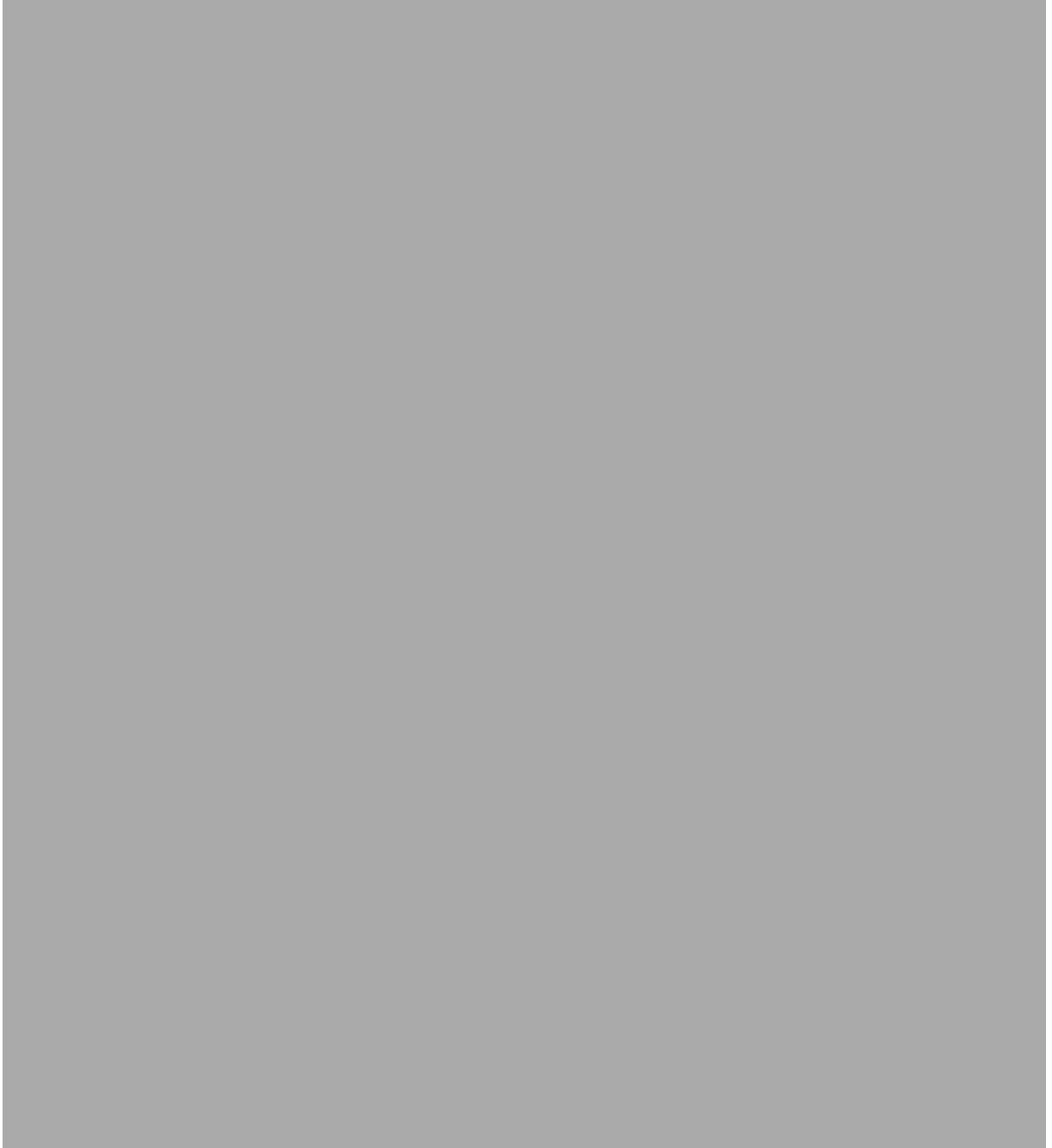
EXHIBIT 1







SCHEDULE "A"
Rate Escalation



[illegible]



MASTER LOCOMOTIVE AGREEMENT

THIS MASTER LOCOMOTIVE AGREEMENT (the “Master Agreement”), made and entered into this ____ day of _____, 201_ between:

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation, d/b/a CANADIAN PACIFIC, hereinafter referred to as “CP”, AND RAPID CITY, PIERRE & EASTERN RAILROAD, INC., a Delaware corporation, hereinafter referred to as “RCP&E”, each being hereinafter sometimes severally called “Party” and collectively called “Parties”.

A. WHEREAS, in the handling of certain through traffic, the Parties desire, in the interest of economy and efficiency of operation, that the locomotives and related equipment (“**Equipment**” as defined herein), owned, leased, or licensed by either Party hereto may be operated by the other Party with their respective locomotive and train crews (the “Crews”); and

B. WHEREAS, the Parties desire an agreement that defines and fixes liabilities and other terms and conditions applicable to the reciprocal exchange and use of the Equipment, and which enables the respective operating officers to efficiently manage the Equipment exchange process; and

C. WHEREAS, the Parties desire that this Master Agreement shall apply solely to Equipment Exchanged between the Parties for the purpose of being used by Crews of the Party given Custody and Control of the Equipment Exchanged in run-through service or in Free Runner Service.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. DEFINITIONS

The following terms shall have the meanings ascribed to them below:

1.1 “AAR” shall mean the Association of American Railroads.

1.2 “Burn Rate(s)” shall mean [REDACTED]

1.3 “Casualty Value” shall have the meaning set forth in Section 7.3 of this Master Agreement.

1.4 “Controlling Locomotives” shall mean locomotives equipped to be used in head-end operation.

1.5 “Custody and Control”, when referring to Equipment, shall mean the Party which has possession, care, custody, and, control of and responsibility for such Equipment.

1.6 “Delivering Railroad” shall have the meaning solely as described in Section 3.2 and Section 3.10 of this Master Agreement.

1.7 “Distributed Power” or “DP” shall mean remotely controlled locomotive systems which provide synchronous and independent control of multiple locomotive consists within a train to provide, in addition to the lead locomotive consist, power, dynamic braking, and air braking.

1.8 “EOT” means an end-of-train telemetry device.

1.9 “Equipment” means locomotives, TDs and any other accessory equipment on locomotives including without limitation, refrigerators, radios, radio handsets, stretchers, first-aid kits, and miscellaneous tools.

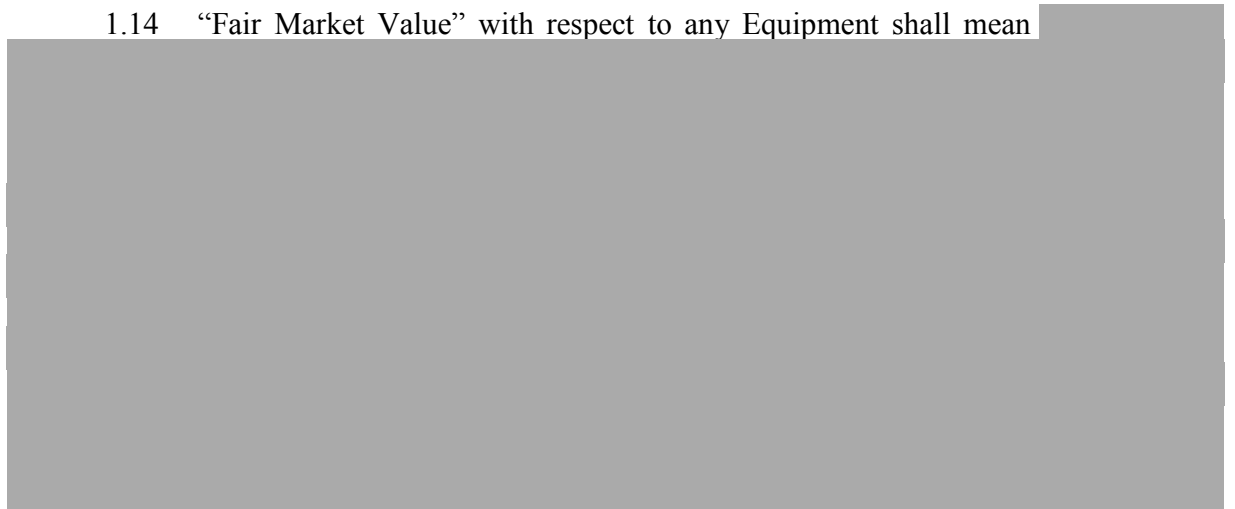
1.10 “Exchange” shall have the meaning set forth in Section 3.10 of this Master Agreement.

1.11 “Exchange Point” shall mean the point where the Exchange of Equipment by the Parties takes place.

1.12 “Exchange Supplemental” shall be a numbered written supplement made part of this document and treated as a proprietary document between the Parties involved. It is the intent of the Parties to determine mutually acceptable Exchange locations. Each Exchange Supplemental will identify the Exchange Point, the operational specifications for the intended service horsepower hours, fueling considerations and exceptions and be made part of this Master Agreement as a numbered Exchange Supplemental. Exhibit 3 attached hereto represents a guideline of the information and details to be included in the Exchange Supplemental.

1.13 “Event” shall mean damage to Equipment occurring as a result of an accident, derailment, or cause other than normal use occurring while in the Custody and Control of the Using Party.

1.14 “Fair Market Value” with respect to any Equipment shall mean





1.15 “FRA” shall mean the Federal Railroad Administration.

1.16 “Free Runner Service” shall mean



1.17 “Fuel” means locomotive diesel fuel.

1.18 “Fuel Deficit Party” shall have the meaning set forth in Subsection 5.5 of this Master Agreement.

1.19 “Fuel Surplus Party” shall have the meaning set forth in Subsection 5.5 of this Master Agreement.

1.20 “Fuel Tank Capacity” shall be defined as



1.21 “Heavy Repairs” shall have the meaning set forth in Subsection 6.4(iv).

1.22 “HOT” means head-of-train telemetry device.

1.23 “Horsepower” (or “HP”) shall be defined as the rating of a locomotive as specified in UMLER/EMIS.

1.24 “Horsepower Hours” (“HPH”) shall have the meaning set forth in Subsection 4.1 of this Master Agreement.

1.25 “Latent Defect” shall mean a hidden or concealed defect in the condition of the Equipment (one which could not be discovered by reasonable customary inspection).

1.26 “Locomotive Servicing” shall mean the performance of daily inspections, required air tests and minor component adjustments, checking fluid levels, adding sand and fluids as necessary, cleaning of the cab interior and the provision of supplies for the cab.

1.27 “Monthly Statement(s)” shall have the meaning set forth in Subsection 4.1 of this Master Agreement.

1.28 “Net Time” shall have the meaning set forth in Subsection 4.1 of this Master Agreement.

1.29 “New Burn Rates” shall mean the revision of existing Burn Rates upon agreement of the Parties.

1.30 “Owning Party” shall denote the Party hereto which is the owner, lessee, or licensee of the Equipment utilized pursuant to the provisions of this Master Agreement.

1.31 “R-1 Rate” shall mean

1.32 “Railroad Lines” shall have the meaning set forth in Subsection 3.1 of this Master Agreement.

1.33 “Receiving Railroad” shall have the meaning solely as described in Section 3.10 of this Master Agreement.

1.34 “STB” shall mean the Surface Transportation Board or any successor agency.

1.35 “TDs” shall mean HOT and EOT telemetry devices.

1.36 “Using Party” shall denote the Party that has Custody and Control of Equipment furnished by the Owning Party and utilized pursuant to the provisions of this Master Agreement.

1.37 “Work” shall have the meaning set forth in Section 6.7 of this Master Agreement.

SECTION 2. AMENDMENTS AND EXCHANGE SUPPLEMENTALS

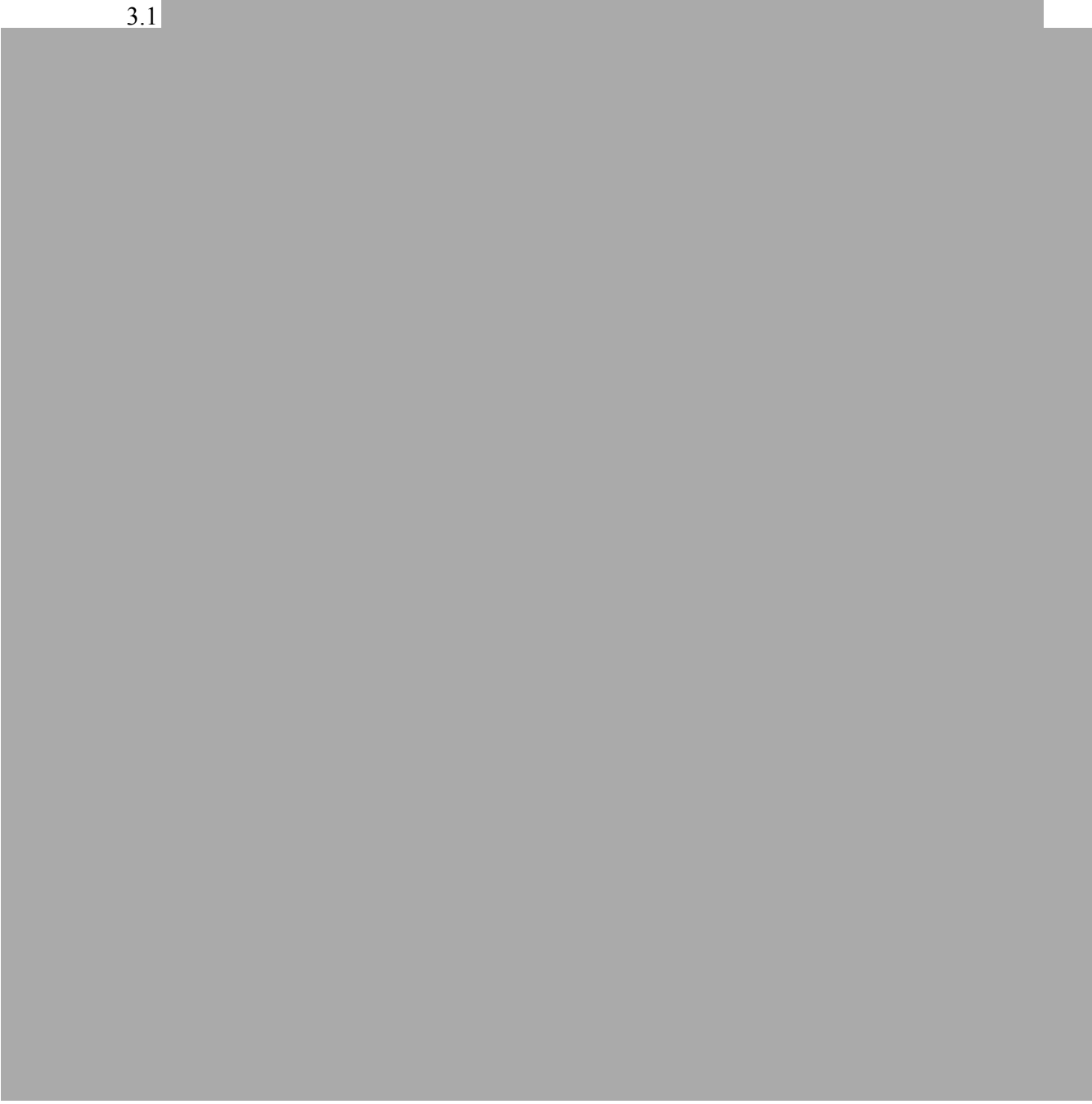
2.1 This Master Agreement shall be supplemented with Exchange Supplementals, as necessary and as agreed to between the Parties to provide for special operating, horsepower hour and fueling considerations and/or exceptions associated with Equipment Exchanged in specific

run through services.¹ Except as otherwise provided in any such Exchange Supplemental, all provisions of this Master Agreement shall apply to all Equipment Exchanged between the Parties. Equipment shall be considered in Interchange service and subject to the terms of the appropriate Interchange Agreement unless Exchanged.

2.2 In the event a conflict of provisions exists between this Master Agreement and an Exchange Supplemental, the provisions of such Exchange Supplemental shall prevail.

SECTION 3. OPERATIONS

3.1



[REDACTED]

3.2

[REDACTED]

(i)

[REDACTED]

Master Agreement will retain responsibility for horsepower hours with the third party.

(ii)

[REDACTED]

(iii)

[REDACTED]

3.3 All Locomotives Exchanged shall be in good running order, FRA compliant, UMLER/EMIS registered, properly serviced and equipped, including, without limitation, AEI tags, drawbar alignment control couplers, equipped with automatic cooling water drain valve (guru valve) and shall be in compliance with applicable laws and regulations. Locomotives must be fully equipped as required by applicable laws and regulations with operative radios and HOTs that are compatible for the conduct of business over the tracks of both Parties. If not lead capable and fully equipped as required by applicable laws and regulations the Locomotives shall not accumulate any HPH charges unless mutually agreed upon between the Parties. [REDACTED]

s.

3.4 Unless otherwise expressly provided for in this Master Agreement or in its applicable Exchange Supplemental(s), items, appurtenances and supplies required exclusively by the Using Party shall be provided at the sole cost and expense of the Using Party.

3.5 (i) Controlling Locomotives Exchanged must be fully equipped as required by FRA, clear of any FRA defects, equipped with cab heaters, and with operative HOTs and radios that are compatible for the conduct of business over the Railroad Lines of both Parties. All Equipment Exchanged must comply with applicable mandatory Positive Train Control ("PTC") requirements.

(ii)

(iii)

3.6

[REDACTED]

3.7 Advance notice of arrival of Equipment shall be given by the Owning Party to the Using Party in accordance with the provisions of the Interchange Agreement between the Parties of even date, by such method as agreed to between the Parties and which may be changed from time to time by the Parties.

3.8 Air slips or notification that an initial terminal test was successfully conducted shall be provided to the Using Party by the Owning Party and, under such circumstances, it shall not be necessary for the Using Party to obtain new air slips at the Exchange Point.

3.9 The Exchange of Equipment between the Parties pursuant to this Master Agreement may take place at Exchange Points mutually agreed to by the Parties, as specified in any Exchange Supplemental. The Parties agree that considerations relative to train movements that are subject to change in order to meet marketing and operating demands (*e.g.*, scheduling and blocking) are not a part of this Master Agreement.

3.10 [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv)

3.11 Equipment shall be subject to inspection by the Using Party at the time of Exchange or thereafter. Such inspections may be made according to the rules of the AAR that govern and regulate inspection of railroad equipment between railroads. If the Equipment is found to be FRA defective or unsafe by the Using Party, the Using Party may, at its sole discretion, exclude such Equipment from Exchange provided that Equipment is not moved by the Using Party from the Exchange Point or accept it in Exchange and repair the Equipment as provided in Section 6 of this Master Agreement.

3.12

3.13

SECTION 4. HORSEPOWER HOURS (HPH) & EOT LIABILITY

4.1

es

[REDACTED]

4.2

[REDACTED]

4.3

[REDACTED]

[REDACTED]

4.4

[REDACTED]

(i)

[REDACTED]

(ii)

[REDACTED]

(iii)

[REDACTED]

(iv)

[REDACTED]

4.5

[REDACTED]

[REDACTED]

4.6

[REDACTED]

4.7

[REDACTED]

4.8

[REDACTED]

4.9

[REDACTED]

SECTION 5. FUEL AND LUBRICATING OIL - ACCOUNTING AND BILLING

5.1

[REDACTED]

[REDACTED]

[REDACTED]

5.2

[REDACTED]

5.3

[REDACTED]

5.4

[REDACTED]

[REDACTED]

5.5

[REDACTED]

5.6

[REDACTED]

5.7

[REDACTED]

5.8

[REDACTED]

SECTION 6. REPAIRS, MAINTENANCE, AND INSPECTION

6.1 If any locomotive of the Owning Party tendered to the Using Party is found to be defective or unsafe by the Using Party, and the Using Party cannot or elects not to make said locomotive operative, the Using Party shall provide written notice to the Owning Party and immediately return such locomotive to the Owning Party and shall not be deemed to have been in possession of the Using Party for purposes of HPH. If Using Party elects to make repairs to the Equipment, the repairs will be handled as set forth in this Section 6.

6.2



6.3



[REDACTED]

6.4

[REDACTED]

(i)

[REDACTED]

(ii)

[REDACTED]

[REDACTED]

(iii)

[REDACTED]

(iv)

[REDACTED]

[REDACTED]

6.5

[REDACTED]

6.6

[REDACTED]

6.7

[REDACTED]

[REDACTED]

[REDACTED]

6.8 Repairs, maintenance, and inspections of TDs shall be pursuant to applicable federal regulations.

6.9 [REDACTED]

6.10 [REDACTED]

6.11 [REDACTED]

6.12 In billing for materials provided, it is understood and agreed that the AAR LRB (Locomotive Repair Billing) standard rates for cross billing shall apply.

SECTION 7. LIABILITY AND INDEMNIFICATION

7.1 [REDACTED]

7.2 [REDACTED]

7.3

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7.9

7.10

7.11

7.12

SECTION 8. INVESTIGATION

8.1 Except as provided in Section 8.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Master Agreement shall be investigated, adjusted, and defended by the Party bearing the liability, cost, and expense therefor under the provisions of this Master Agreement; provided, however, the fact that a Party conducted an investigation shall not be dispositive in determining liability under Section 7.

8.2 In the event a claim or suit is asserted against a Party which it is the other Party's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed by the Parties in writing, such other Party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

8.3 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Master Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Master Agreement, except that salaries or wages of full-time claims agents, full-time attorneys, and other full-time employees of either Party engaged directly or indirectly in such work shall be borne at the sole cost and expense of such Party.

8.4



SECTION 9. GENERAL

9.1 All words, terms, and phrases used in this Master Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

9.2 No commercial agreements, including the division of freight revenue, between the Parties as they now exist, or as they may be changed from time to time, shall be affected by this Master Agreement.

9.3 No changes in, additions, or improvements to or removals from the Owning Party's Equipment shall be made by the Using Party (the "Restrictions") without first obtaining the Owning Party's written consent. The Restrictions shall include, without limitation, lettering and numbering of the Owning Party's Equipment.

9.4 The use of the Owning Party's Equipment as herein provided shall be subject and subordinate to any third party financing agreements covering such Equipment and, to the extent the terms of such agreements are known to such Party, each Party hereto shall not knowingly do or permit to be done any act nor allow any omission that shall result in a default on the part of the Owning Party under any applicable third party financing agreement.

9.5 The Using Party shall not permit or suffer any mechanic's or materialmen's or other lien of any kind or nature to be created or enforced against the Owning Party's Equipment for any Work done or materials furnished thereon at the insistence or request or on behalf of the Using Party. If the Using Party fails to remove any such lien within thirty (30) days, the Owning Party may do so at the sole cost and expense of the Using Party.

9.6 All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Master Agreement.

9.7 No term or provisions of this Master Agreement may be changed, waived, discharged, or terminated except by an agreement in writing and signed by the authorized representatives of the Parties to this Master Agreement.

**SECTION 10. PREPARATION AND PAYMENT OF BILLS AND RETENTION
OF RECORDS**

10.1

[REDACTED]

10.2

[REDACTED]

10.3

[REDACTED]

10.4

[REDACTED]

SECTION 11. EMPLOYEE PROTECTION

[REDACTED]

SECTION 12. TERM

12.1

[REDACTED]

12.2

[REDACTED]

12.3 Either Party's failure to enforce its remedies made available by any such default or failure by the other Party shall not constitute a waiver of such remedies and shall not be construed to extend to any future default or failure, whether of a similar nature or otherwise, nor to impair such Party's right of termination resulting therefrom.

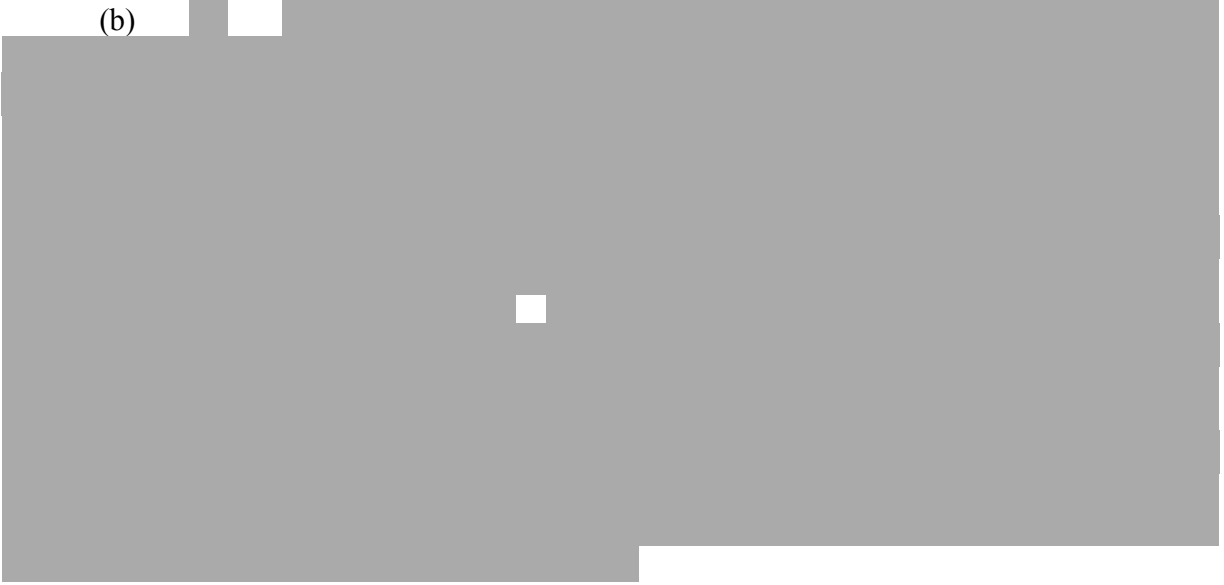
SECTION 13. DISPUTE RESOLUTION

13.1 The Parties agree that all disputes concerning the interpretation and application of the terms of this Master Agreement shall be resolved as follows:

(a)

[REDACTED]

(b)



SECTION 14. ASSIGNMENT



SECTION 15. NOTICES

Any notice required or permitted to be given by one Party to the other Party under this Master Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

(a) If to RCP&E:

Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020
Attention: President
Facsimile No. _____

with a copy to:



Facsimile No. 203-656-1092

(b) If to CP:

Dakota, Minnesota & Eastern Railroad Corporation
120 S. 6th Street, Suite 700
Minneapolis, MN 55402
Facsimile No.: 612 904-5981

with copies to:



Either Party may provide notice of changes in the above addressees to the other Party by personal service or certified mail.

IN WITNESS WHEREOF, the Parties hereto duly execute this Master Agreement as of the date written below.

RAPID CITY, PIERRE & EASTERN RAILROAD, INC.

By: _____

Title: _____

Date: _____

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1
METHODOLOGY FOR ACCOUNTING AND BILLING OF FUEL

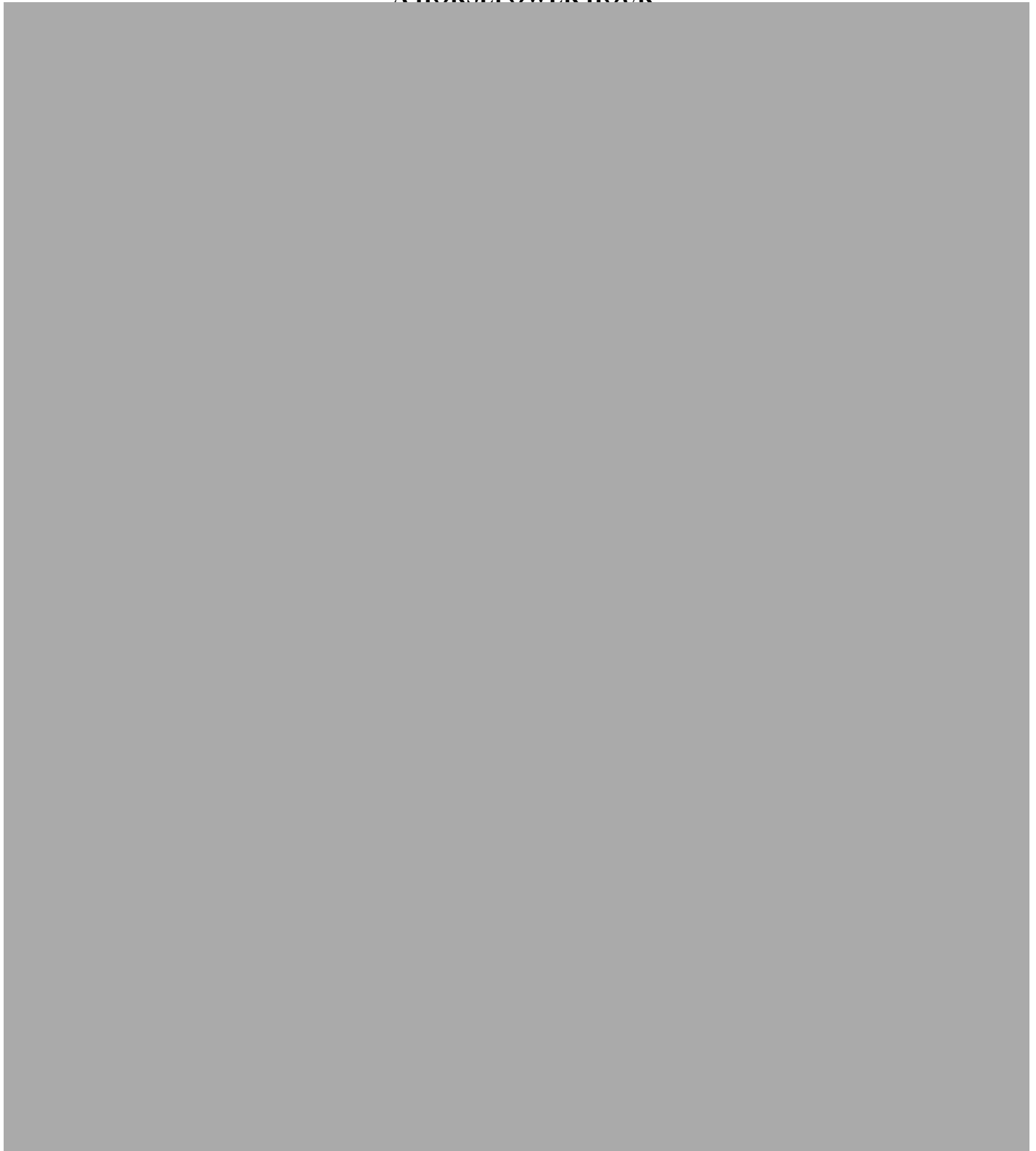






***** END OF EXHIBIT 1 *****

EXHIBIT 2
METHODOLOGY FOR CALCULATING THE MONETARY COST TO SUPPLY
A HORSEPOWER HOUR





***** END OF EXHIBIT 2 *****

EXHIBIT 3

EXCHANGE SUPPLEMENTAL



RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

RIGHT OF FIRST REFUSAL AGREEMENT

AGREEMENT dated as of the ____ day of _____, 201__, between Rapid City, Pierre & Eastern Railroad, Inc. ("**Buyer**"), a Delaware corporation, Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a CANADIAN PACIFIC RAILWAY ("**Seller**") and Genesee & Wyoming Inc., a Delaware corporation ("**Buyer Parent**").

WHEREAS, Buyer and Seller have entered into that certain Transaction Agreement (the "**Transaction Agreement**") dated as of January __, 2014. Capitalized terms used but not defined herein have the meanings set forth in the Transaction Agreement.

WHEREAS, this Agreement is being entered into as a condition to the Closing of the Transaction Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Capitalized terms used herein shall have the meanings set forth in this Article I.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required to close.

"**Common Stock**" means

[REDACTED]

"**Equity Securities**" means

[REDACTED]

"**Government Approval**" means any authorization, consent, approval, waiver, exception, variance, order, exemption, publication, filing, declaration, concession, grant,

franchise, agreement, permission, permit, or license of, from or with any Government Authority, the giving of notice to or registration with any Government Authority or any other action in respect of any Government Authority.

"Government Authority" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction, including the Surface Transportation Board.

"Independent Third Party" means [REDACTED]

"Person" means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivisions thereof.

"Restricted Real Property" means [REDACTED]

"Transfer" means [REDACTED]

ARTICLE II

RIGHT OF FIRST REFUSAL--STOCK

Section 2.01 Right of First Refusal.

(a) **Right of First Refusal.** [REDACTED]

[REDACTED]

(b) **Offer Notice.**

(i)

[REDACTED]

(ii)

[REDACTED]

(c) **Exercise of Right of First Refusal.**

[REDACTED]

(d) Consummation of Sale.

[REDACTED]

(e) Closing.

[REDACTED]

**ARTICLE III
RIGHT OF FIRST REFUSAL—REAL PROPERTY**

Section 3.01 Right of First Refusal.

(a) Right of First Refusal.

[REDACTED]

[REDACTED]

(b) **Offer Notice.**

(i)

[REDACTED]

(ii)

[REDACTED]

(c) **Exercise of Right of First Refusal.**

[REDACTED]

(d) **Consummation of Sale.**

[REDACTED]

[REDACTED]

(e) **Closing.** [REDACTED]

[REDACTED] **IV**
MISCELLANEOUS

Section 4.01 Waiver. No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement, or under any other agreements or instruments given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of default or any acquiescence therein.

Section 4.02 Successors and Assigns. [REDACTED]

Section 4.03 Assignment. [REDACTED]

Section 4.04 Notices. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be mailed by a recognized overnight courier service, by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, or telegram, or facsimile transmission, addressed as follows:

(i) If to Seller:

Dakota, Minnesota & Eastern Railroad Corporation
Suite 700, 120 S. 6th Street
Minneapolis, MN 55402
Facsimile No.: 612 904 5981

With a copy to:



(ii) If to Buyer:

Rapid City, Pierre & Eastern Railroad, Inc.
c/o Genesee & Wyoming Inc.
20 West Avenue
Darien, Connecticut 06820
Attention: General Counsel
Facsimile: (203) 656-1148

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Anthony F. Vernace
Facsimile No.: 212-455-2502

(ii) If to Buyer Parent:

Genesee & Wyoming Inc.
20 West Avenue
Darien, Connecticut 06820
Attention: General Counsel
Facsimile: (203) 656-1148

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Anthony F. Vernace
Facsimile No.: 212-455-2502

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation

Section 4.05 Entire Agreement. This Agreement supersedes all prior oral or written memoranda, agreements and understandings between the parties with respect to the subjects herein, and may not be supplemented or amended, except by a written instrument executed by and delivered to each of the parties hereto designating specifically the terms and provisions so supplemented and amended.

Section 4.06 Headings. Article, section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

Section 4.07 Limitation on Benefits. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth in this Agreement, and all other documents or instruments called for hereunder shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors, legal representatives and assigns as permitted hereunder.

Section 4.08 Severability. If any clause or provision of this Agreement, or the performance of any action related thereto, at the time such fulfillment or performance shall be due, shall be deemed by a court of competent jurisdiction to be

unlawful or otherwise invalid or unenforceable, or to exceed the limit of validity prescribed by law, then the obligation to be fulfilled or performed shall be reduced to the limit of such validity; and if any clause or provision contained in this Agreement operates or would operate prospectively to invalidate any Agreement, in whole or in part, then such clause or provision only shall be held ineffective, as though not herein or therein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

Section 4.09 Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for any particular number of counterparts; but rather any number of counterparts shall be sufficient so long as those counterparts contain the respective signatures of, or on behalf of, all of the parties hereto. Signatures delivered by facsimile or PDF shall be binding to the same extent as an original.

Section 4.10 Governing Law; Jurisdiction.

(a)

[REDACTED]

(b)

[REDACTED]

[REDACTED]

Section 4.11

[REDACTED]

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____
Its: _____

RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.

By: _____
Its: _____

GENESEE & WYOMING INC.

By: _____
Its: _____

032966-0062-10713-Active 15172441 2

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT is entered into as of this ____ day of _____, 201_, by and between RAPID CITY, PIERRE & EASTERN RAILROAD, INC., a Delaware corporation, hereinafter referred to as "RCP&E", and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation, d/b/a CANADIAN PACIFIC, hereinafter referred to as "CP". Sometimes hereinafter, each may be referred to as a "Party" and sometimes collectively referred to as "the Parties."

WITNESSES THAT WHEREAS:

A. CP has entered into an arrangement with RCP&E to sell the line of railroad between MP 231.5+/- in Tracy, MN and MP 174.7+/- in Colony, WY, between MP 97.1+/- in Rapid City, SD and MP 0.4+/- in Dakota Junction, NE, and between MP 0.4+/- in Dakota Junction, NE and MP 432.5+/- in Crawford, NE; and

B. Pursuant to the Transaction Agreement, dated as of January 2, 2014 between the Parties (the "**Transaction Agreement**"), RCP&E has agreed to grant to CP, and CP has agreed to accept from RCP&E, certain rights for CP's use of the Subject Trackage described herein in accordance with the terms and conditions set forth below;

NOW THEREFORE, in consideration of the premises and of all the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1
INTERPRETATION

1.1 **Defined Terms**. As used in this Agreement, including the Recitals hereto, the following terms shall have the meanings set out below:

- (a) **"Affiliate"** means with respect to a Party, any person that controls, is controlled by or is under common control with that Party.
- (b) **"Ballast"** shall mean ballast, rip rap and aggregates.
- (c) **"Capital Improvements"** means Improvements which require capital investments and expenditures to materially improve or upgrade the Subject Trackage, as defined by RCP&E capital accounting procedures.
- (d) **"Cars"** means each loaded or empty railway freight car, locomotive or similar equipment, handled by CP over the Subject Trackage.
- (e) **"Hazardous Substance"** means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing
 - (i) radioactive, explosive, poisonous, corrosive, flammable or toxic substances;

- (ii) substances that endanger the health and safety of persons; and
 - (iii) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.
- (f) **"Emergency Response Plan"** means the emergency response plan to be prepared by CP as described in Article 8.2.
- (g) **"Improvements"** means any building, structure, trackage or any other work of a physical character.
- (h) **"Trackage rights"** means the non-exclusive overhead trackage rights described in Article 2.1.
- (i) **"Trackage rights Fee"** means the fees payable by CP to RCP&E described in Article 10.2.
- (j) **"Operating Rules"** means RCP&E's operating and safety rules, timetables, special instructions, bulletins, general orders, authoritative directions and amendments, supplements and replacements thereto as communicated from time to time by RCP&E's designated operating officer to CP's designated operating officer.
- (k) **"Operating Window"** means the daily time period or periods designated by RCP&E that CP may operate on the Subject Trackage.
- (l) **"Subject Trackage"** means RCP&E's trackage between the points designated as Point "A", being approximately mile post 231.5+/- near Tracy, MN, and Point "B", being approximately mile post 250.35+/- near Florence, MN (the "Tracy to Florence segment"); between Point "A" near Tracy and Point "C", being approximately mile post 291.25+/- near Brookings, SD (the "Tracy to Brookings segment"); and between Point "A" near Tracy and Point "D", being approximately mile post 378.4+/- near Wolsey, SD (the "Tracy to Wolsey segment"), all as shown in Schedule "A". The Subject Trackage includes all track, track connections, facilities and appurtenances, signals and switches located between Points "A" and "B", "A" to "C", and "A" to "D" as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of RCP&E.
- (m) **"Trains"** means all trains, locomotives, Cars, cabooses and equipment owned, leased, used or otherwise in the possession of, control of or under operation by CP.

- 1.2 **Schedules**. The following Schedules are attached to and form a part of this Agreement:

<u>Schedule</u>	<u>Description</u>
A	Subject Trackage Sketch Plan
B	Rate Schedule
C	Rate Escalation

ARTICLE 2 **TRACKAGE RIGHTS**

- 2.1  CP's use of the Subject Trackage shall be in common with RCP&E and any other user of the Subject Trackage and the rights of RCP&E and such other user to use the Subject Trackage shall not be diminished by this Agreement.

- 2.2 In order to avoid conflicting movements and ensure the safe operation of both Parties on the Subject Trackage, the Trackage rights are subject at all times to the following conditions:

- (a) 
- (b) 
- (c) 
- (d) 
- (e) 

2.3

[REDACTED]

ARTICLE 3
RESTRICTIONS ON USE

- 3.1 The Trackage rights granted herein for the Tracy to Florence segment are only for the movement of overhead freight traffic to be interchanged with BNSF at Florence, MN.

[REDACTED]

[REDACTED]

- 3.2 The Trackage rights granted herein for the Tracy to Brookings segment and the Tracy to Wolsey segment are only for the movement of non-revenue Ballast Cars. CP may set off, pick up, or store equipment at Brookings as necessary for the loading of Ballast.

[REDACTED]



ARTICLE 4
MAINTENANCE OF CONNECTIONS TO SUBJECT TRACKAGE

4.1 Existing connections to the Subject Trackage or related facilities, which are jointly used by CP and RCP&E under other existing agreements with other parties, shall continue to be maintained, repaired and renewed by and at the expense of the Party or parties responsible for such maintenance, repair and renewal under such agreements.

4.2



ARTICLE 5
MAINTENANCE OF SUBJECT TRACKAGE

5.1 RCP&E shall maintain, repair and renew the Subject Trackage with its own supervision and labor forces and shall maintain sufficient access on adjacent roadways as may be necessary for crews to access the Subject Trackage. RCP&E shall keep and maintain the Subject Trackage in reasonably good condition, however, RCP&E shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Subject Trackage and RCP&E does not guarantee the conditions of the Subject Trackage or that operations over it will not be interrupted. The Parties also acknowledge and agree that in order for RCP&E to perform its maintenance obligations, the Subject Trackage will be out of service from time to time for the required work blocks and RCP&E shall not be liable to CP for any loss due to delay or interruption resulting from RCP&E's performance of maintenance, repair, or renewal of the Subject Trackage.

5.2

5.3 Nothing in this Agreement shall preclude RCP&E from discontinuing or abandoning rail operations on any part of the Subject Trackage at any time, subject to RCP&E fulfilling the applicable requirements set out by the Surface Transportation Board. Upon such discontinuance or abandonment, this Agreement shall automatically terminate as to the portion of the Subject Trackage that has been discontinued.

ARTICLE 6
OPERATION AND MANAGEMENT OF SUBJECT TRACKAGE

6.1 The management and operation of the Subject Trackage shall be under the exclusive direction and control of RCP&E. Subject to Section 2.2, RCP&E shall have the unrestricted right to change the management and the operations on and over the Subject Trackage as RCP&E, in its sole judgment, may deem necessary, expedient or proper for the operation of the Subject Trackage.

6.2 CP shall comply with all applicable laws, regulations and rules respecting the operation, condition, inspection and safety of its Trains, while such Trains are being operated over the Subject Trackage.

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6.9

6.10

6.11

6.12

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6.14

6.15

6.16

6.17

ARTICLE 7
CLEARING OF WRECKS

7.1

[REDACTED]

7.2

[REDACTED]

ARTICLE 8
ENVIRONMENTAL

8.1 In the event that CP is required to transport Hazardous Substances over the Subject Trackage, CP shall:

- (a) comply with all applicable federal, state and municipal laws, rules and regulations including, but not limited to, applicable rules and regulations as set forth by the, Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Surface Transportation Board, and the Association of American Railroads (AAR) respecting the handling and transporting of Hazardous Substances; and
- (b) ensure its personnel comply with such applicable laws, rules and regulations and meet all the requirements and qualifications for training and certification set forth by such laws.

8.2

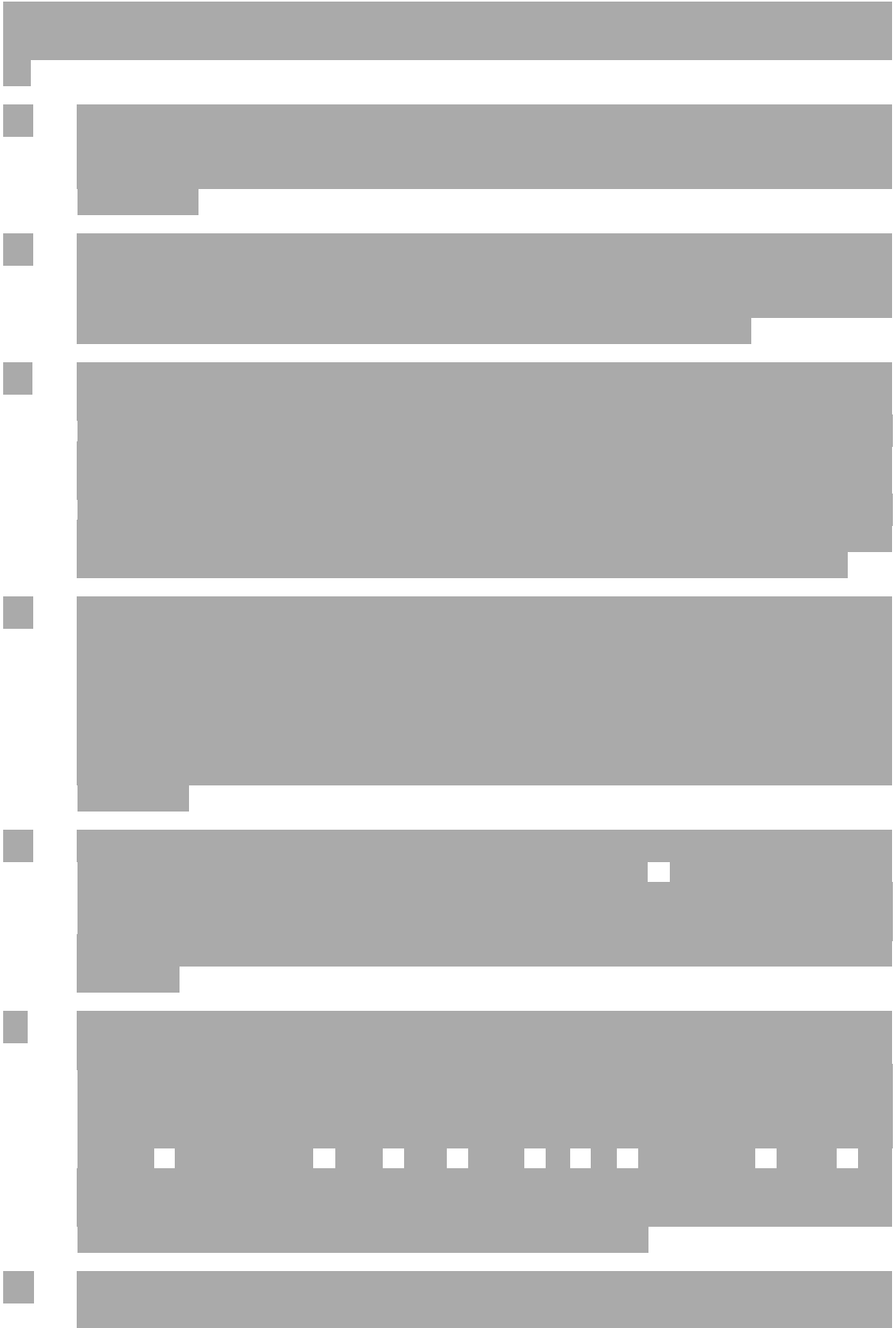
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8.3



8.4

8.5

ARTICLE 9
MILEAGE AND CAR HIRE

9.1 All mileage and car hire charges accruing on cars in CP's Trains on the Subject Trackage shall be on CP's account, to be reported and paid by CP.

ARTICLE 10
BILLING AND PAYMENT OF CHARGES

10.1

10.2

10.3	
10.4	
10.5	
10.6	
10.7	
10.8	

ARTICLE 11
LIABILITY

[REDACTED]

11.1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.2 [REDACTED]

11.3 [REDACTED]

11.4 [REDACTED]

11.5

11.6

11.7

11.8

11.9

11.10

11.11

[REDACTED]

11.12

11.13

11.14

11.15

ARTICLE 12
TERM AND TERMINATION

12.1

12.2

12.3

(a)

(b)

(c)

(d)

(e)

(f)

12.4 Termination of this Agreement for any reason shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination hereof.

12.5 In the event of termination of the trackage rights over all or a portion of the Subject Trackage, CP shall cooperate with RCP&E in obtaining STB discontinuance authority for the trackage rights terminated under this Agreement.

ARTICLE 13

CONFIDENTIALITY

13.1

ARTICLE 14

DISPUTE RESOLUTION

14.1

- (a) 
- (b) 

ARTICLE 15
NOTICES

15.1 Any notice request, demand or other document required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered in person, or by courier or facsimile and addressed to the other Party as follows:

(a) if to CP:

Dakota, Minnesota & Eastern Railroad Corporation
120 S. 6th Street, Suite 700
Minneapolis, MN 55402
Facsimile No.: 612 904-5981

with a copy to:



Facsimile No.: _____

with a copy to:



(b) if to RCP&E:

Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020
Attention President
Facsimile No. []

with a copy to :



Any notice, if given by courier, shall be deemed to have been given or made on the date delivered. Either Party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other Party to this Agreement, in the same manner as provided above for all other written notices.

ARTICLE 16
SUCCESSORS AND ASSIGNS

16.1



16.2



ARTICLE 17
REGULATORY APPROVAL

- 17.1 Should this Agreement require the prior approval of the Surface Transportation Board (“STB”), CP will initiate and thereafter diligently pursue, at its own cost and expense, an appropriate application to secure such approval.
- 17.2 The Parties shall assume and hold one another harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the Parties hereunder, where such claims are predicated on labor protective conditions imposed by the Surface Transportation Board or its predecessor.

ARTICLE 18

GOVERNING LAW

18.1

ARTICLE 19

FORCE MAJEURE

- 19.1 A Party’s duties and obligations under this Agreement shall be excused and a Party shall not be liable to the other Party for any delay, loss or damage resulting from circumstances or causes beyond its reasonable control including, without limitation: an Act of God, inclement weather conditions, storms, blizzard, flood, washout, avalanche, snow slide, rockslide, earthquake, expropriation, fire or explosion, natural catastrophe of any kind, strike, lockout, walkout or other labor dispute; war; vandalism or sabotage, riot, or other civil commotion, insurrection, act of terrorism or other violence, derailment, track outage, labor shortage, electric utility power outage, locomotive or fuel shortage; any law, order or requirement of any governmental agency or authority; blockade; embargo or AAR service order; closure of origin or destination for any reason. Force majeure declarations by either Party may be limited to specific origins or destinations or railroad routes to more specifically identify the force majeure event. The Party declaring force majeure shall promptly notify the other Party of the nature of the condition and the commencement and cessation thereof.

ARTICLE 20

GENERAL

- 20.1 Nothing in this Agreement shall limit the right of RCP&E to admit other companies to use, operate, dispatch or maintain the Subject Trackage or any part thereof on such terms and conditions as are satisfactory to RCP&E.
- 20.2 All headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 20.3 In this Agreement where the context so requires, the singular of any word includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, to a corporation.

- 20.4 References to a "Person" shall include individuals, corporations, partnerships, associations, bodies politic and other entities, all as may be applicable in the context.
- 20.5 All words, terms and phrases used in this Agreement and not otherwise defined herein shall be construed in accordance with the generally accepted definition or meaning of such words, terms or phrases in the North American railroad industry.
- 20.6 This Agreement may not be modified or amended except in writing and executed by CP and RCP&E.
- 20.7 No waiver of any provision of this Agreement will be effective unless in writing signed by the appropriate Party, and then only in the specific instance and for the specific purpose given.
- 20.8 This Agreement constitutes the entire understanding between the Parties hereto with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and prior agreements and memorandums between the Parties hereto relating to the subject matter hereof.
- 20.9 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
d/b/a CANADIAN PACIFIC**

Per: _____
Name: _____
Title: _____
Date: _____

RAPID CITY, PIERRE & EASTERN RAILROAD, INC.

Per: _____
Name: _____
Title: _____
Date: _____

SCHEDULE "A"

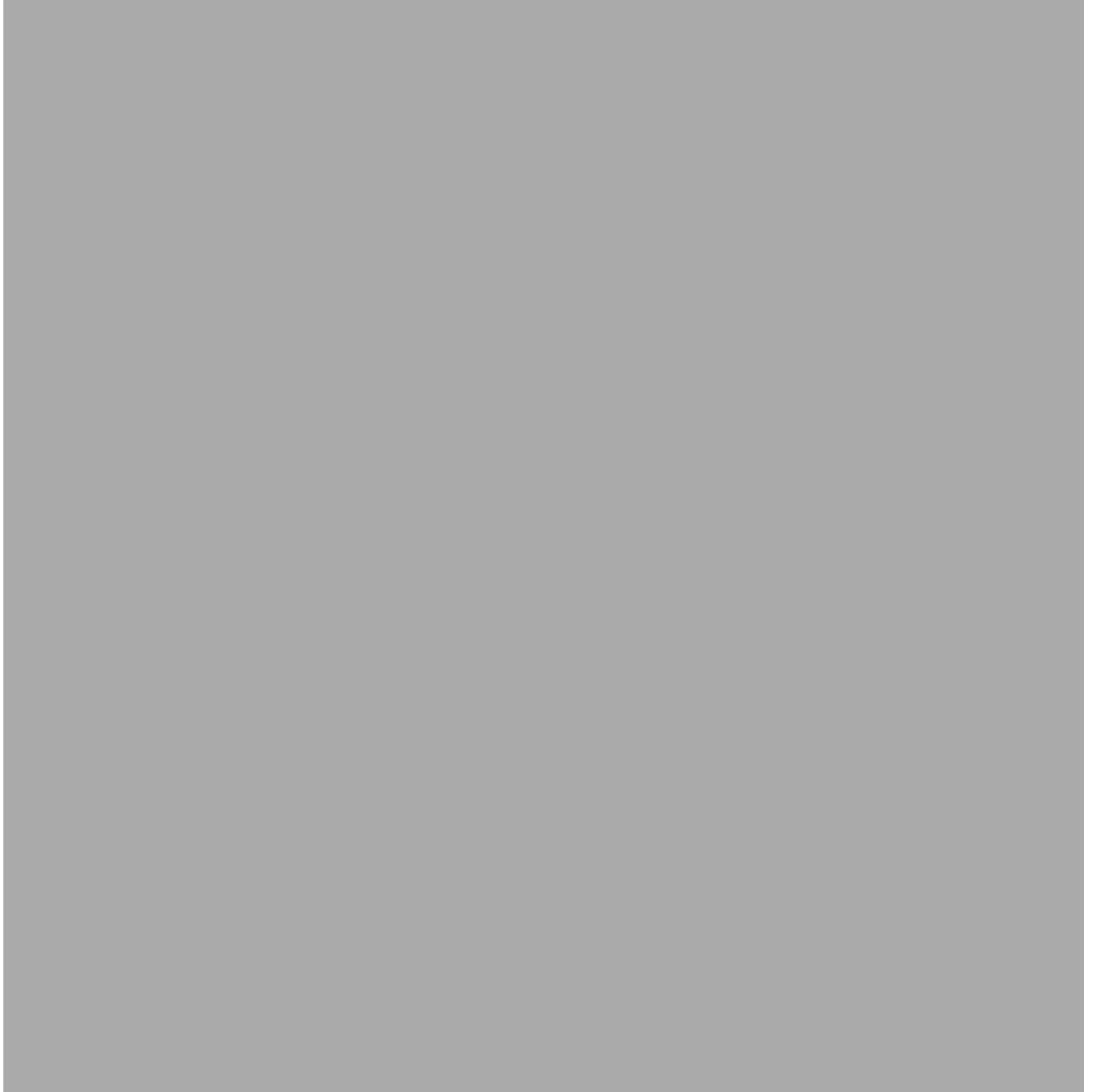
Subject Trackage

SCHEDULE "B"
Rate Schedule



SCHEDULE "C"

Rate Escalation

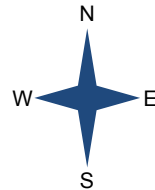
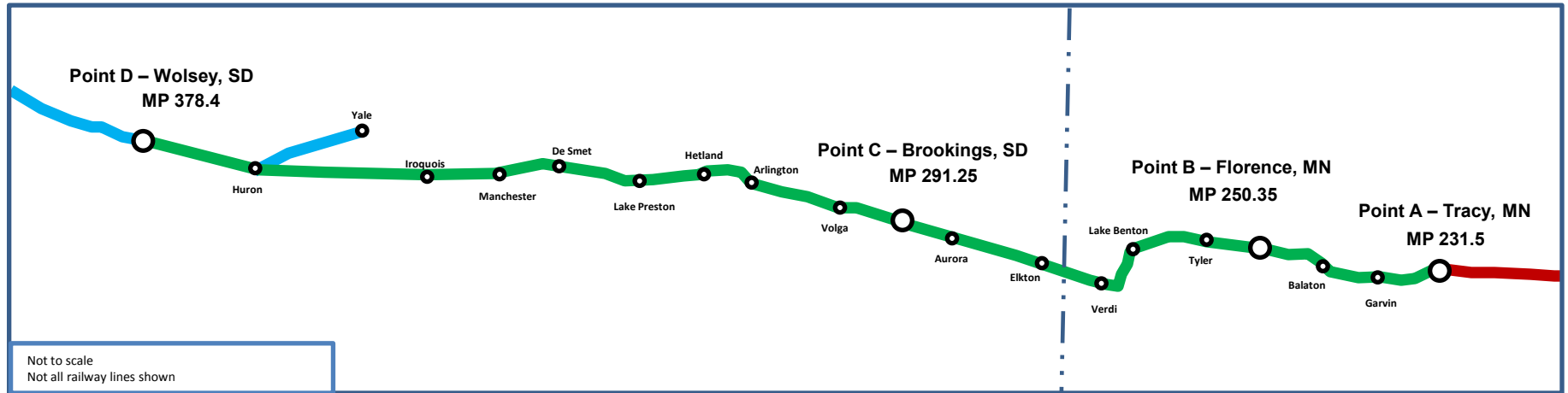


SCHEDULE "D"



Trackage Rights Agreement – Exhibit O

Schedule A Subject Trackage



TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT is entered into as of this ____ day of _____, 201_, by and between RAPID CITY, PIERRE & EASTERN RAILROAD, INC., a Delaware corporation, hereinafter referred to as "RCP&E", and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation, d/b/a CANADIAN PACIFIC, hereinafter referred to as "CP". Sometimes hereinafter, each may be referred to as a "Party" and sometimes collectively referred to as "the Parties."

WITNESSES THAT WHEREAS:

A. CP has entered into an arrangement with RCP&E to sell the line of railroad between MP 231.5+/- in Tracy, MN and MP 174.7+/- in Colony, WY, between MP 97.1+/- in Rapid City, SD and MP 0.4+/- in Dakota Junction, NE, and between MP 0.4+/- in Dakota Junction, NE and MP 432.5+/- in Crawford, NE; and

B. Pursuant to the Transaction Agreement, dated as of January 2, 2014 between the Parties (the "**Transaction Agreement**"), CP has agreed to grant to RCP&E, and RCP&E has agreed to accept from CP, certain rights for RCP&E's use of the Subject Trackage described herein in accordance with the terms and conditions set forth below;

C. **NOW THEREFORE**, in consideration of the premises and of all the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 **Defined Terms.** As used in this Agreement, including the Recitals hereto, the following terms shall have the meanings set out below:

- (a) **"Affiliate"** means with respect to a Party, any person that controls, is controlled by or is under common control with that Party.
- (b) **"Capital Improvements"** means Improvements which require capital investments and expenditures to materially improve or upgrade the Subject Trackage, as defined by CP capital accounting procedures.
- (c) **"Cars"** means each loaded or empty railway freight car, locomotive or similar equipment, handled by RCP&E over the Subject Trackage.
- (d) **"Hazardous Substance"** means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing
 - (i) radioactive, explosive, poisonous, corrosive, flammable or toxic substances;
 - (ii) substances that endanger the health and safety of persons; and

- (iii) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.
- (e) **"Emergency Response Plan"** means the emergency response plan to be prepared by RCP&E as described in Article 8.2.
- (f) **"Improvements"** means any building, structure, trackage or any other work of a physical character.
- (g) **"Trackage rights"** means the non-exclusive overhead trackage rights described in Article 2.1.
- (h) **"Trackage rights Fee"** means the fees payable by RCP&E to CP described in Article 10.2.
- (i) **"Operating Rules"** means CP's operating and safety rules, timetables, special instructions, bulletins, general orders, authoritative directions and amendments, supplements and replacements thereto as communicated from time to time by CP's designated operating officer to RCP&E's designated operating officer.
- (j) **"Operating Window"** means the daily time period or periods designated by CP that RCP&E may operate on the Subject Trackage.
- (k) **"Subject Trackage"** means CP's trackage between the points designated as Point "A", being approximately mile post 231.5+/- near Tracy, MN, and Point "B", being approximately mile post 142.4+/- near Mankato, MN on CP's Tracy Subdivision as shown in Schedule "A". The Subject Trackage includes all track, track connections, facilities and appurtenances, signals and switches located between Points "A" and "B" as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of CP.
- (l) **"Trains"** means all trains, locomotives, Cars, cabooses and equipment owned, leased, used or otherwise in the possession of, control of or under operation by RCP&E.

- 1.2 **Schedules**. The following Schedules are attached to and form a part of this Agreement:

<u>Schedule</u>	<u>Description</u>
A	Subject Trackage Sketch Plan
B	Insurance Coverage
C	Rate Escalation

ARTICLE 2 **TRACKAGE RIGHTS**

- 2.1 Subject to the terms and conditions herein provided, CP hereby grants to RCP&E the non-exclusive right to operate its overhead Trains with its own crews over the Subject Trackage (the "**Trackage rights**"). RCP&E's use of the Subject Trackage shall be in common with CP and any other user(s) of the Subject Trackage and the rights of CP and such other user(s) to use the Subject Trackage shall not be diminished by this Agreement.
- 2.2 In order to avoid conflicting movements and ensure the safe operation of both Parties on the Subject Trackage, the Trackage rights are subject at all times to the following conditions:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]

- 2.3 [REDACTED]

ARTICLE 3
RESTRICTIONS ON USE

- 3.1 The Trackage rights granted herein are only for the movement of overhead freight traffic to be interchanged with UP at Mankato, MN. [REDACTED]



ARTICLE 4
MAINTENANCE OF CONNECTIONS TO SUBJECT TRACKAGE

- 4.1 Existing connections to the Subject Trackage or related facilities, which are jointly used by RCP&E and CP under other existing agreements with other parties, shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.
- 4.2 [REDACTED]

ARTICLE 5
MAINTENANCE OF SUBJECT TRACKAGE

- 5.1 CP shall maintain, repair and renew the Subject Trackage with its own supervision and labor forces and shall maintain sufficient access on adjacent roadways as may be necessary for crews to access the Subject Trackage. CP shall keep and maintain the Subject Trackage in reasonably good condition, however, CP shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Subject Trackage and CP does not guarantee the conditions of the Subject Trackage or that operations over it will not be interrupted. The Parties also acknowledge and agree that in order for CP to perform its maintenance obligations, the Subject Trackage will be out of service from time to time for the required work blocks and CP shall not be liable to RCP&E for any loss due to delay or interruption resulting from CP's performance of maintenance, repair, or renewal of the Subject Trackage.

5.2

- 
- 5.3 Nothing in this Agreement shall preclude CP from discontinuing or abandoning rail operations on any part of the Subject Trackage at any time, subject to CP fulfilling the applicable requirements set out by the Surface Transportation Board. Upon such discontinuance or abandonment, this Agreement shall automatically terminate as to the portion of the Subject Trackage that has been discontinued.

ARTICLE 6
OPERATION AND MANAGEMENT OF SUBJECT TRACKAGE

- 6.1 The management and operation of the Subject Trackage shall be under the exclusive direction and control of CP. Subject to Section 2.2, CP shall have the unrestricted right to change the management and the operations on and over the Subject Trackage as CP, in its sole judgment, may deem necessary, expedient or proper for the operation of the Subject Trackage.

6.2 RCP&E shall comply with all applicable laws, regulations and rules respecting the operation, condition, inspection and safety of its Trains, while such Trains are being operated over the Subject Trackage.

[REDACTED]

6.3

[REDACTED]

6.4

[REDACTED]

6.5

[REDACTED]

6.6

[REDACTED]

6.7

[REDACTED]

6.8

[REDACTED]

6.9



6.10



6.11



6.12



6.13



6.14



6.15



6.16

[REDACTED]

6.17

[REDACTED]

ARTICLE 7
CLEARING OF WRECKS

7.1

[REDACTED]

7.2

[REDACTED]

ARTICLE 8
ENVIRONMENTAL

8.1 In the event that RCP&E is required to transport Hazardous Substances over the Subject Trackage, RCP&E shall:

- (a) comply with all applicable federal, state and municipal laws, rules and regulations including, but not limited to, applicable rules and regulations as set forth by the, Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Surface Transportation Board, and the Association of American Railroads (AAR) respecting the handling and transporting of Hazardous Substances; and
- (b) ensure its personnel comply with such applicable laws, rules and regulations and meet all the requirements and qualifications for training and certification set forth by such laws.

8.2

[REDACTED]

[REDACTED]

- [Redacted]

- [Redacted]

8.3 [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

replace contaminated soils with clean fill as appropriate under the circumstances.

[Redacted]

[Redacted]

[Redacted]

8.4 [Redacted]

8.5 [Redacted]

ARTICLE 9
MILEAGE AND CAR HIRE

9.1 [Redacted]

ARTICLE 10
BILLING AND PAYMENT OF CHARGES

10.1 [Redacted]

10.2 [Redacted]

(a) [Redacted]

[REDACTED]

(b)

[REDACTED]

10.3

[REDACTED]

10.4

[REDACTED]

10.5

[REDACTED]

10.6

[REDACTED]

10.7

[REDACTED]

10.8

[REDACTED]

[REDACTED]

ARTICLE 11
LIABILITY

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.2 [REDACTED]

11.3 [REDACTED]

11.4



11.5



11.6



11.7



11.8



11.9



11.10



11.11 [REDACTED]

11.12 [REDACTED]

11.13 [REDACTED]

11.14 [REDACTED]

11.15 [REDACTED]

ARTICLE 12
TERM AND TERMINATION

12.1 [REDACTED]

12.2 [REDACTED]

12.3 [REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]

12.4 Termination of this Agreement for any reason shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination hereof.

12.5 In the event of termination of the trackage rights over all or a portion of the Subject Trackage, RCP&E shall cooperate with CP in obtaining STB discontinuance authority for the trackage rights terminated under this Agreement.

ARTICLE 13 **CONFIDENTIALITY**

13.1 [REDACTED]

ARTICLE 14
DISPUTE RESOLUTION

14.1

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

ARTICLE 15
NOTICES

15.1 Any notice request, demand or other document required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered in person, or by courier or facsimile and addressed to the other Party as follows:

(a) if to CP:

Dakota, Minnesota & Eastern Railroad Corporation
120 S. 6th Street, Suite 700
Minneapolis, MN 55402
Facsimile No.: 612 904-5981

with a copy to:

[REDACTED]

with a copy to:



(b) if to RCP&E:

Rapid City, Pierre & Eastern Railroad, Inc.
166 E 14000 S
Suite 140
Draper, UT 84020
Attention President
Facsimile No. []

with a copy to :



Any notice, if given by courier, shall be deemed to have been given or made on the date delivered. Either Party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other Party to this Agreement, in the same manner as provided above for all other written notices.

ARTICLE 16 **SUCCESSORS AND ASSIGNS**

16.1



16.2



ARTICLE 17 **REGULATORY APPROVAL**

- 17.1 Should this Agreement require the prior approval of the Surface Transportation Board ("STB"), RCP&E will initiate and thereafter diligently pursue, at its own cost and expense, an appropriate application to secure such approval.
- 17.2 The Parties shall assume and hold one another harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the Parties hereunder, where such claims are predicated on labor protective conditions imposed by the Surface Transportation Board or its predecessor.

ARTICLE 18

GOVERNING LAW

18.1

ARTICLE 19

FORCE MAJEURE

- 19.1 A Party's duties and obligations under this Agreement shall be excused and a Party shall not be liable to the other Party for any delay, loss or damage resulting from circumstances or causes beyond its reasonable control including, without limitation: an Act of God, inclement weather conditions, storms, blizzard, flood, washout, avalanche, snow slide, rockslide, earthquake, expropriation, fire or explosion, natural catastrophe of any kind, strike, lockout, walkout or other labor dispute; war; vandalism or sabotage, riot, or other civil commotion, insurrection, act of terrorism or other violence, derailment, track outage, labor shortage, electric utility power outage, locomotive or fuel shortage; any law, order or requirement of any governmental agency or authority; blockade; embargo or AAR service order; closure of origin or destination for any reason. Force majeure declarations by either Party may be limited to specific origins or destinations or railroad routes to more specifically identify the force majeure event. The Party declaring force majeure shall promptly notify the other Party of the nature of the condition and the commencement and cessation thereof.

ARTICLE 20

GENERAL

- 20.1 Nothing in this Agreement shall limit the right of CP to admit other companies to use, operate, dispatch or maintain the Subject Trackage or any Party thereof on such terms and conditions as are satisfactory to CP.
- 20.2 All headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 20.3 In this Agreement where the context so requires, the singular of any word includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, to a corporation.
- 20.4 References to a "Person" shall include individuals, corporations, partnerships, associations, bodies politic and other entities, all as may be applicable in the context.

- 20.5 All words, terms and phrases used in this Agreement and not otherwise defined herein shall be construed in accordance with the generally accepted definition or meaning of such words, terms or phrases in the North American railroad industry.
- 20.6 This Agreement may not be modified or amended except in writing and executed by RCP&E and CP.
- 20.7 No waiver of any provision of this Agreement will be effective unless in writing signed by the appropriate Party, and then only in the specific instance and for the specific purpose given.
- 20.8 This Agreement constitutes the entire understanding between the Parties hereto with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and prior agreements and memorandums between the Parties hereto relating to the subject matter hereof.
- 20.9 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
d/b/a CANADIAN PACIFIC**

Per: _____
Name: _____
Title: _____
Date: _____

RAPID CITY, PIERRE & EASTERN RAILROAD, INC.

Per: _____
Name: _____
Title: _____
Date: _____

SCHEDULE "A"

Subject Trackage

SCHEDULE "B"
Insurance Coverage

1.1 RCP&E, at its sole cost and expense, shall take out and keep in full force and effect and pay all premiums for, throughout the term and during such other time as this Agreement remains in force, the following insurances:

- (a) 
- (i) 
- (ii) 
- (iii) 
- (iv) 
- (v) 
- (vi) 
- (vii) 
- (b) 
- (c) 

[Redacted]

[Redacted]

[Redacted]

[Redacted]

1.2 **Replacement Insurance**

[Redacted]

1.3 **Notice to CP**

[Redacted]

1.4 **Certificate of Insurance**

[Redacted]

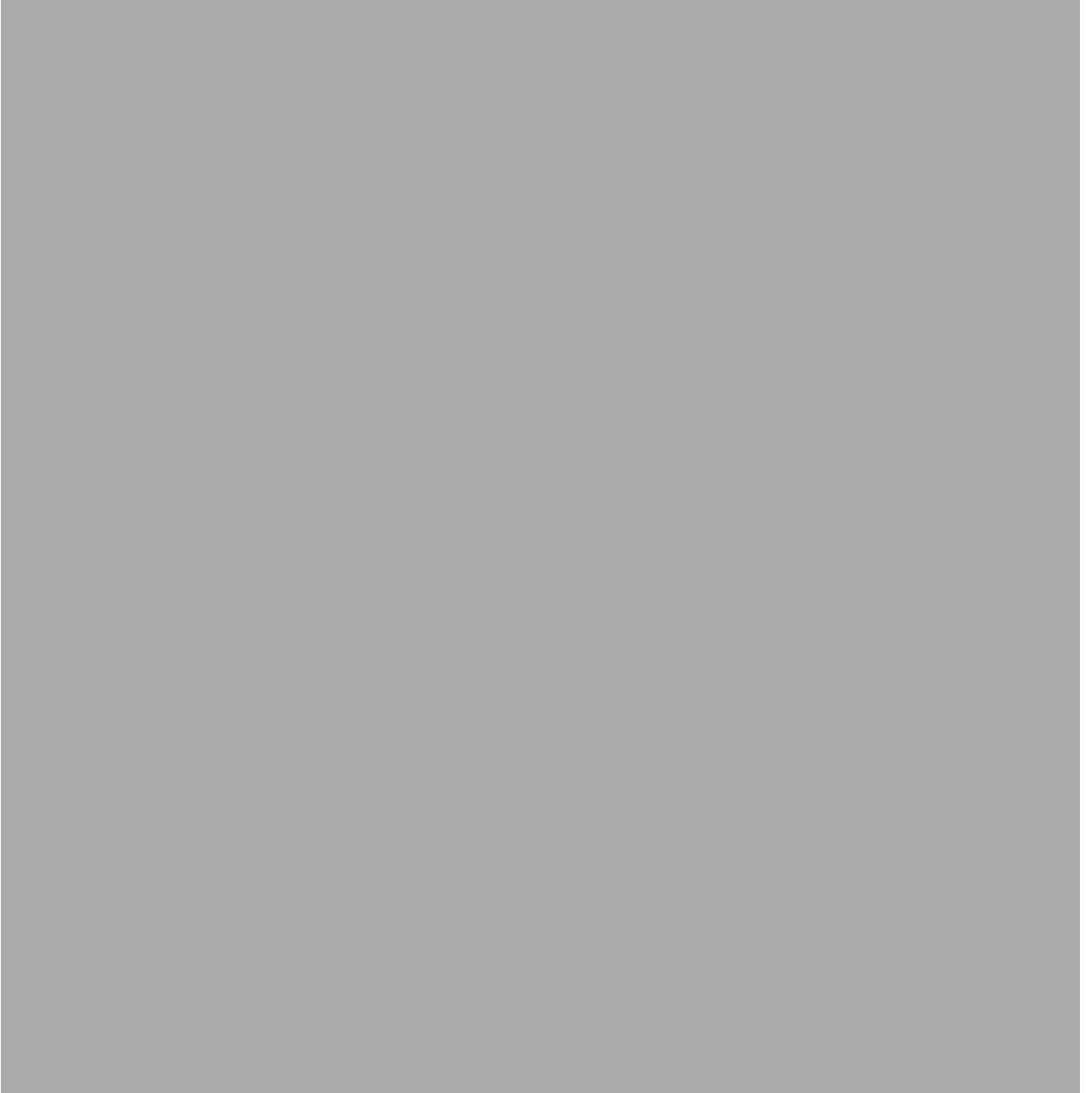
1.5 **No Limitation**



.

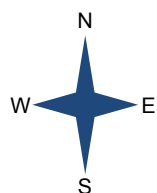
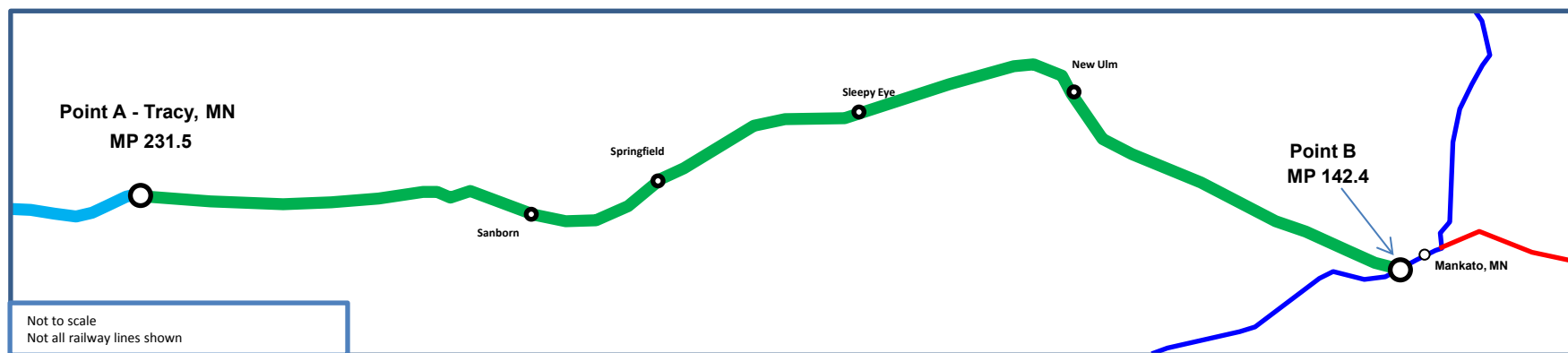
SCHEDULE "C"

Rate Escalation



Trackage Rights Agreement – Exhibit P

Schedule A Subject Trackage



- Subject Trackage
- CP
- NEWCO
- UP

**RAILCAR AND LOCOMOTIVE INSPECTION AND PURCHASE PRICE
ADJUSTMENT PROCEDURES**

Rapid City, Pierre & Eastern Railroad, Inc. (“Buyer”) and Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a CANADIAN PACIFIC RAILWAY (“DM&E”) have entered into that Transaction Agreement (the “Transaction Agreement”) among Buyer and DM&E, pursuant to which, among other things, Buyer will acquire the Equipment Leases (including any obligations and liabilities arising thereunder from and after 12:01 a.m. Chicago time on the day following the Closing (the “Effective Time”)) from DM&E. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Transaction Agreement.

A. Leased Cars and Locomotives.

Pursuant to the Equipment Leases relating to railcars and locomotives (the “Car and Locomotive Leases”), DM&E leases railcars and locomotives (the “Leased Cars/Locomotives”). The provisions of the respective Car and Locomotive Leases contain certain maintenance, repair and other obligations related to the condition upon expiration of the Car and Locomotive Leases (such obligations, other than removal of insignia upon lease expiration, the “Condition Standards”).

B. Inspection Procedures.



C. Repair or Purchase Price Adjustment.





PRORATION PROCEDURES

Rapid City, Pierre & Eastern Railroad, Inc. (“Buyer”) and Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a CANADIAN PACIFIC RAILWAY (“DM&E”), have entered into that certain Transaction Agreement (the “Transaction Agreement”) pursuant to which, among other things, Buyer will purchase the Transaction Assets, including the Main System, from DM&E. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Transaction Agreement.

A. Trains.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]2. [REDACTED]
[REDACTED]
[REDACTED]3. [REDACTED]
[REDACTED]4. [REDACTED]
[REDACTED]5. [REDACTED]
[REDACTED]
[REDACTED]**B. Other.**1. Miscellaneous. [REDACTED]
[REDACTED]

[REDACTED]

2. Demurrage. [REDACTED]

[REDACTED]

3. Equipment Rentals. [REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

5.

[REDACTED]

e.

6.

[REDACTED]

7.

[REDACTED]

8.

[REDACTED]

9.

[REDACTED]

10.

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

C. Car Hire

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

**OFFICER'S CERTIFICATE
OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

This Certificate is being delivered pursuant to Section 9.03 of that certain Transaction Agreement dated as of January __, 2014 (the "Transaction Agreement") between Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a CANADIAN PACIFIC RAILWAY ("DM&E"), and Rapid City, Pierre & Eastern Railroad, Inc., a Delaware corporation ("Buyer"). Capitalized terms not otherwise defined herein have the meanings given to such terms in the Transaction Agreement.

The undersigned, does hereby certify on behalf of DM&E, and not in an individual capacity and without personal liability, that:

- (i) attached hereto as Exhibit A is a true, complete and correct copy of the Certificate of Incorporation of DM&E certified by the Office of the Delaware Secretary of State, which such Certificate of Incorporation is in full force and effect and has not been amended since the date of its adoption reflected on the attached;
- (ii) attached hereto as Exhibit B is a true, complete and correct copy of the Bylaws of DM&E, which such Bylaws are in full force and effect and have not been amended since the date of their adoption reflected on the attached;
- (iii) attached hereto as Exhibit C is a true, complete and correct copy of an extract of the resolutions of the Board of Directors of DM&E, authorizing the execution, delivery and performance by DM&E of the Transaction Agreement, and such resolutions are in full force and effect and have not been amended since the date of their adoption reflected on the attached;
- (iv) attached hereto as Exhibit D is a true, complete and correct copy of a Certificate of Good Standing of DM&E issued by the Office of the Delaware Secretary of State;

(v)



[REDACTED]

(vi)

[REDACTED]

[THIS SPACE INTENTIONALLY LEFT BLANK]

This Certificate is given solely in the capacities as the President and Secretary of DM&E and no personal liability is assumed by the undersigned in connection herewith.

IN WITNESS WHEREOF, I have hereto set my hand this ____ day of ____, 2014.

**DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION**

By: _____
_____, President

By: _____
_____, Secretary

EXHIBIT A

CERTIFICATE OF INCORPORATION

EXHIBIT B

BYLAWS

EXHIBIT C

BOARD OF DIRECTOR RESOLUTIONS

EXHIBIT D

GOOD STANDING CERTIFICATE

**OFFICER'S CERTIFICATE
OF
RAPID CITY, PIERRE & EASTERN RAILROAD, INC.**

This Certificate is being delivered pursuant to Section 10.03 of that certain Transaction Agreement dated as of January __, 2014 (the "Transaction Agreement") between Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a CANADIAN PACIFIC RAILWAY ("DM&E"), and Rapid City, Pierre & Eastern Railroad, Inc., a Delaware corporation ("Buyer"). Capitalized terms not otherwise defined herein have the meanings given to such terms in the Transaction Agreement.

The undersigned, does hereby certify on behalf of Buyer, and not in an individual capacity and without personal liability, that:

- (i) attached hereto as Exhibit A is a true, complete and correct copy of the Certificate of Incorporation of Buyer certified by the Office of the Delaware Secretary of State, which such Certificate of Incorporation is in full force and effect and has not been amended since the date of its adoption reflected on the attached;
- (ii) attached hereto as Exhibit B is a true, complete and correct copy of the Bylaws of Buyer, which such Bylaws are in full force and effect and have not been amended since the date of their adoption reflected on the attached;
- (iii) attached hereto as Exhibit C is a true, complete and correct copy of an extract of the resolutions of the Board of Directors of Buyer, authorizing the execution, delivery and performance by Buyer of the Transaction Agreement, and such resolutions are in full force and effect and have not been amended since the date of their adoption reflected on the attached;
- (iv) attached hereto as Exhibit D is a true, complete and correct copy of a Certificate of Good Standing of Buyer issued by the Office of the Delaware Secretary of State;

(v)



(vi)





[THIS SPACE INTENTIONALLY LEFT BLANK]

This Certificate is given solely in the capacities as the President and Secretary of Buyer and no personal liability is assumed by the undersigned in connection herewith.

IN WITNESS WHEREOF, I have hereto set my hand this ____ day of ____, 201__.

**RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.**

By: _____
_____, President

By: _____
_____, Secretary

EXHIBIT A

CERTIFICATE OF INCORPORATION

EXHIBIT B

BYLAWS

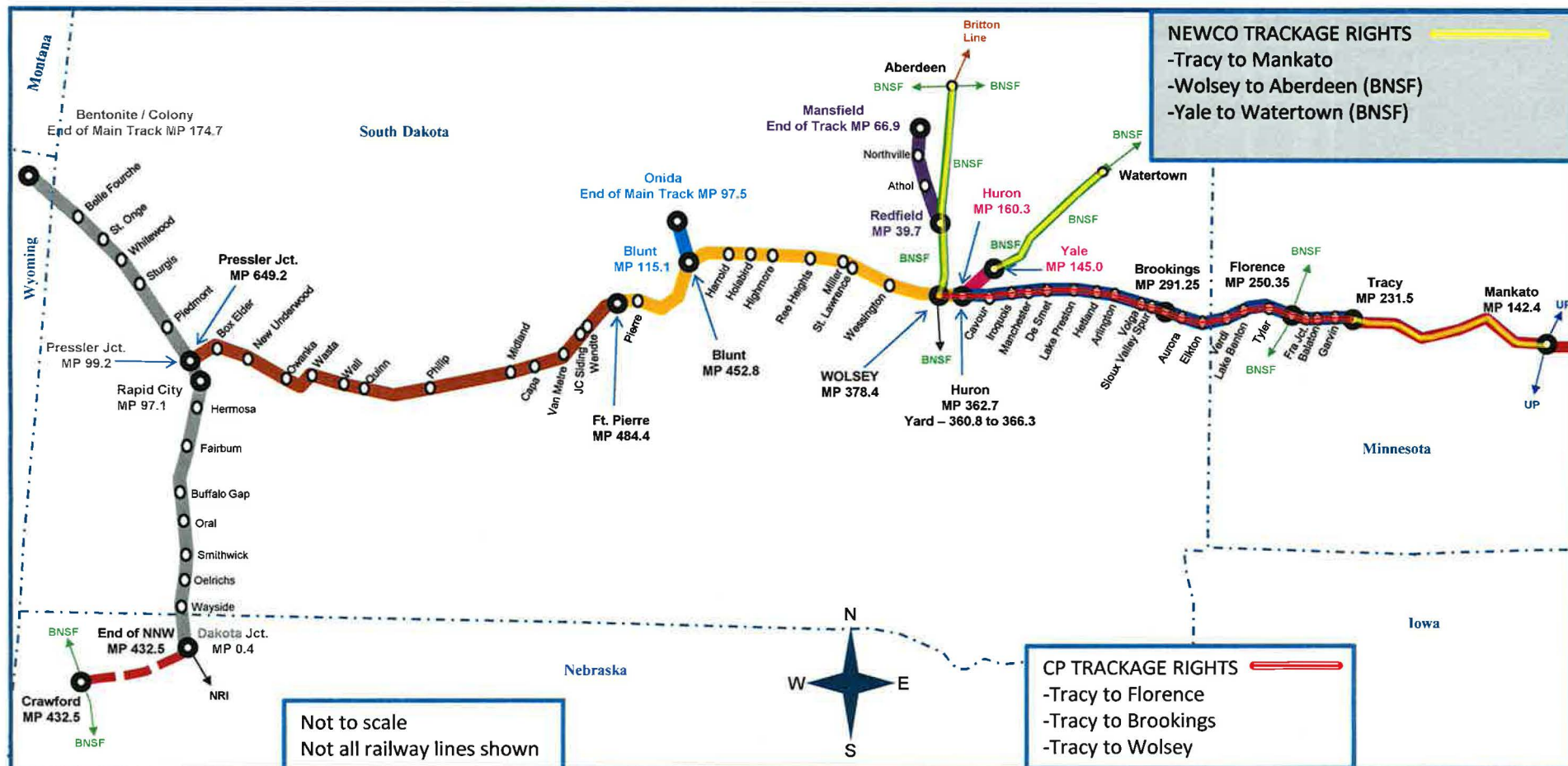
EXHIBIT C

BOARD OF DIRECTOR RESOLUTIONS

EXHIBIT D

GOOD STANDING CERTIFICATE

Main System Map for STB



NNW

Black Hills

PRC

Onida

Pierre

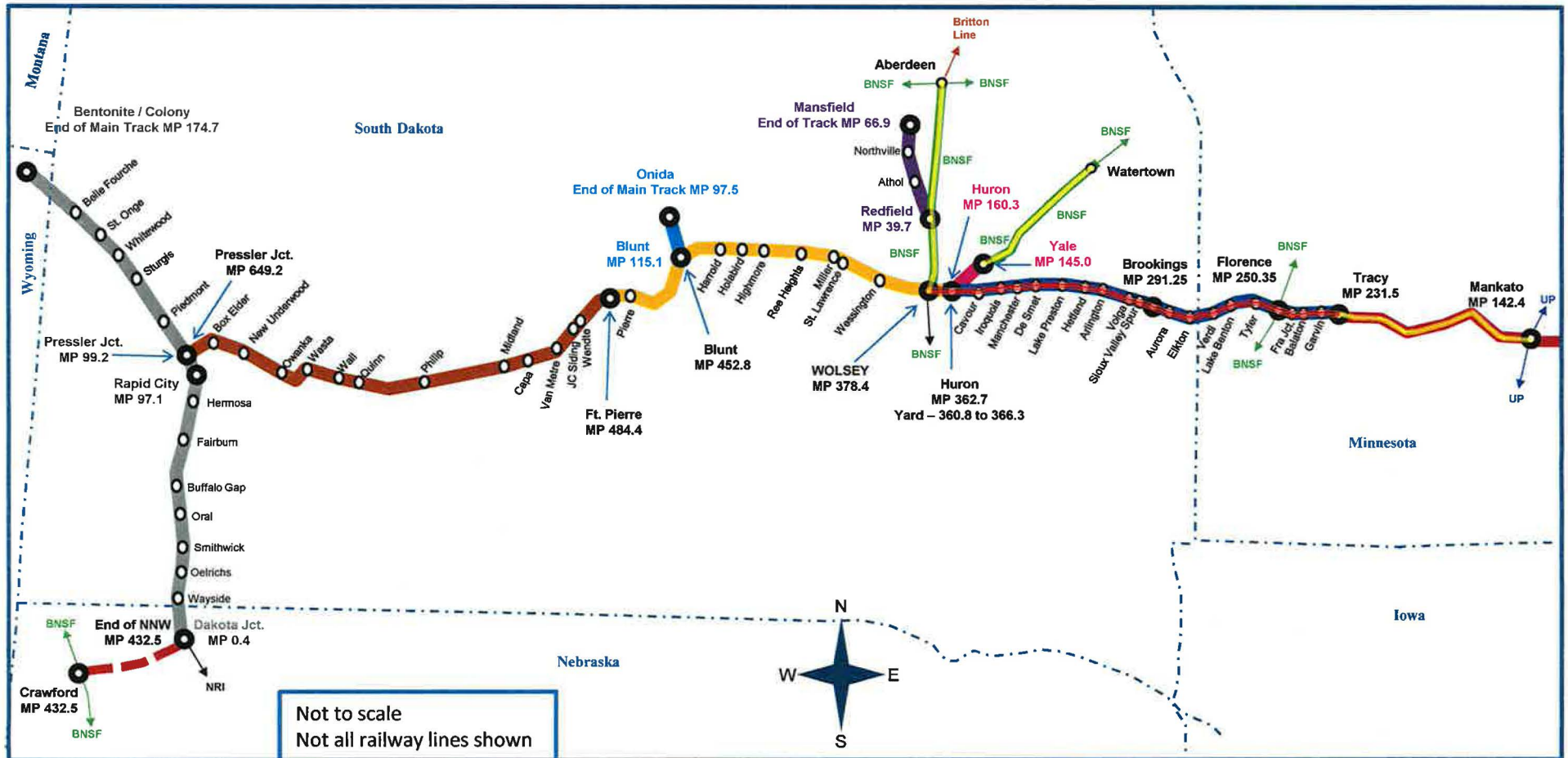
Mansfield

Yale

Huron

CP

Main System Map for STB – Slide 1 of 2



Main System Map for STB – Slide 2 of 2

LEGEND

LINES	
	CP
	Huron
	Yale
	Mansfield
	Pierre
	Onida
	PRC
	Black Hills
	NNW
NEWCO TRACKAGE RIGHTS 	
-Tracy to Mankato	
-Wolsey to Aberdeen (BNSF)	
-Yale to Watertown (BNSF)	
CP TRACKAGE RIGHTS 	
-Tracy to Florence	
-Tracy to Brookings	
-Tracy to Wolsey	

PUBLIC VERSION

AMENDMENT NO. 1 TO THE TRANSACTION AGREEMENT

This Amendment No. 1 to the Transaction Agreement is dated as of February 7, 2014 (this "Amendment") and made between Rapid City, Pierre & Eastern Railroad, Inc., a Delaware corporation (the "Buyer"), and Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a CANADIAN PACIFIC RAILWAY (the "Seller", and each of the Buyer and the Seller, a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, the Buyer and Seller entered into that certain Transaction Agreement, dated as of January 2, 2014 (the "Original Agreement"); capitalized terms used in this Amendment, if not otherwise defined herein, shall have the meanings set forth in the Original Agreement, as amended or modified pursuant to this Amendment (as so amended or otherwise modified, the "Transaction Agreement");

WHEREAS, pursuant to Section 13.10 of the Original Agreement, the Buyer and Seller may amend, modify or supplement the Original Agreement upon the execution and delivery of a written agreement executed by the Parties; and

WHEREAS, the Parties desire to make certain amendments to the Original Agreement as provided in this Amendment.

NOW, THEREFORE, pursuant to Section 13.10 of the Original Agreement and in consideration for the premises and agreements hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

1. Amendment to Original Agreement. Upon the terms and subject to the conditions set forth herein:

[REDACTED]

2. Effective Date of this Amendment. Except as expressly provided herein, the Original Agreement is not amended, supplemented, modified, revised or otherwise affected by this Amendment. This Amendment shall be deemed effective and in full force and effect as of the date first written above. On and after the date hereof, each reference in the Original Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import referring to the Original Agreement, shall mean and be a reference to the Transaction Agreement and each reference to the Transaction Agreement in any other agreements, documents or instruments executed and delivered pursuant to or in connection with the Transaction Agreement shall be deemed to mean and be a reference to the Transaction Agreement as amended by this Amendment.

3. Binding Effect. This Amendment shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

4. Governing Law. [REDACTED]

[REDACTED]

5. Counterparts. This Amendment may be executed in one or more counterparts, including by facsimile or e-mail delivery of a counterpart, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

6. Entire Agreement. This Amendment constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any and all prior agreements, understanding and representations, whether written or oral, related to the subject matter hereof.

[Remainder of the page intentionally left blank]

PUBLIC VERSION

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: *[Signature]*
Its: VP CORPORATE AFFAIRS.

By: _____
Its: _____

RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.

By: _____
Its: _____



PUBLIC VERSION

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____
Its: _____

By: *Sam Paul*
Its: *Chief Legal Officer*

RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.

By: _____
Its: _____

Reference is made to the Guaranty (the "Guaranty") dated as of January 2, 2014, by Genesee & Wyoming Inc., a Delaware corporation ("Guarantor") in favor of Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a Canadian Pacific Railway, as beneficiary ("Beneficiary"). Guarantor acknowledges receipt of this Amendment and confirms that the term "Purchase Agreement" as defined in the Guaranty means the Purchase Agreement as amended by this Amendment.

GENESEE & WYOMING INC.

By: *Ann M. Lewis*
Its: *General Counsel & Secretary*

PUBLIC VERSION

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

By: _____

Its: _____

By: _____

Its: _____

RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.

By: Ann M. Fergus

Its: Secretary

Reference is made to the Guaranty (the "Guaranty") dated as of January 2, 2014, by Genesee & Wyoming Inc., a Delaware corporation ("Guarantor") in favor of Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a Canadian Pacific Railway, as beneficiary ("Beneficiary"). Guarantor acknowledges receipt of this Amendment and confirms that the term "Purchase Agreement" as defined in the Guaranty means the Purchase Agreement as amended by this Amendment.

GENESEE & WYOMING INC.

By: Ann M. Fergus

Its: General Counsel & Secretary

[Signature Page to Amendment No. 1 to Transaction Agreement]