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December 21, 2018

ENTERED
Office of Proceedings
December 21, 2018
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Public Record

Via electronic filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001



Re: *City and County of Denver – Verified Petition for Declaratory Order*, STB Docket No. FD 36263

Via hand delivery

Dear Ms. Brown:

I am attaching an original and ten (10) copies of the Verified Petition for Declaratory Order of the City and County of Denver in the above-captioned proceeding.

With respect to the filing fee, we have enclosed a check in the amount of \$1400. However, the City and County of Denver (City), a political subdivision of the State of Colorado, is seeking a waiver of the filing fee based on the fact that it is a local government entity filing the Petition for Declaratory Order on behalf of the general public. *See* 49 C.F.R. §1002.2(e); STB Ex Parte No. 542 (Sub-No. 6) - *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services--Policy Statement* (Served December 6, 2000). Specifically, 49 C.F.R. 1002.2(e)(1) states that “filing fees are waived for application and other proceedings which is filed by...a state or local government agency.” The City is a state government agency filing the request on behalf of the general public. Accordingly, the City requests that the filing fee submitted with the Notice of Exemption be waived.

Please date stamp the extra copy and return to our messenger. Please note that a CD containing an electronic copy of this filing is enclosed.

FILED
December 21, 2018
SURFACE
TRANSPORTATION BOARD

Sincerely,



Allison I. Fultz
Counsel for City and County of Denver

FEE RECEIVED
December 21, 2018
SURFACE
TRANSPORTATION BOARD

Enclosure

CONTAINS COLOR ORIGINALS

**Before the
Surface Transportation Board**

Docket No. FD 36263

**VERIFIED PETITION OF THE CITY AND COUNTY OF DENVER
FOR DECLARATORY ORDER**

Dated: December 21, 2018

Communications with respect to this
document should be addressed to:

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Counsel for the City and County of Denver

**Before the
Surface Transportation Board**

Docket No. FD 36263

**VERIFIED PETITION OF THE CITY AND COUNTY OF DENVER
FOR DECLARATORY ORDER**

The City and County of Denver (the “City”), a political subdivision of the State of Colorado, hereby requests that the Surface Transportation Board (“Board”) institute a declaratory order proceeding pursuant to 5 U.S.C. §554(e) to confirm that: (1) the City’s proposed reconfiguration of track on its National Western Center campus is a relocation rather than an extension of a line or an additional railroad line; (2) the incidental abandonment of track following relocation will not require separate approval or exemption; and (3) the Board’s prior approval of the relocation is not required because the Board has no jurisdiction over the proposed relocation.

I. STATEMENT OF FACTS

A. National Western Center Redevelopment

The City has initiated a comprehensive economic revitalization project to redevelop an approximately 250-acre property, comprising the Denver Stock Yards and some additional parcels, as the National Western Center, an agricultural innovation, education, event, and tourism center. The City has established the National Western Center Authority, a Colorado nonprofit corporation, that will program, operate and maintain the year-round campus for agricultural education, innovation and entertainment. The City has, with the notable exception of parcels owned or controlled by DRIR, largely completed the property acquisitions necessary to assemble the campus and has begun site clearing and other preliminary redevelopment activities. A

description of the redevelopment, planning and public outreach for which began in 2014, is available at <https://nationalwesterncenter.com/about/the-redevelopment-process/master-plan/>. A copy of the proposed National Western Center site plan is attached at **Exhibit A**, and shows the range of uses the campus will accommodate, including a public park along the restored South Platte River waterfront; other public open space; extensive stockyard and exhibition facilities to house the annual National Western Stock Show (“Stock Show”) and other large-scale events throughout the year; a new large animal health and research facility to be developed in conjunction with Colorado State University; additional mixed use facilities to attract agricultural and science-oriented investments; and a relocated rail corridor. The redeveloped campus will accommodate the annual Stock Show, which reflects the site’s historical importance as the rail-served central holding and distribution stockyards for a large portion of the Rocky Mountain western region. In addition to the Stock Show, the existing National Western Complex hosts over 250 other events annually. See <https://nationalwesterncenter.com/about/history-about-the-site/> for a detailed history of the National Western Center site.

A significant element of the proposed site plan is to make the site safer for pedestrian, vehicular and rail traffic. Currently, the existing rail facilities are not separated from other uses on the site, and pedestrians and vehicles can cross or otherwise gain access to the tracks at virtually any point. A diagram showing the existing configuration is attached as **Exhibit B**. The existing rail lines are located immediately adjacent and parallel to existing roadways, and there are no signalized crossings or means of physically separating the track from other areas of the site. This is particularly potentially hazardous during the Stock Show, which is held each year in January. Thousands of cattle, sheep, horses and other livestock are assembled on the site (in the pens appearing to the east of the National Western Drive Corridor on **Exhibit B**, along with

temporary holding facilities), and thousands of human exhibitors and visitors circulate freely throughout the grounds. For this reason, DRIR has agreed to limit its use of the tracks to defined operating windows of 10:00 am to 5:00 pm and 10:00 pm to 4:00 am during the month of January to minimize conflicts between pedestrian and livestock movements and rail operations. The proposed comprehensive site plan, is shown on **Exhibit A**.

B. Rail Consolidation

The National Western Center redevelopment includes the proposed consolidation of rail operations on two current lines, the River Corridor and the National Western Drive Corridor,¹ to a single corridor. A diagram showing the proposed relocated line is attached as **Exhibit C**, and shows the new triple-tracked rail line running along the eastern edge of the site in a corridor generally 80 feet in width, parallel with BNSF, before hooking to the northwest at the northern end of the campus. A diagram showing the existing track configuration in relation to the relocated line is shown on **Exhibit D**.

The proposed improvements will also significantly improve the safety of rail operations on the site, which is currently characterized by a lack of differentiation between the rail corridor and the large areas of the site that accommodate vehicular and pedestrian circulation, both formal and uncontrolled. As illustrated on **Exhibit A**, the relocated corridor will allow for more efficient, safer rail operations by (a) segregating rail traffic from other uses on the National Western Center Campus, including through plantings and landscaping, (b) eliminating

¹ The National Western Drive Corridor is a section of line adjacent to National Western Drive, from the south right-of-way line of East 47th Ave., extending northeast and then north to private industrial spur track owned by the City which also connects to the River Corridor at the northeastern right-of-way line of Race Court. The River Corridor is a section of line adjacent to the east bank of the South Platte River, from the intersection of the line with the National Western Drive Corridor at a point just north of the south endpoint of the National Western Drive Corridor, extending north and then northeast to an intersection with the north end of private industrial spur track just south of Race Court. Said private industrial spur track also connects, at its South end, to the National Western Drive Corridor.

uncontrolled, indiscriminate access to the tracks, (c) creating a grade-separated vehicular and pedestrian crossing at Bettie Cram Drive, (d) restricting additional pedestrian crossings to an underpass or private controlled at-grade crossing at the northern portion of the site, and an overpass to the RTD station, and (e) creating a controlled at-grade vehicular crossing at Race Court at the northern end of the site. The relocation as currently proposed will preserve access to BNSF's main line and the BNSF Jersey Cutoff. The only shipper currently remaining on site, McDonald Farms, is in discussions with the City to relocate its rail served facilities at the southern end of the campus, as shown on Exhibits A and B, to a nearby City-owned parcel North of the National Western Center which will also be served by DRIR. Final plans will either reflect this relocation or preserve access to the existing McDonald Farms facilities.

The Denver Rock Island Railroad Company ("DRIR") is the only railroad conducting operations on the National Western Center site,² and uses the existing River Corridor and National Western Drive Corridor track for overhead access, to serve one shipper (McDonald Farms) at the south end of the site, and car storage. DRIR conducts switching operations between BNSF to the south of the site and Union Pacific to the north for shippers located north

² *Denver Terminal R.R. – Acquisition and Operation Exemption – Denver Ry.*, ICC Finance Docket No. 32356, 58 Fed. Reg. 50,955 (September 29, 1993). The STB has determined that the City acquired a residual common carrier obligation when it acquired the land underlying the track from the Western Stock Show Association. *City and County of Denver – Acquisition Exemption – Western Stock Show Assn in the City and County of Denver, Colo.*, STB Docket No. FD 36157 (Service Date August 9, 2018). Additionally, over time, a number of railroads have operated on the Denver Stockyards, including the predecessors of Union Pacific Railroad Company ("UP") and the Burlington Northern Railroad Company ("BN"). In *Denver Terminal R.R. Co. – Adverse Discontinuance – In Denver, CO*, Docket No. AB-446 (Sub-No. 2), this Board's predecessor agency, the ICC, granted the request of WSSA to discontinue UP's and BN's rights on the Lines. In subsequent decisions, the ICC authorized both UP and BN to discontinue service on the Lines. *Union Pacific R.R. Co. – Adverse Discontinuance – In Denver, CO*, STB Docket No. AB-33 (Sub-No. 92) (Service Date July 22, 1996); *Burlington Northern R.R. Co. – Adverse Discontinuance – In Denver, CO*, STB Docket No. AB-6 (Sub-No. 374) (Service Date July 22, 1996). The City has researched the history of rail operations on the site through the dockets of the ICC and STB, and through review of agreements between the Denver Union Stockyard Company and Denver Union Corp., WSSA's predecessors, and various operators. It has not been possible to confirm that all prior operators have either merged into UP, BNSF, or DRIR, or have abandoned their common carrier obligations. The City will pursue further proceedings as appropriate to resolve the status of any lingering previously-granted common carrier interests. Nevertheless, for the past two decades, DRIR has been the only freight rail operator on the Lines. DRIR is operating and will continue to operate under its existing exemption.

of the National Western Center site in Adams County. Other than McDonald Farms, DRIR serves no shippers on the National Western Center site. DRIR holds a non-exclusive easement for rail purposes to conduct its existing operations (the “DRIR Easement”). A copy of DRIR’s easement is attached hereto as **Exhibit E**.

In addition to the safety benefits described above, the improvements associated with the relocation of rail operations onto the consolidated corridor include the construction of a triple-track line and associated signal improvements.

The City has coordinated with DRIR on the design and construction of the improved rail facilities, and has shared its plans with DRIR as it has refined the design of the site and track configuration. Most recently, the City provided DRIR with its 60% rail design plans on November 26, 2018, which DRIR acknowledged on November 30, 2018.

The City recognizes the potential for disruption to DRIR’s operations that the proposed reconfiguration could entail if not properly sequenced. For that reason the City has planned its construction phasing to allow for DRIR’s continued operations throughout the redevelopment process, and to achieve an efficient cutover to the new line once construction of the new rail facilities is complete. DRIR will be able to operate on at least one of the existing corridors at all times, and the City will provide notice as far in advance as possible of any work that may have an impact on DRIR’s operations, i.e., utility relocations. In addition, insofar as possible, the City intends to conduct construction activities that would potentially impact DRIR during hours when DRIR is not operating in order to keep the possibility of even inadvertent interference to a minimum.

Over the past three years, the City has regularly met with and made multiple offers to DRIR to establish a comprehensive agreement to coordinate on the design of the rail relocation

and to address the impacts of this work on DRIR. For several months, until mid-October 2018, the City and DRIR conducted bi-weekly meetings at DRIR's offices, attended by multiple City representatives, to negotiate terms including: (a) a substantial cash settlement to address the costs to DRIR associated with the relocation, (b) the acquisition of DRIR controlled parcels at the National Western Center, (c) long-term operation and maintenance responsibilities over the relocated rail lines, and (d) all necessary easements and bills of sale related thereto. DRIR has not affirmatively responded to the City's offers and negotiations are no longer in process, but the City has nonetheless proceeded in good faith to accommodate those of DRIR's needs that are known to the City as plans for the National Western Center progress. The City is well aware of DRIR's common carrier obligation and has planned above all to allow for DRIR's continued operations until the railroad can cut over to the relocated facilities. Accordingly, DRIR's rights as a common carrier providing transportation by rail, and as provided in the DRIR Easement, will be preserved throughout the City's construction process.

The City acknowledges that DRIR owns most of the rails, ties and ballast over which it operates, and anticipates that DRIR will either salvage its track materials upon the completion of construction of the new line or enter into an agreement with the City regarding the disposition of the same. A diagram of the area occupied by the DRIR Easement, and showing the extent of the track that DRIR owns, is shown on **Exhibit F**.³ The City will relocate the easement area to cover the relocated track.

³ DRIR has filed a Complaint at this Board alleging that it owns certain track outside of the area shown on **Exhibit F**, *Denver Rock Island R.R. Co. v. The City and County of Denver, Colorado*, STB Docket No. NOR 42160 (Filed October 29, 2018). The track at issue in NOR 42160 is also the subject of a quiet title action the City initiated in the District Court of the City and County of Denver, Case No. 2018CV34300 (Filed November 19, 2018). This Petition, which addresses only lines that are subject to DRIR's common carrier obligation, does not include the private spur track at issue in those proceedings.

II. ARGUMENT

A. The Board does not have jurisdiction over the proposed relocation.

The reconfiguration of track on the National Western Center campus is confined to the National Western Center redevelopment site and is contained within the existing endpoints of the River Corridor and National Western Drive Corridor. It is designed to preserve existing rail operations on safer, improved facilities, but does not expand DRIR's or any other rail carrier's territory, confer a competitive advantage upon DRIR or any other rail carrier at the expense of other rail carriers, or affect any shippers. Accordingly, the construction of track on the proposed realignment is not an extension of a rail line or construction of an additional rail line pursuant to 49 U.S.C. § 10901(a) over which the Board would have jurisdiction.

This Board has repeatedly determined that “replacing existing track with substitute track constructed nearby is not within the reach of 49 U.S.C. § 10901 . . . if there is no effect on (1) service to shippers; (2) the carrier's territory or traffic; (3) competition; or (4) the carrier's revenue or operating expenses”, and that there is an “absence of jurisdiction” if the proposed relocation operates “in the same manner as the existing line, no shippers are involved, and no new competitive territory is reached.” *The State of Texas, Dept. of Transp. – Petition for Declaratory Order Regarding Highway Construction in Tarrant Co., TX*, I.C.C. Finance Docket No. 32589 (Service Date Feb. 7, 1995), slip op. at 2 (citing *Denver & R.G.W.R.Co. – Jt. Proj. – Relocation over BN*, 4 I.C.C.2d 95, 97-99). Here, the limited region within which the City's proposed reconfiguration will occur, coupled with a lack of other factors that would trigger the application of 49 U.S.C. § 10901, demonstrate that the proposed project is track relocation that does not fall within this Board's purview:

- The relocation will have no effect on shippers. Only one shipper is located on the National Western Center campus, and the City's design preserves service to that facility.
- The relocation will not affect DRIR's territory or traffic. The relocation is, in fact, designed to preserve DRIR's current market position and operations.
- The relocation will not trigger any effects on competition. The relocation will not allow DRIR to open up new routes or invade new territory.

This Board has found that projects of greater scope than the proposed realignment nevertheless satisfy the criteria to be deemed a relocation. For instance, in *City of Detroit v. Canadian Nat'l Ry.*, 9 I.C.C. 2d 1208 (1993), aff'd sub nom. *Detroit/Wayne Cnty. Port Auth. v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995), the Board held that a tunnel crossing the international border between Port Huron, Michigan, and Sarnia, Ontario, to replace an existing tunnel 90 feet away from the new corridor was simply a relocation of a line, even though it was taller than the old tunnel and introduced the accommodation of double-stacked trains, because it did "not extend the physical length of the line, served the same route and the same shippers, and did not open up new traffic routes [or] expand into new traffic territory". *Id.* at 1219. In the case of the National Western Center realignment, the geographic and physical limits of the proposed new lines are even more constrained than in that case, and accordingly satisfy the characteristics of a relocation that is not subject to STB oversight.

B. Any incidental abandonment relating to the relocation requires no separate approval or exemption.

As demonstrated above, the City's track relocation project will not disrupt service to shippers, expand DRIR's service into a new territory, or alter the existing competitive situation. Any regulatory rights and obligations associated with track in the River Corridor and National

Western Drive Corridor will transfer to the relocated track, rendering the track in the idled corridors non-jurisdictional, and therefore subject to abandonment without further approval or exemption from this Board under 49 U.S.C. § 10903.

The Board will exercise jurisdiction pursuant to 49 U.S.C. § 10901 over the abandonment, construction, or sale components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track or transfer of existing track involves expansion into new territory. *The Indiana Rail Road Co. and CSX Transp., Inc. – Joint Relocation Project Exemption – Terre Haute, Ind*, STB Docket No. FD 36203 (Service Date Oct. 12, 2018), slip op. at 2; *CSX Transp., Inc., The Baltimore & Ohio Chicago Terminal RR Co., and Norfolk Southern Ry. Co. – Joint Relocation Project Exemption – Gary-Chicago International Airport Authority*, STB Docket No. FD 35804 (Service Date May 21, 2014), slip op. at 2 (citing *City of Detroit*, 9 I.C.C. 2d 1208; *Flats Indus. R.R. & Norfolk S. Ry.—Joint Relocation Project Exemption—in Cleveland, Ohio*, FD 34108 (Service Date Nov. 15, 2001)). Under these criteria, the incidental abandonment and construction relating to a relocation project require no separate approval or exemption because the relocation project would not disrupt service to shippers, expand the incumbent railroad's service into a new territory, or alter the existing competitive situation. Accordingly, the disposition of real property interests, track and other materials on the River Corridor and National Western Drive Corridor once the new line is in service will not be subject to the Board's approval or need for an exemption.

III. CONCLUSION

Consistent with prior Board rulings, the City proposes to relocate, and not extend, railroad facilities on the National Western Center campus to create a safer, more efficient

operating environment for all users of the site. As a result, the Board should conclude that it does not have jurisdiction over the City's proposed rail construction activities or the related incidental abandonment of no-longer active track and that those activities can proceed without any further approvals (or exemptions) from this Board under 49 U.S.C. § 10901 or 49 U.S.C. § 10903. The interests of the current operator will be protected and advanced through the development of the new track.

WHEREFORE, and in view of all of the foregoing, the City respectfully requests that the Board grant the City's Petition for Declaratory Order.

Respectfully submitted,



Charles A. Spitulnik
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

Counsel for the City and County of Denver

Dated: December 21, 2018

**Before the
Surface Transportation Board**

Docket No. FD 36263

**VERIFIED PETITION OF THE CITY AND COUNTY OF DENVER
FOR DECLARATORY ORDER**

VERIFIED STATEMENT OF GRETCHEN HOLLRAH

I, Gretchen Hollrah, Executive Director, National Western Center, do swear and affirm to the best of my personal knowledge that the facts set forth in the foregoing Petition for Declaratory Order are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Petition for Declaratory Order.



Gretchen Hollrah
Executive Director,
National Western Center

Subscribed and sworn to
before me this 20th day of
December, 2018


Notary Public

My commission expires: 4/7/2021



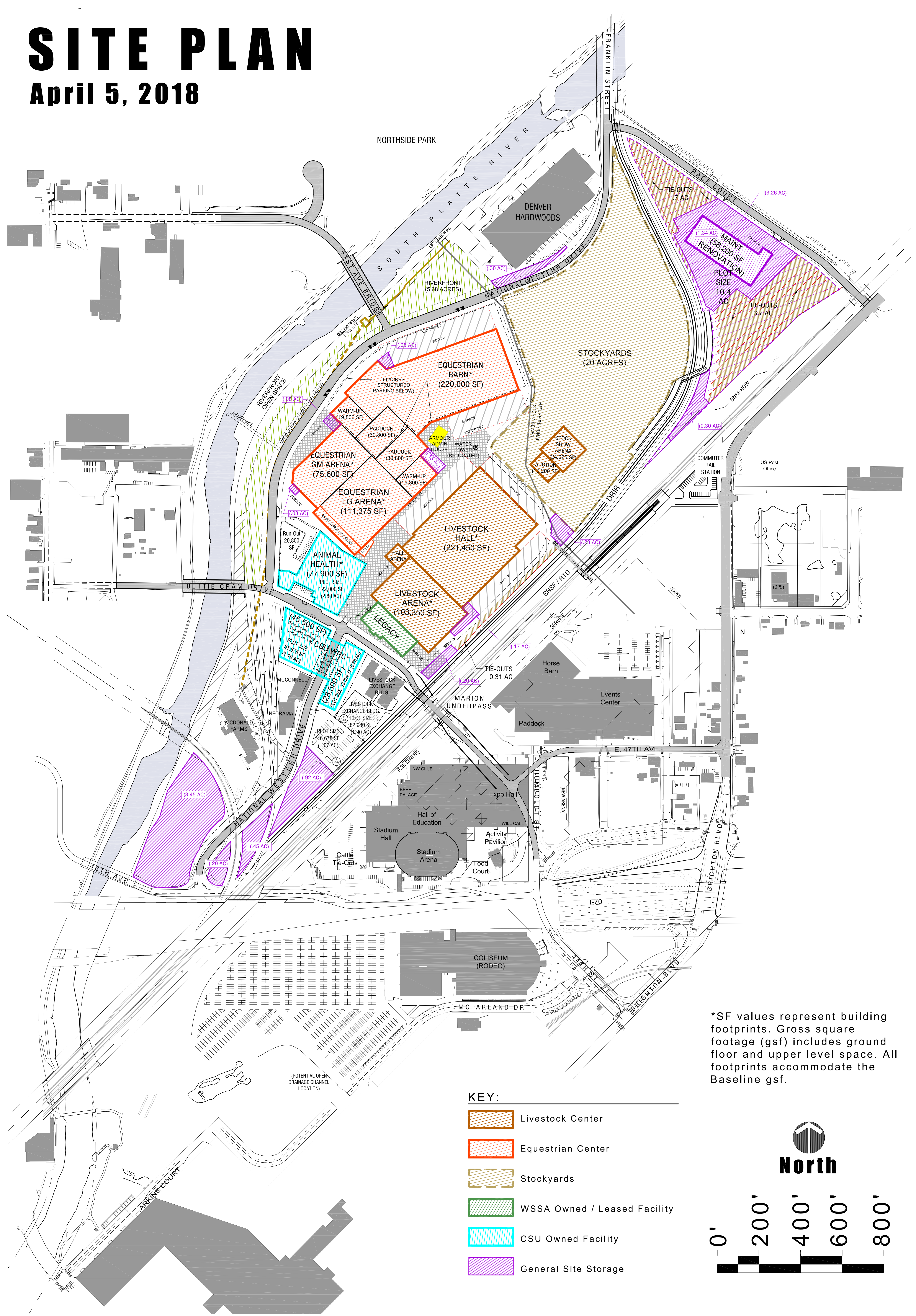
Exhibit A

Comprehensive National Western Center Site Plan

[attached hereto]

SITE PLAN

April 5, 2018



*SF values represent building footprints. Gross square footage (gsf) includes ground floor and upper level space. All footprints accommodate the Baseline gsf.

KEY:

- Livestock Center
- Equestrian Center
- Stockyards
- WSSA Owned / Leased Facility
- CSU Owned Facility
- General Site Storage

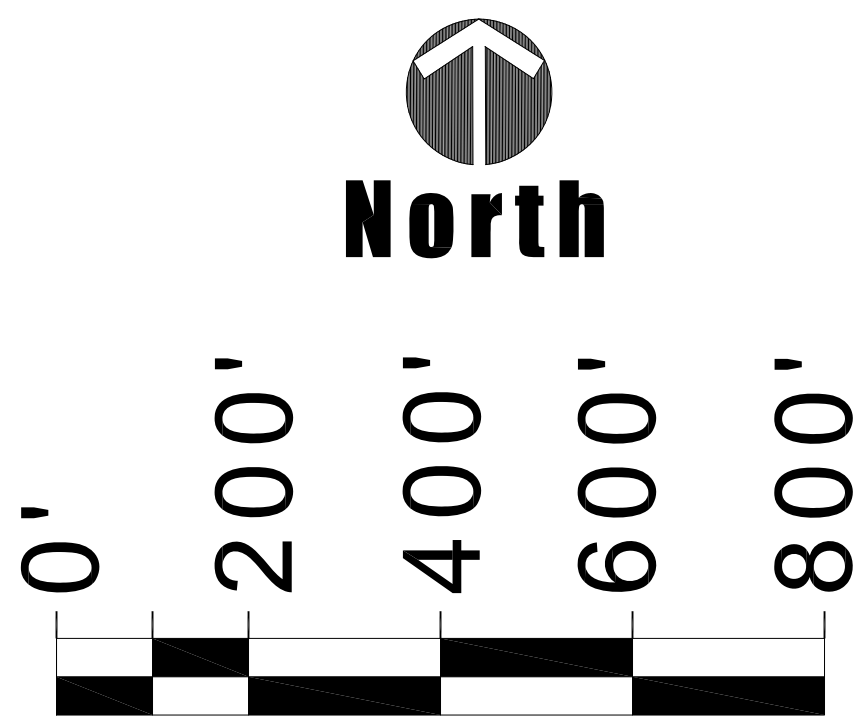
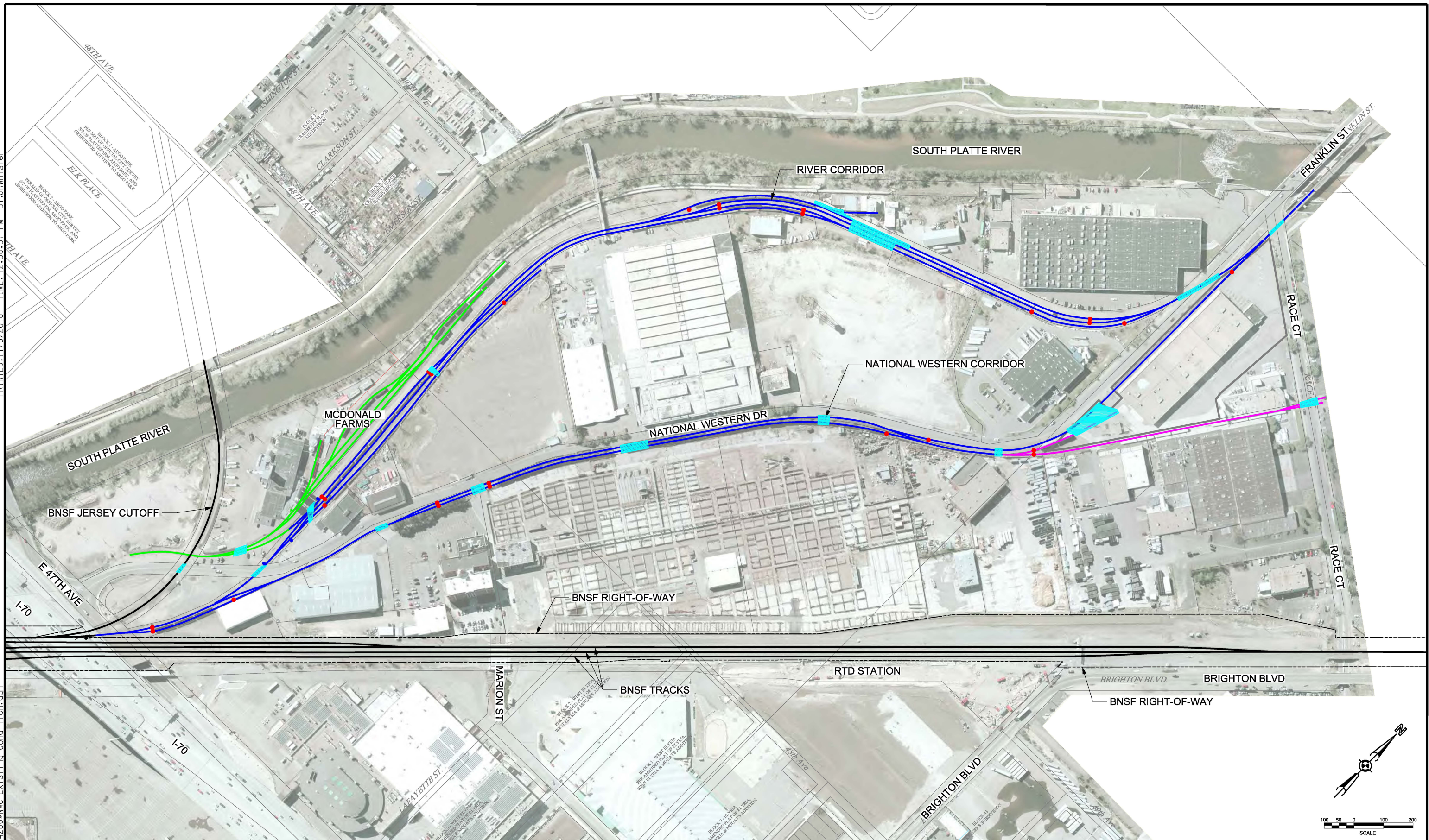


Exhibit B

National Western Center – Existing Track Configuration

[attached hereto]



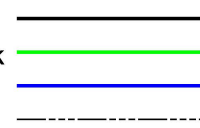
- CONCEPTUAL -
FOR REVIEW/DISCUSSION

WILSON
& COMPANY

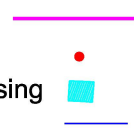


LEGEND:

BNSF Track
McDonald Farms Track
DRIR Track
Right-of-Way



Industry Track
Clear Point
At-Grade Crossing
Access Road



NWC RAIL RELOCATION PROJECT
DENVER, COLORADO

EXISTING CONDITIONS

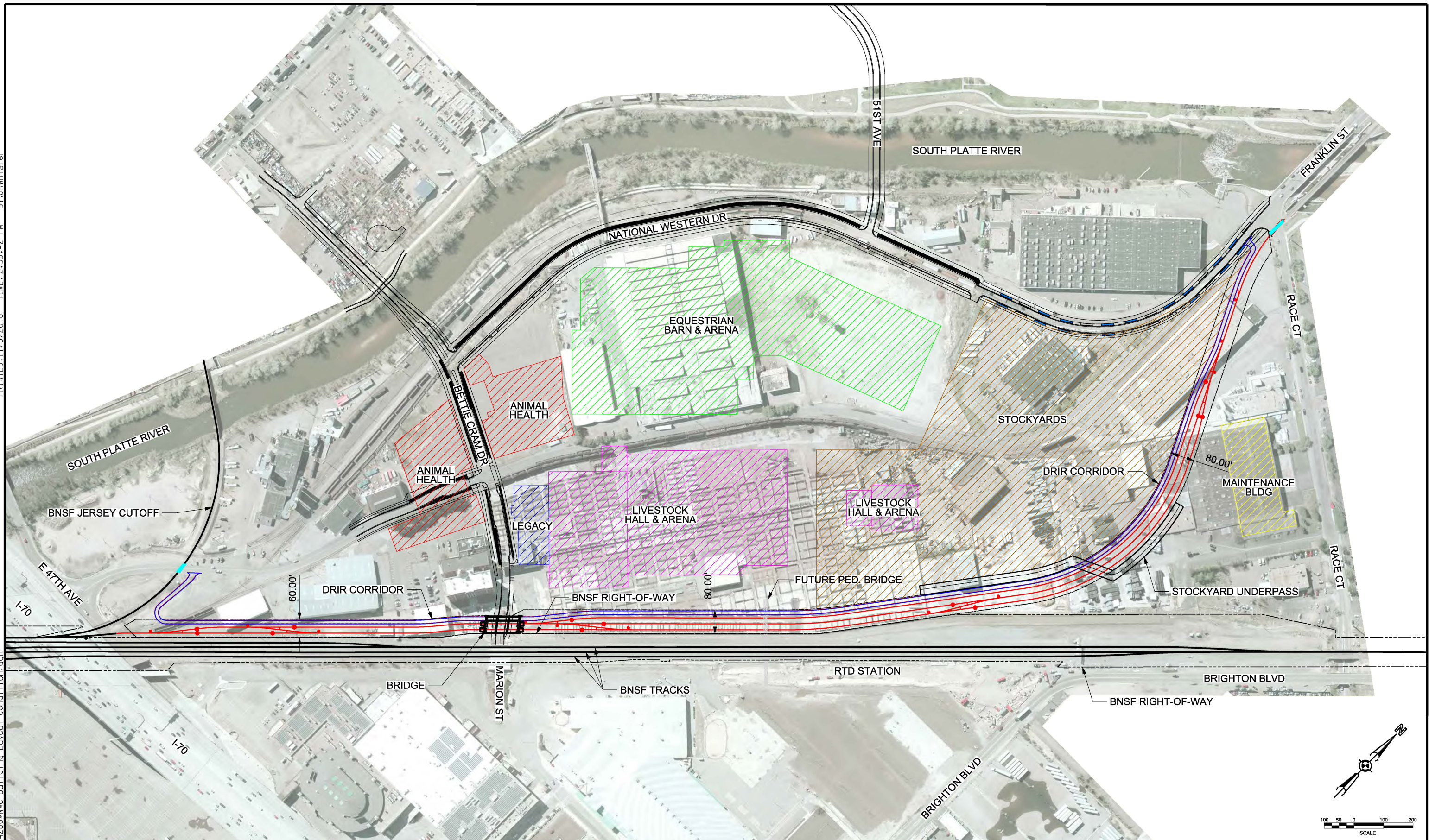
DESIGNED JRW
CHECKED MTD
DRAWN JRW
APPROVED MTD
DATE 11-09-2018

LAYOUT 1

Exhibit C

National Western Center – Rail Consolidation Plan

[attached hereto]



- CONCEPTUAL -
FOR REVIEW/DISCUSSION

WILSON
& COMPANY



LEGEND:

Existing Track
Proposed Track
Remove Track
Right-of-Way

Clear Point
At-Grade Crossing
Access Road

NWC RAIL RELOCATION PROJECT
DENVER, COLORADO
FINISHED CONSTRUCTION CONDITION

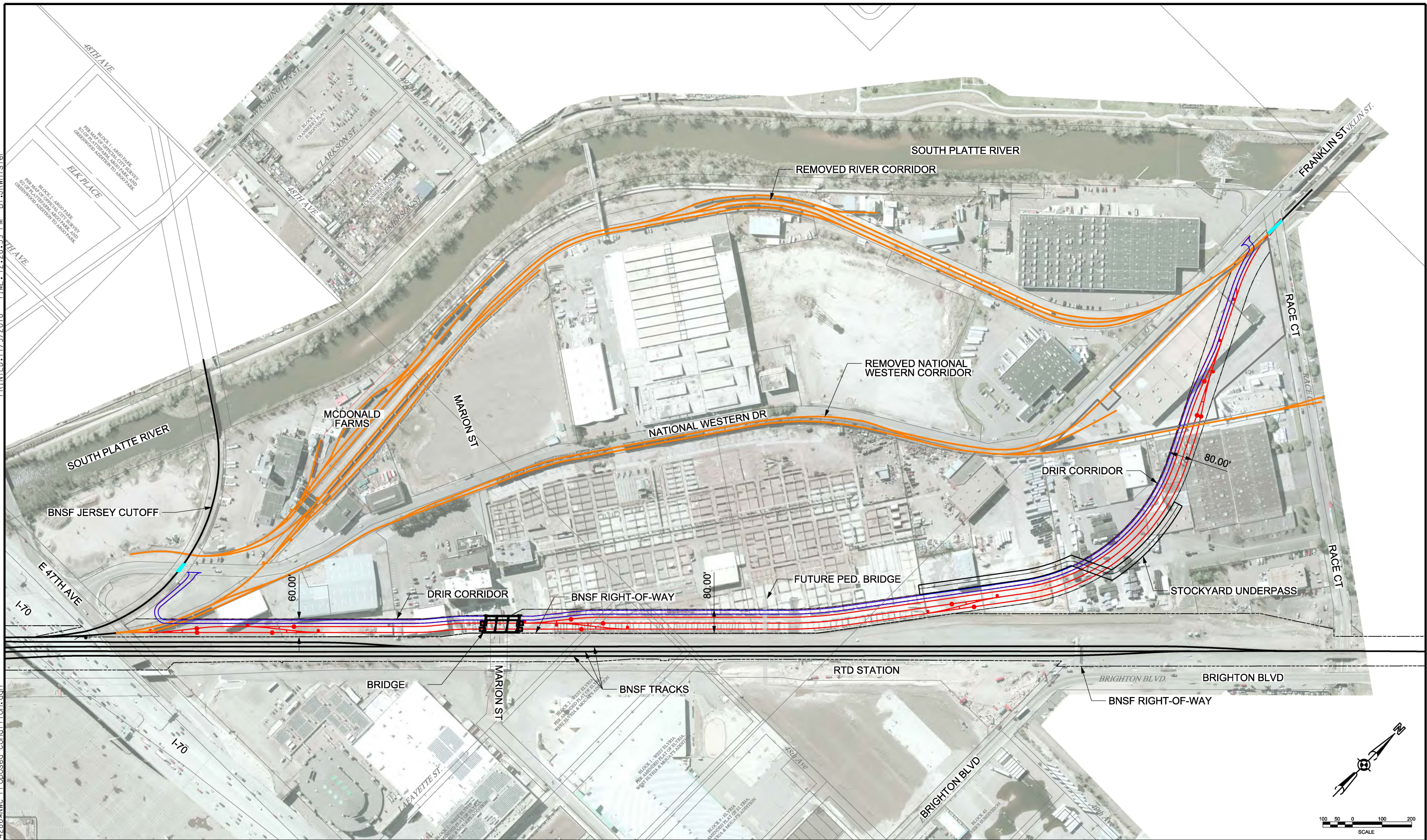
DESIGNED JRW
CHECKED MTD
DRAWN JRW
APPROVED MTD
DATE 11-09-2018

LAYOUT 3

Exhibit D

National Western Center – Existing Conditions and Rail Consolidation Plan

[attached hereto]



- CONCEPTUAL -
FOR REVIEW/DISCUSSION

WILSON
& COMPANY



LEGEND:

Existing Track
Proposed Track
Remove Track
Right-of-Way



Clear Point
At-Grade Crossing
Access Road



NWC RAIL RELOCATION PROJECT
DENVER, COLORADO

DURING CONSTRUCTION CONDITION

DESIGNED JRW
CHECKED MTD
DRAWN JRW
APPROVED MTD
DATE 11-09-2018

LAYOUT 2

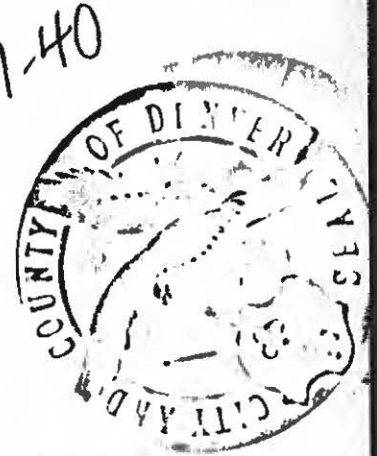
Exhibit E

DRIR Easement: Easement Deed – Recep. 9700122742, 1997/09/15

[attached hereto]

9700122742 1997/09/15 15:00:35 1/ 40 EAS
DENVER COUNTY CLERK AND RECORDER 201.00 .00 JCZ

EASEMENT DEED



THIS DEED, made effective as of the 10th day of July, 1997, by and between **THE WESTERN STOCK SHOW ASSOCIATION**, a Colorado nonprofit corporation ("Grantor") and **DENVER ROCK ISLAND RAILROAD**, a Colorado corporation ("Grantee"):

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) the receipt whereof is hereby confessed and acknowledged, by these presents does grant, bargain, sell, convey and quitclaim unto Grantee, without warranting title or interest and subject to the terms and conditions hereinafter set forth, a non-exclusive **EASEMENT**, for so long as such easement is used for rail purposes, for a right of way for the operation, maintenance, repair, renewal and reconstruction of railroad trackage (the "Trackage") over and across the land situate in the City and County of Denver, State of Colorado, described in Appendix 1 hereto attached and hereby made a part hereof (the "Easement Property").

TO HAVE AND TO HOLD the above-mentioned easement unto Grantee, subject to the terms and conditions hereinafter set forth.

The above-mentioned easement is granted upon, and subject to, the following terms and conditions:

1. This easement deed is given pursuant to, and governed by the provisions of, an agreement entered into of even date herewith by Grantor and Grantee entitled

CERTIFICATION
The Clerk and Recorder for the
CITY AND COUNTY OF DENVER State
do hereby certify this
document to be a full, true and
correct copy of the original
document recorded in my office.



Clerk and Recorder
by Aaron Hurlburt
Deputy County Clerk
Date 11/14/2015

Aaron Hurlburt

"Agreement for Resolution of Disputed Issues" (the "Agreement"), the terms of which are incorporated herein by this reference represented by Appendix 2 hereto attached and made a part hereof (excluding the exhibits attached thereto).

2. The Trackage includes the rail and related items described in the bill of sale between Grantor and Grantee of even date herewith represented by Appendix 3 hereto which is incorporated herein by reference, including the respective rights and obligations of Grantor and Grantee.

3. So long as Burlington Northern Railroad Company uses that component of the Easement Property designated on Appendix 1 as the River Corridor (the "River Corridor") without paying rental to Grantor therefor, Grantee shall be entitled to the use of the River Corridor without the payment of rental for such usage. In the event Burlington Northern Railroad Company is required to pay rental for its right to use the River Corridor, Grantee shall pay Grantor an equivalent amount of rental on a track-mile basis. Grantee's failure to make any such rental payment shall provide Grantor the right, at its option, to terminate the above-mentioned easement upon 30 days' prior written notice to Grantee of such failure unless Grantee cures the same within such 30 day period.

4. Grantor may adjust the amount payable under Section 3 above on each anniversary date of this Deed. The adjusted amount shall be reasonable and in no event

shall it exceed the amount paid to Grantor by Burlington Northern Railroad Company for use of trackage in the River Corridor computed on a track-mile basis.

5. Grantor reserves the right of ownership, use and occupancy of the Easement Property insofar as said ownership, use and occupancy does not impair the rights granted to Grantee hereunder. Grantee's rights hereunder shall be nonexclusive and Grantor shall have full right and authority to grant other easements or rights to use the Easement Property as will not impair Grantee's rights under this Deed. Grantor reserves the right to cross over and through the easement granted hereunder for access to and from Grantor's National Western Complex for Grantor and its employees, agents, invitees, licensees, guests and the livestock, vehicles and equipment of any of the foregoing, as well as the general public, at any place and for any purpose so long as such crossing and use does not unreasonably interfere with Grantee's railroad operations, and during the month of January of each year, Grantee's use of such easement shall be specifically subject to the provisions of Subsection 6.1 below. Grantee acknowledges that any impairment by Grantee of such right to cross over and through the easement granted hereunder for access to and from Grantor's National Western Complex reserved by Grantor for itself and the others identified above cannot be adequately compensated by monetary damages and that injunctive relief may be appropriate.

6. So long as this Deed remains in effect, Grantee agrees as follows:

6.1 Grantee shall limit its activities on the easement in accordance with Appendix 4 attached hereto and will use its best efforts to coordinate such rail use with Grantor and the shipper served by the trackage on the easement granted hereunder in accordance with said Appendix 4.

6.2 Grantee, at its sole expense, shall maintain all road crossings of the Trackage to meet FRA standards and standards of the City and County of Denver, Colorado, and also shall maintain the crossings in condition so that they can accommodate safely all types of motor vehicle traffic.

6.3 Grantee shall, at all times, conduct its operations at crossings and at all points on the Trackage with reasonable care and shall observe all applicable federal, state and municipal laws, ordinances, rules and regulations in conducting its operations on the easement granted to it hereunder.

6.4 All taxes (real estate, personalty or of whatever nature), wastewater, storm, sanitary sewer, tap charges, or any charges made by any government authority against or on the easement granted hereunder shall be borne and promptly paid when due by Grantee.

6.5 Grantee shall not dump any waste or debris of whatsoever nature on the easement granted hereunder.

6.6 Grantor may, in connection with the use of its adjacent properties, create necessary or appropriate easements, rights of way and/or crossings on the easement granted hereunder to Grantee for underground or surface pipelines and use the easement for reasonable installation, maintenance, removal, replacement,

installation and rehabilitation of the same so long as such use by Grantor does not interfere unreasonably with the use thereof by Grantee for railroad purposes.

Accordingly, Grantor shall have the right to place, maintain, remove, replace, install, and rehabilitate old or new pipes or utilities on the easement, by going in, upon, over, under, across and through the easement and Trackage and other facilities thereon with Grantee's prior approval which shall not be unreasonably withheld, temporarily cutting the Trackage, and any other means necessary, and replacing same, all upon reasonable prior notice to Grantee; provided, any cutting of the Trackage shall be performed by Grantee at reasonable cost to Grantor, unless Grantee is unavailable, in which case such cutting of the Trackage may be performed by Grantor.

6.7 Grantee's use of the easement granted hereunder is subject to the rights of others, and Grantee in this respect, under all track agreements with third parties, shall hold Grantor harmless for any repairs, replacements or safety requirements for the tracks on the easement while this Deed is in effect, including but not limited to railroad entities.

6.8 Grantee shall, at all times while this Deed is in effect, keep on file with the Surface Transportation Board and the Colorado Public Utilities Commission (or any successor agencies), to the extent applicable, all tariffs and all other documents and papers which Grantee is required by law, rule or regulation to keep on file with the Surface Transportation Board and/or the Public Utilities Commission, or any successor agencies.

6.9 Except in case of emergency, when Grantee shall notify Grantor as soon as reasonably possible, Grantee shall notify Grantor in advance of any maintenance, repair or reconstruction work on the Trackage which could reasonably be expected to interfere with use by Grantor of any portion of the Easement Property. Relocation of any Trackage within the Easement Property identified as Parcel 2-A-1 of the River Corridor on Appendix 1 shall require the prior written consent of Grantor, which consent shall not be unreasonably withheld.

7. All rights of Grantee under this Deed shall terminate on the effective date of an order of the Surface Transportation Board or successor agency authorizing DRIR to discontinue service over the rail lines located on the easement granted hereunder. In the event the Surface Transportation Board or any such successor agency authorizes the discontinuance of service over some but not all of the rail lines located on the easement granted hereunder, the easement granted hereunder will terminate with respect to the portion of the property on which such service has been discontinued. In the event of termination of the easement in whole or part, Grantee shall have 30 days to remove all personal property and fixtures to which it has title from such property over which the easement has terminated.

8. Notices given under this Deed shall be in writing and may be given personally or sent to each respective party by express courier, facsimile, or United States certified mail

at the address for each party set forth below, or to such other address as such party may designate in writing to the other parties.

If to Grantor:

Address: 4655 Humboldt Street,
Denver, CO 80216
Attention: Patrick A. Grant, President
Facsimile: 303-292-1708
Telephone: 303-297-1166

If to Grantee:

Address: 3400 E. 56th Avenue
Commerce City, CO 80022
Attention: Tom Mars, President
Facsimile: 303-296-2347
Telephone: 303-296-0900

Any notice shall be deemed given on the date of delivery if given personally, on the date of the return receipt if given by mail, on the date evidenced by the courier service receipt if given by express courier, and on the date of transmission indicated by a machine generated confirmation if sent by facsimile.

9. This Deed shall not constitute or imply any partnership, joint venture or agency agreement among the parties for any purpose. Nothing in this Deed shall be deemed to constitute an agreement for the benefit of any third person or entity.

10. This Deed and the easement granted herein by Grantor may not be assigned or transferred by Grantee without the prior written approval of Grantor; provided, under no circumstances shall Grantor be required to approve any such assignment unless the assignee consents to be bound by the covenants of Grantee set forth in this Deed and the insurance and indemnity provisions of the Agreement, and such other reasonable conditions as Grantor may impose.

11. No failure to require performance or observation of any provision of this Deed shall constitute a waiver thereof unless waived in writing signed by the party benefitted by such provision. Any waiver of a provision on one occasion shall not constitute a continuing waiver or the waiver of any other provision.

12. Subject to the provisions of Section 1 above, this Deed constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof and supersedes all prior discussions, representations, understandings and agreements, written or oral. No modifications of this Deed shall be valid unless made in writing and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Deed to be executed by their duly authorized representatives as of the 10th day of July, 1997.

THE WESTERN STOCK SHOW
ASSOCIATION

DENVER ROCK ISLAND RAILROAD

By: 
Patrick A. Grant
Title: President

By: Thomas F. McFarland Jr.
Thomas F. McFarland, Jr.
Title: Attorney-in-Fact

STATE OF Colorado)
COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me this 9th day of
July, 1997 by PATRICK A. GRANT as President of THE WESTERN STOCK
SHOW ASSOCIATION, a Colorado corporation.

Witness my hand and official seal.

My commission expires: 3-30-99



Carrie A. Grant
Notary Public

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 11th day of
JULY, 1997 by THOMAS F. McFARLAND, Jr. as attorney-in-fact of DENVER
ROCK ISLAND RAILROAD, a COLORADO corporation.

Witness my hand and official seal.

My commission expires:



Stephen C. Herman
Notary Public

APPENDIX 1

[LEGAL DESCRIPTION]

All that portion of the following described real property located in the City and County of Denver, Colorado lying between the easternmost boundary of each Parcel and ten feet West of the centerline of the westernmost track on each Parcel.

Parcels identified as "2-A-1" and "2B" below shall constitute the "River Corridor."

Parcels identified as "2-C"; "10"; "2J" and "2D" below shall constitute the "National Western Drive Corridor."

A strip of ground lying within the SW 1/4 of Section 14, Township 3 South, Range 68 West of the 6th Principal Meridian, bounded as follows: West of the West line of Book 2042 at Page 631; Southerly boundary lines of Property described in Book 1961 at Page 496, Book 426 at Page 199 and Book 1582 at Page 539; Northerly and Westerly of Northerly and Westerly boundary lines of property described in Book 2363 at Page 320, Book 1518 at Page 151, Book 2044 at Page 153, Book 1748 at Page 115 and addition to Parcel F as described in Book 1044 at Page 127 as said Property lines connect each other; and Easterly of Easterly boundary line of Property described in Book 748 at Page 49, more particularly described as follows: Commencing at the Center of said Section 14; thence S 00 degrees 16'21" W along the North-South centerline of said Section 14 a distance of 131.39 feet to its intersection with the Southeastery line of the Official Channel of the South Platte River; thence S 47 degrees 02'03" W along said Southeastery line a distance of 1603.04 feet; thence S 42 degrees 57'57" E a distance of 50.00 feet to the Southwestery most corner of a Parcel of land described in Book 426 at Page 199 of the Records of the Clerk and Recorder of the City and County of Denver, said point also being on the Southerly line of a Parcel of Land described in Book 1582 at Page 539 and the Point of Beginning; thence S 42 degrees 57'57" E along the Southerly line of said Parcel described in Book 426 at Page 199 a distance of 22.07 feet to the Southeastery line of said Parcel; thence N 69 degrees 56' E along said Southerly line a distance of 605.91 feet to the Northeastery line of said Parcel; thence N 42 degrees 57'57" W along said Northeastery line a distance of 6.32 feet to the Southerly corner of a Parcel of Land described in Book 1961 at Page 496; thence N 69 degrees 57'08" E along the Southeastery line of said Parcel described in Book 1961 at page 496 a distance of 202.73 feet to a point of curve; thence along said curve to the left, the chord of which bears N 44 degrees 43'36" E a distance of 445.28 feet through a central angle of 50 degrees 27'04" having a radius of 522.4 feet and arc length of 459.86 feet to a point of non-tangency on the Westerly line of Book 2042 at Page 631; thence S 00 degrees 16'21" W being 50 feet West of and parallel to said North-South centerline of Section 14 and along said Westerly line of Book 2042 at Page 631 a distance of 101.86 feet to a point of non-tangent curve on the Northerly line of a parcel of land described in Book 2363 at Page 320; thence along said non-tangent curve to the right the chord of which bears S 46 degrees 48'57" W a distance of 401.69 feet through a central angle of 46 degrees 08'24" having a radius of 512.55 feet and arc length of 412.86 feet; thence continuing along said Northerly line S 69 degrees 50'49" W a distance of 749.83 feet to a point of curve; thence continuing along said Northerly line of said Parcel described in Book 2363 at Page 320 along said curve to the left the chord of which bears S 67 degrees 38'57" W a distance of 47.91 feet through a central angle of 04 degrees 23'43" having a radius of 624.51 feet and arc length of 47.91 feet to a point of non-tangency and the Southwestery line of said Parcel described in Book 2363 at Page 320; thence S 55 degrees 03'52" E along said Southwestery line a distance of 17.46 feet to the Westerly line of a Parcel of land described in Book 2044 at Page 153 and a point of non-tangent curve; thence along said Westerly line of said Parcel described in Book 2044 at Page 153 and along said non-tangent curve to the left the chord of which bears S 50 degrees 25'58" W a distance of 298.04 feet through a central angle of 29 degrees 49'51" having a radius of 577.79 feet and arc length of 300.82 feet to a point of non-tangency and the Northerly line of a Parcel described in Book 1748 at Page 115; thence N 55 degrees 10'27" W along said Northerly line a distance of 2.50 feet to the Westerly line of said Parcel described in Book 1748 at Page 115; thence S 34 degrees 38'18" W along said Westerly line a distance of 405.38 feet to a point of curve; thence along said curve to the left the chord of which bears S 22 degrees 01'05" W a distance of 234.20 feet a central angle of 25 degrees 14'26" having a radius of 535.96 feet and arc length of 236.11 feet to the Northwest corner of a Parcel of land described as addition to Parcel F in Book 1044 at Page 127; thence S 02 degrees 56'36" W along the Westerly line of said Parcel described in Book 1044 at Page 127 for this and the next 3 courses a distance of 251.22 feet; thence S 00 degrees 18'44" E a distance of 140.06 feet; thence S 04 degrees 14'32" E a distance of 82.79 feet; thence S 08 degrees 05'54" E a distance of 107.08 feet to the South line of Southwest 1/4 of said Section 14; thence S 89 degrees 58'16" W along said South line a distance of 61.68 feet to the Easterly line of a Parcel of land described in Book 748 at Page 49; thence N 04 degrees 22'22" E along said Easterly line of said Parcel described in Book 748 at Page 49 a distance of 347.62 feet; thence N 02 degrees 35'15" W continuing along said Easterly line a distance of 152.08 feet to the Northerly line of said Parcel; thence S 54 degrees 33'48" W along said Northerly line a distance of 22.62 feet to the Easterly line of a Parcel of land described in Book 1582 at Page 539 and a point of non-tangent curve; thence Northeastery along said Easterly line and along said non-tangent curve to the right the chord of which bears N 23 degrees 59'25" E a distance of 720.34 feet through a central angle of 46 degrees 53'00" having a radius of 905.37 feet and arc length of 740.84 feet; thence N 47 degrees 00'51" E continuing along said Easterly line a distance of 426.20 feet to the Point of Beginning.

all in the City and County of Denver.
State of Colorado.

A strip of ground lying within the NW 1/4 NW 1/4 of Section 23, Township 3 South, Range 68 West of the 6th Principal Meridian, bounded as follows: North and West of the Westerly boundary line of that which is described in Book 1440 at Page 470; Easterly of the Easterly boundary lines of Property described in Book 184 at Page 221 and Book 748 at Page 49; and Westerly of the Westerly boundary lines of Property described in Book 1021 at Page 627; Addition to Parcel F in Book 1044 at Page 127; in Book 748 at Page 52; in Book 737 at Page 483 and that which is being conveyed to Albert S. Karsh and Adele S. Karsh by quit claim and correction deed as recorded in Book 2643 at Page 322 as said property lines connect each other, more particularly described as follows: Beginning at the intersection of the Easterly line of a Parcel of land described in Book 184 at Page 221 of the Records of the Clerk and Recorder of the City and County of Denver and the Northwestern line of Packing House Road as described in Book 1440 at Page 470; thence N 03 degrees 53'48" W along the Easterly line of said Parcel described in Book 184 at Page 221 a distance of 251.76 feet; thence continuing along said Easterly line N 29 degrees 55'11" W a distance of 35.52 feet to the Easterly line of a Parcel of land described in Book 748 at Page 49; thence N 04 degrees 22'22" W along said Easterly line a distance of 550.79 feet to the North line of the Northwest 1/4 of said Section 23; thence N 89 degrees 58'16" E along said North line a distance of 61.68 feet to the Westerly line of a Parcel of land described as Addition to Parcel F in Book 1044 at Page 127; thence S 08 degrees 05'54" E a distance of 46.01 feet; thence continuing along said Westerly line S 09 degrees 01'39" E a distance of 89.23 feet; thence continuing along said Westerly line S 07 degrees 22'12" E a distance of 42.19 feet to the Westerly line of a Parcel of land described in Book 1021 at Page 627; thence S 05 degrees 57'20" E along said Westerly line a distance of 48.08 feet to the Southerly line of said Parcel; thence S 65 degrees 18'30" E a distance of 2.97 feet to the Northwest corner of a Parcel of land described in Book 748 at Page 52; thence S 04 degrees 17'34" E along the Westerly line of said Parcel described in Book 748 at Page 52 a distance of 203.96 feet to the Northwest corner of a Parcel of land described in Book 737 at Page 483; thence S 02 degrees 24'06" W along the Westerly line of said Parcel described in Book 737 at Page 483 a distance of 185.8 feet to the South line of said Parcel; thence S 85 degrees 08'31" E along the South line of said Parcel a distance of 2.51 feet; thence S 00 degrees 07'58" E along the West line of Parcel described in Book 2643 at Page 322 a distance of 182.01 feet to the Northwestern line of Packing House Road; thence S 37 degrees 20'21" W along said Northwestern line a distance of 44.56 feet to the Point of Beginning.

all in the City and County of Denver,
State of Colorado.

A strip of ground lying within the NW 1/4 NW 1/4 of Section 23, Township 3 South, Range 68 West, of the 6th Principal Meridian, bounded as follows: Northerly of the Northerly Right of Way line of 46th Avenue; Easterly of the Easterly boundary line of Property described in Book 637 at Page 371; Southeasterly of the Southeasterly boundary line of that which is described in Book 1440 at Page 470; Westerly of the Westerly boundary line of Property described in Book 628 at Page 183, and Westerly of the Westerly Right of Way line of the Burlington Northern Inc. Railroad; and Southerly of the Southwesterly Right of Way line of that easement described in Book 1217 at Page 10, more particularly described as follows: Beginning at the intersection of the North line of 46th Avenue and the Easterly line of Parcel 2 as described in Book 637 at Page 371; thence N 32 degrees 46'44" E along the Easterly line of said Parcel 2 described in Book 637 at Page 371 for this and next 2 courses a distance of 144.34 feet; thence N 22 degrees 41'27" E a distance of 148.88 feet; thence N 11 degrees 52'27" E a distance of 152.21 feet to the Southeasterly line of Packing House Road as described in Book 1440 at Page 470; thence N 46 degrees 54'41" E along said Southeasterly line of Packing House Road for this and the next 2 courses a distance of 33.59 feet; thence N 37 degrees 20'21" E a distance of 91.70 feet; thence N 20 degrees 31'11" E a distance of 90.43 feet to the Southwesterly line of a strip of land described in Book 1217 at Page 10 and a point of non-tangent curve; thence along said Southwesterly line of said strip of land described in Book 1217 at Page 10 and along said non-tangent curve to the left through a central angle of 03 degrees 10'55" having a radius of 645.2 feet and arc distance of 35.67 feet to the Westerly line of a parcel of land described in Book 628 at Page 183; thence S 21 degrees 46'13" W along said Westerly line of said parcel described in Book 628 at Page 183 for this and the next 2 courses a distance of 64.73 feet; thence S 21 degrees 14'12" W a distance of 351.19 feet; thence S 23 degrees 53'58" W a distance of 146.99 feet; thence S 45 degrees 23'40" W leaving said Westerly line of said parcel described in Book 628 at Page 183 a distance of 42.79 feet to the North line of 46th Avenue; thence S 89 degrees 59' W along said North line of 46th Avenue a distance of 43.74 feet to the Point of Beginning.

all in the City and County of Denver,
State of Colorado.

A strip or tract of land situate in the N 1/2 of NW 1/4 of Section 23 and in the SE 1/4 of SW 1/4 of Section 14, Township 3 South, Range 68 West of the Sixth Principal Meridian, in the City and County of Denver, Colorado, bounded and described as follows: Commencing at the point of intersection of the northeasterly line of the old Colorado & Southern Railway Company right of way (abandoned in 1938) with the northwesterly right of way line of the Burlington Northern, Inc. (formerly Chicago, Burlington & Quincy Railroad Company):

thence N. 45 degrees 48' E. along said northwesterly right of way line of the Burlington Northern, Inc. a distance of 36.35 feet, more or less;
 thence northwesterly and northerly along the easterly boundary line of that certain parcel of land heretofore conveyed by Union Pacific Railroad Company to The Denver Union Stock Yard Company by Quitclaim Deed dated August 11, 1942 which is a curve concave easterly, the center of which bears N. 63 degrees 40' E. a distance of 595.3 feet, an arc distance of 382 feet, more or less, to the most northerly corner of said parcel heretofore conveyed which is the true point of beginning of the parcel hereby described;
 thence continuing northeasterly along the extension of the last described curved line which is also the southeasterly boundary line of that certain strip of land heretofore conveyed by The Denver Union Stock Yard Company to Union Pacific Railroad Company by Warranty Deed dated February 19, 1918, a distance of 154.19 feet to the end of said curve;
 thence N. 25 degrees 20' E. a distance of 463.17 feet, more or less, to a point in the north line of said Section 23 that is 144.82 feet east from the northwest corner of the NE 1/4 of NW 1/4 of said section;
 thence continuing N. 25 degrees 20' E. a distance of 14.11 feet;
 thence northeasterly along a line curving to the right, having a radius of 1003 feet, a distance of 174.42 feet;
 thence N 35 degrees 18' E. a distance of 620.0 feet;
 thence northeasterly along a line curving to the right, having a radius of 930.4 feet, a distance of 210.2 feet;
 thence N 50 degrees 07' E. a distance of 222.48 feet;
 thence N. 59 degrees 41' E. a distance of 207.8 feet;
 thence northeasterly along a line curving to the left, having a radius of 610.3 feet, a distance of 42.6 feet;
 thence N. 34 degrees 19' W. along a line drawn radially to the last described curve a distance of 13.0 feet;
 thence southwesterly along a curve concave northwesterly, the center of which bears N 34 degrees 19' W. a distance of 597.3 feet, an arc distance of 41.69 feet;
 thence S. 59 degrees 41' W. a distance of 353.0 feet;
 thence S. 55 degrees 51' W. a distance of 83.37 feet;
 thence N. 41 degrees 45' W. a distance of 4.6 feet;
 thence southwesterly along a curve concave southeasterly, the center of which bears S. 41 degrees 45' E. a distance of 980.4 feet, an arc distance of 221.5 feet;
 thence S. 35 degrees 18' W. a distance of 620.0 feet;
 thence southwesterly along a line curving to the left, having a radius of 1053.0 feet, a distance of 183.12 feet;
 thence S. 25 degrees 20' W. a distance of 37.78 feet, more or less, to a point in the south line of said Section 14 that is 89.5 feet distant east from the southwest corner of the SE 1/4 of SW 1/4 of said Section;
 thence continuing S 25 degrees 20' W. a distance of 441.5 feet;
 thence southwesterly along a line curving to the left, having a radius of 645.3 feet a distance of 345.64 feet, more or less, to the northwesterly corner of said parcel of land which was heretofore conveyed to The Denver Union Stock Yard Company by Quitclaim Deed dated August 11, 1942;
 thence northeasterly along a straight line portion of the northwesterly boundary line of said parcel heretofore conveyed by said deed dated August 11, 1942 a distance of 55 feet, more or less;
 thence continuing northeasterly along a curved line portion of the northwesterly boundary line of said parcel heretofore conveyed by said deed dated August 11, 1942, which is a line curving to the left, having a radius of 773 feet, a distance of 95.7 feet, more or less;
 thence continuing northeasterly along the remaining portion of said northwesterly boundary line of parcel heretofore conveyed by said deed dated August 11, 1942 which is a straight line a distance of 28 feet, more or less, to the true point of beginning.
 EXCEPT that portion thereof described in the following deeds:
 Deed recorded October 2, 1972 in Book 574 at Page 196; Deed recorded January 12, 1973 in Book 628 at Page 183; Deed recorded December 23, 1975 in Book 1173 at Page 76; Deed recorded April 5, 1976 in Book 1223 at Page 315; Deed recorded April 5, 1976 in Book 1223 at Page 317; Deed recorded December 9, 1976 in Book 1358 at Page 617; Deed recorded May 9, 1977 in Book 1440 at Page 470; Deed recorded December 17, 1982 in Book 2711 at Page 6.

all in the City and County of Denver,
 State of Colorado.

A strip of ground lying within the NW 1/4 NW 1/4 of Section 23, Township 3 South, Range 68 West, of the 6th Principal Meridian, bounded as follows: Northerly of the Northerly Right of Way line of 46th Avenue; Easterly of the Easterly boundary line of Property described in Book 637 at Page 371; Southeasterly of the Southeasterly boundary line of that which is described in Book 1440 at Page 470; Westerly of the Westerly boundary line of Property described in Book 628 at Page 183, and Westerly of the Westerly Right of Way line of the Burlington Northern Inc. Railroad; and Southerly of the Southwesterly Right of Way line of that easement described in Book 1217 at Page 10, more particularly described as follows: Beginning at the intersection of the North line of 46th Avenue and the Easterly line of Parcel 2 as described in Book 637 at Page 371; thence N 32 degrees 46'44" E along the Easterly line of said Parcel 2 described in Book 637 at Page 371 for this and next 2 courses a distance of 144.34 feet; thence N 22 degrees 41'27" E a distance of 148.88 feet; thence N 11 degrees 52'27" E a distance of 152.21 feet to the Southeasterly line of Packing House Road as described in Book 1440 at Page 470; thence N 46 degrees 54'41" E along said Southeasterly line of Packing House Road for this and the next 2 courses a distance of 33.59 feet; thence N 37 degrees 20'21" E a distance of 91.70 feet; thence N 20 degrees 31'11" E a distance of 90.43 feet to the Southwesterly line of a strip of land described in Book 1217 at Page 10 and a point of non-tangent curve; thence along said Southwesterly line of said strip of land described in Book 1217 at Page 10 and along said non-tangent curve to the left through a central angle of 03 degrees 10'55" having a radius of 645.2 feet and arc distance of 35.67 feet to the Westerly line of a parcel of land described in Book 628 at Page 183; thence S 21 degrees 46'13" W along said Westerly line of said parcel described in Book 628 at Page 183 for this and the next 2 courses a distance of 64.73 feet; thence S 21 degrees 14'12" W a distance of 351.19 feet; thence S 23 degrees 53'58" W a distance of 146.99 feet; thence S 45 degrees 23'40" W leaving said Westerly line of said parcel described in Book 628 at Page 183 a distance of 42.79 feet to the North line of 46th Avenue; thence S 89 degrees 59' W along said North line of 46th Avenue a distance of 40.74 feet to the Point of Beginning.

all in the City and County of Denver,
State of Colorado.

PARCEL 10

Property Tax Assessment No. 2143-00-079

A tract or parcel of land in the SE $\frac{1}{4}$ of Sec. 14, Twp. 3 S., Range 68 W., of the 6th P.M., more particularly described as follows: That land lying between the west boundary line of that certain tract of the property described in that certain deed of even date herewith from Western Stock Center, Inc., to The Western Stock Show Association, and the west boundary line of that certain deed recorded October 2, 1972, in Book 374, page 196, of the real estate records of the City and County of Denver, and the eastern boundary line of that certain right-of-way and private roadway referred to as "Packing House Road" and as described in that certain quit claim deed of even date herewith from Western Stock Center, Inc., and Denver Union Corporation to John F. O'Dea, et al., reserving, however, to grantor the right to use, maintain, repair, replace or remove the existing railroad trackage lying on said tract.

A strip of ground lying within the South 1/2 of Section 14, Township 3 South, Range 68 West of the 6th Principal Meridian, bounded as follows: Easterly of the Easterly line of that which is described in Book 1440 at Page 470; Northerly of the Southwesterly line extended Northwesterly of Property described in Book 1285 at Page 231; Westerly of the Westerly boundary lines of Property described in Book 1922 at Page 676, Book 1285 at Page 231, and in Book 1727 at Page 619 and Southerly of the Southerly line of the 60 foot portion of Parcel C described in Book 1440 at Page 470, more particularly described as follows: Commencing at the center of said Section 14; thence S 00 degrees 16'21" W along the North-South centerline of said Section 14 a distance of 1328.3 feet; thence S 89 degrees 43'39" E a distance of 30 feet to the intersection of the Southeasterly line of Packing House Road as described in Book 1440 at Page 470 of the Records of the Clerk and Recorder of the City and County of Denver and the Westerly line of a Parcel of land described in Book 1712 at Page 415, and the Point of Beginning; thence S 00 degrees 16'21" W along said Westerly line of said Parcel described in Book 1712 at Page 415 a distance of 8.04 feet to the Northwesterly line of a Parcel of land described in Book 1727 at Page 619 and a point of non-tangent curve; thence along said Northwesterly line and along said non-tangent curve to the right the chord of which bears S 40 degrees 08'29" W a distance of 21.73 feet through a central angle of 01 degrees 04'58" having a radius of 1149.91 feet and arc length of 21.73 feet to the Southwesterly corner of said Parcel; thence S 54 degrees 33'57" E along said Southwesterly line a distance of 17.46 feet to the Northwesterly line of a Parcel of land described in Book 1922 at Page 676 and in Book 1285 at Page 231 and a point of non-tangent curve; thence along said Northwesterly line and along said non-tangent curve to the right the chord of which bears S 44 degrees 04'11" W a distance of 135.00 feet through a central angle of 08 degrees 16'14" having a radius of 936.05 feet and arc length of 135.12 feet; thence continuing along said Northwesterly line S 48 degrees 09'21" W a distance of 30.13 feet to a point of curve; thence continuing along said Northwesterly line and along said curve to the right the chord of which bears S 54 degrees 16'30" W a distance of 219.10 feet through a central angle of 11 degrees 15'11" having a radius of 1117.37 feet and arc length of 219.45 feet; thence continuing along said Northwesterly line S 59 degrees 23'55" W a distance of 114.39 feet to the Westerly most corner of said Parcel described in Book 1922 at Page 676; thence N 54 degrees 33'16" W along the Southerly line extended Northwesterly of said parcel described in Book 1922 at Page 676 and in Book 1285 at Page 231 a distance of 16.54 feet to the Southerly line of a Parcel of land described in Book 1217 at Page 10; thence N 59 degrees 25'24" E along said Southerly line a distance of 153.87 feet to a point of curve; thence continuing along said Southerly line and along said curve to the left the chord of which bears N 57 degrees 25'24" E a distance of 42.60 feet through a central angle of 04 degrees 00'01" having a radius of 610.3 feet and arc length of 42.61 feet to a point of non-tangency; thence S 34 degrees 17'24" E along the Easterly most line of said Parcel described in Book 1217 at Page 10 extended Southeasterly a distance of 1.18 feet to the Southerly line of Packing House Road as described in Book 1440 at Page 470; thence N 57 degrees 58'30" E along said Southerly line a distance of 117.91 feet; thence continuing along said Southerly line N 39 degrees 37'12" E a distance of 214.83 feet to the Point of Beginning,

all in the City and County of Denver,
State of Colorado.

A strip of ground lying within the South 1/2 of Section 14, Township 3 South, Range 68 West of the 6th Principal Meridian, bounded as follows: Easterly of the Easterly line of that which is described in Book 1440 at Page 470; Northerly of the Southwesterly line extended Northwesterly of Property described in Book 1285 at Page 231; Westerly of the Westerly boundary lines of Property described in Book 1922 at Page 676, Book 1285 at Page 231, and in Book 1727 at Page 619 and Southerly of the Southerly line of the 60 foot portion of Parcel C described in Book 1440 at Page 470, more particularly described as follows: Commencing at the center of said Section 14; thence S 00 degrees 16'21" W along the North-South centerline of said Section 14 a distance of 1328.3 feet; thence S 89 degrees 43'39" E a distance of 30 feet to the intersection of the Southeasterly line of Packing House Road as described in Book 1440 at Page 470 of the Records of the Clerk and Recorder of the City and County of Denver and the Westerly line of a Parcel of land described in Book 1712 at Page 415, and the Point of Beginning; thence S 00 degrees 16'21" W along said Westerly line of said Parcel described in Book 1712 at Page 415 a distance of 8.04 feet to the Northwesterly line of a Parcel of land described in Book 1727 at Page 619 and a point of non-tangent curve; thence along said Northwesterly line and along said non-tangent curve to the right the chord of which bears S 40 degrees 08'29" W a distance of 21.73 feet through a central angle of 01 degrees 04'58" having a radius of 1149.91 feet and arc length of 21.73 feet to the Southwesterly corner of said Parcel; thence S 54 degrees 33'57" E along said Southwesterly line a distance of 17.46 feet to the Northwesterly line of a Parcel of land described in Book 1922 at Page 676 and in Book 1285 at Page 231 and a point of non-tangent curve; thence along said Northwesterly line and along said non-tangent curve to the right the chord of which bears S 44 degrees 04'11" W a distance of 135.00 feet through a central angle of 08 degrees 16'14" having a radius of 936.05 feet and arc length of 135.12 feet; thence continuing along said Northwesterly line S 48 degrees 09'21" W a distance of 30.13 feet to a point of curve; thence continuing along said Northwesterly line and along said curve to the right the chord of which bears S 54 degrees 16'30" W a distance of 219.10 feet through a central angle of 11 degrees 15'11" having a radius of 1117.37 feet and arc length of 219.45 feet; thence continuing along said Northwesterly line S 59 degrees 23'55" W a distance of 114.39 feet to the Westerly most corner of said Parcel described in Book 1922 at Page 676; thence N 54 degrees 33'16" W along the Southerly line extended Northwesterly of said parcel described in Book 1922 at Page 676 and in Book 1285 at Page 231 a distance of 16.54 feet to the Southerly line of a Parcel of land described in Book 1217 at Page 10; thence N 59 degrees 25'24" E along said Southerly line a distance of 153.87 feet to a point of curve; thence continuing along said Southerly line and along said curve to the left the chord of which bears N 57 degrees 25'24" E a distance of 42.60 feet through a central angle of 04 degrees 00'01" having a radius of 610.3 feet and arc length of 42.61 feet to a point of non-tangency; thence S 34 degrees 17'24" E along the Easterly most line of said Parcel described in Book 1217 at Page 10 extended Southeasterly a distance of 1.18 feet to the Southerly line of Packing House Road as described in Book 1440 at Page 470; thence N 57 degrees 58'30" E along said Southerly line a distance of 117.91 feet; thence continuing along said Southerly line N 39 degrees 37'12" E a distance of 214.83 feet to the Point of Beginning.

all in the City and County of Denver,
State of Colorado.

**APPENDIX 2
AGREEMENT FOR RESOLUTION
OF DISPUTED ISSUES**

THIS AGREEMENT FOR RESOLUTION OF DISPUTED ISSUES ("this Agreement") dated effective as of July 10, 1997, is entered by and between THE WESTERN STOCK SHOW ASSOCIATION, a Colorado nonprofit corporation ("WSSA"), and DENVER ROCK ISLAND RAILROAD, a Colorado corporation (formerly known as Denver Terminal Railroad Company and hereinafter referred to as "DRIR").

RECITALS

A. In 1995, WSSA initiated federal administrative proceedings seeking the discontinuance of rail service by DRIR over two lines of railroad on WSSA's property in Denver, Colorado.

B. In July, 1996, the Surface Transportation Board rendered its order in those administrative proceedings (Service Date, July 3, 1996 in Docket No. AB-452 (Sub-No. IX)) and WSSA thereafter filed its Petitions for Review of the Board's order with the United States Court of Appeals for the Tenth Circuit (No. 96-9531 and No. 97-9507).

C. WSSA and DRIR have agreed to resolve the disputed issues pending in those proceedings before the United States Court of Appeals for the Tenth Circuit and those issues remaining before the Surface Transportation Board as hereinafter set forth.

AGREEMENT

In consideration of the premises and other good and valuable consideration, the parties hereby agree as follows:

1. This Agreement supersedes in all respects that certain Agreement dated December 10, 1993 between WSSA and the predecessor in interest to DRIR, Tom Mars (which agreement is hereinafter referred to as the "1993 Agreement").

2. WSSA shall grant to DRIR a nonexclusive rail use easement, in accordance with Exhibit A attached hereto, on WSSA's real property where the River Corridor (as described on the Easement Deed represented by Exhibit A attached hereto) and National Western Drive Corridor trackage is presently located, so long as the property is used for rail purposes and subject to (i) the right to cross over and through the real property and the rail line and tracks situate thereon for ingress and egress to and from WSSA's National Western Complex reserved by WSSA for itself and its employees, agents, invitees, licensees, guests and the livestock, vehicles and equipment of each of the foregoing, as well as the general public, at points where such crossing has customarily taken place and at such additional points as WSSA may reasonably need (as more specifically provided for in Exhibit E attached hereto), so long as such crossing and use do not unreasonably interfere with DRIR's railroad operations, and (ii) to the insurance requirements of Section 6 hereof, (iii) the requirement that during the month of

January of each year, DRIR's use of such easement shall be subject to the provisions set forth in said Exhibit A, and (iv) that certain Easement Deed from Denver Union Corporation, as Grantor, to Union Pacific Railroad Company, as Grantee, dated March 22, 1976, and recorded in Book 1217 at page 10 of the real property records of the City and County of Denver, Colorado, and assigned to DRIR pursuant to an Assignment of Easement Deed between Union Pacific Railroad Company, as Assignor, and DRIR, as Assignee, dated effective April 28, 1995, and recorded May 19, 1995 under No. 9500053501.

3. WSSA shall grant to DRIR and Drywall Products, Inc. a nonexclusive license for drywall unloading operations, in accordance with Exhibit B attached hereto, on WSSA's real property described in said Exhibit B adjoining the trackage on WSSA's property described in Exhibit A hereto, subject to (i) the right to the use of the licensed property reserved by WSSA for itself and its employees, agents, invitees, licensees, guests and the livestock, vehicles and equipment of each of the foregoing so long as such use does not interfere unreasonably with the off-loading of drywall products by DRIR and Drywall Products, Inc., and (ii) WSSA's right to terminate as set forth in said Exhibit B.

4. WSSA shall quit claim and convey to DRIR, by a bill of sale in accordance with Exhibit C hereto, the rail, ties, ballast, spikes, tie plates, bolts and angle irons on the rail use easement referred to in Section 2 above, subject to the rights reserved (i) with respect to common carrier obligations and (ii) to cross over and through the rail tracks for access to and from WSSA's National Western Complex by WSSA for itself and its employees, agents, invitees,

licensees, guests, and the livestock, vehicles and equipment of each of the foregoing, as well as the general public, at any place and for any purpose so long as such crossing and use do not unreasonably interfere with DRIR's railroad operations, and during the month of January of each year, DRIR's use of such items acquired by it shall be subject to the provisions set forth in said Exhibit C.

5. DRIR shall quit claim to WSSA, by a quit claim in accordance with Exhibit D hereto, all right, title and interest of DRIR in the real property owned and used by WSSA described in Appendix A hereto, except the rail use easement and license referred to in Sections 2 and 3 above and the other exceptions set forth in Exhibit D.

6. So long as DRIR exercises its rights under the rail use easement granted by WSSA pursuant to Section 2 above, DRIR will maintain insurance coverage as follows:

6.1 DRIR shall, at all times while this Agreement is in effect, carry railroad commercial comprehensive general liability insurance coverage on a claims made basis on the following terms and conditions:

6.1.1 The insurance coverage will include all coverage required by law but not limited to the following specific types of coverage: bodily injury and property damage, liability for pollution and contamination, including evacuation liability, seepage liability, federal employer liability, liability for owners and contractors protective liability insurance, comprehensive railroad and railroad

liability insurance, personal injury coverage, broad form blanket contractual endorsement, cargo legal liability and foreign rolling stock coverage.

6.1.2 The insurance policy will have a minimum limit of \$2,000,000 per occurrence and \$4,000,000 aggregate, with a maximum self-insured retention limit of \$25,000 and be provided by an insurer licensed to do business in Colorado and reasonably satisfactory to WSSA; provided, in the event that DRIR ships significant amounts of hazardous materials not excluded on the liability policy, including without limitation methanol, over the nonexclusive rail use easement granted by WSSA to DRIR pursuant to Section 1 of this Agreement, then such combined single limit of insurance coverage shall be increased by DRIR to \$6,000,000 combined single limit. For purposes of the proviso to the immediately preceding sentence, the parties acknowledge that shipments of hazardous materials will be deemed significant if such shipments exceed (i) 10 rail cars per calendar month and (ii) 100 rail cars during any period of 12 consecutive calendar months.

6.2 DRIR shall cause a true copy of the whole insurance policy to be furnished to WSSA prior to the anniversary or effective date of the policy each year.

6.3 As an additional insured, WSSA shall have the right to reasonable access to the insurer and any of its adjusters with respect to material occurrences and information which may be reasonably anticipated to related to WSSA and/or its insurance carriers in any manner.

6.4 No commodities or activities excluded by the insurance policy will be allowed on the easement granted by WSSA to DRIR or over the railroad trackage thereon.

6.5 Any and all material accidents or similar material incidents on the easement granted by WSSA to DRIR must be reported by DRIR to WSSA.

6.6 DRIR will maintain the retroactive date of November 20, 1993 on any renewal or new insurance policy.

6.7 The maximum speed DRIR will permit its railroad engines and cars on the easement granted by WSSA to DRIR will comply with FRA Class 1 safety standards which are currently ten miles per hour.

6.8 The fund in the amount of approximately \$7,530 paid by DRIR to WSSA under the 1993 Agreement for the purpose of purchasing rail insurance shall be paid by WSSA to DRIR for purposes of defraying a portion of the insurance premium expense incurred by DRIR in satisfying its insurance obligations hereunder.

6.9 To the extent permitted by applicable Law (as defined below), DRIR hereby releases WSSA from any and all liability or responsibility to DRIR or anyone claiming through or under DRIR by way of subrogation or otherwise for any loss or damage to property caused by fire or any other peril insured in policies of insurance covering DRIR's activity upon WSSA's property, unless such loss or damage shall have been caused by the fault or negligence of WSSA, or anyone for whom WSSA may be responsible.

7. So long as DRIR exercises its rights under the rail use easement granted by WSSA pursuant to Section 1 above, DRIR agrees, among other things, to limit its activities on the easement in accordance with Exhibit E attached and will use its best efforts to coordinate such rail use with WSSA and the shippers served by the trackage covered by such easement in accordance with Exhibit E.

8. (a) To the extent permitted by applicable Law, DRIR assumes the risk of, and waives and releases WSSA and its parents, subsidiaries, affiliates, shareholders, directors, officers, employees and agents, and their respective shareholders, directors, officers, employees and agents (each a "Released Party") from liability for, any damage or injury (including death) sustained by DRIR or its shareholders, affiliates, partners, employees, agents, representatives, contractors, operators, licensees and invitees (collectively, "Covered Persons") as a result of (i) any act or omission of any Released Party relating in any way to, or occurring on, the facilities or any part thereof, except (subject to the other provisions hereof) if such act or omission was willful or grossly negligent or constituted a material breach of this Agreement; or (ii) the condition of WSSA's property or any part thereof, whether or not such condition was apparent or discoverable (unless WSSA deliberately and willfully concealed such condition).

(b) Tenant shall not:

(i) cause or permit any Hazardous Substance (as defined below) to be placed, held, located, released, transported or disposed of on, under, at or from the premises from

WSSA's property, or any land contiguous thereto, unless directly related to and necessary for the permitted operations on WSSA's property or the maintenance or repair of DRIR's equipment, and then only if done so in a safe, prudent and environmentally sound manner and in accordance with the requirements of, and not in violation of, applicable Laws, including Environmental Laws (as defined below); or

- (ii) permit any person to engage in any activity on WSSA's property that could result in any liability, cost or expense to WSSA or the creation of any lien on WSSA's property pursuant to any Environmental Law.

- (c) DRIR shall be responsible for the management and disposal of all Hazardous Substances and wastes in an environmentally sound manner and in compliance with all pertinent legal requirements. DRIR shall promptly report to WSSA and the appropriate governmental agencies any Release or threat of Release of any Hazardous Substance in connection with DRIR's operations at or occupancy of WSSA's property, provided that DRIR shall use its best efforts to notify WSSA prior to reporting any such Release or threat of Release in a manner as shall be appropriate under the circumstances. WSSA will assume full responsibility for reporting

to the appropriate governmental agencies any Release or threat of Release of any Hazardous Substance in connection with WSSA's operations at or occupancy of WSSA's property. As used herein, the term:

- (i) **"Environmental Law"** means any Law or Permit regulating Releases or threatened Releases of pollutants, contaminants, or hazardous or toxic materials or wastes into ambient air, surface water, ground water, or land, or otherwise relating to pollution or the protection of health or the environment, including the following Laws: The Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.* (1972); Clean Air Act, as amended, 42 U.S.C. § *et seq.* (1970); Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA", 42 U.S.C. § 9601 *et seq.*; Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 *et seq.* Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 *et seq.* (1976); Safe Drinking Water Act, as amended, 42 U.S.C. § 300(f) *et seq.* (1974); Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 *et seq.* (1975); Marine Protection, Research, and Sanctuaries Act of 1972, as amended,

33 U.S.C § 1401 *et seq.*; National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq.*; and any comparable state or local Law;

- (ii) **"Hazardous Substance"** means any "hazardous substance" defined as such in (or for purposes of) section 9601(14) of CERCLA, or any so-called "superfund" or "superlien" Law; any "pollutant or contaminant" as defined in 42 U.S.C. § 9601(33); any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; any petroleum, including crude oil or any products, by-products or fraction thereof; natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel; any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; asbestos; and any other pollutant, contaminant, chemical mixture, compound, element, or toxic or hazardous substance or waste whose presence, nature, quantity or intensity of existence, use, manufacture, disposal, transportation, Release or effect, either by itself or in combination with other materials on the Premises, is either (A) potentially injurious to the public health, safety or welfare, the environment or the Premises, (B) regulated under any Environmental Law or (C) a basis for liability of

Landlord to any governmental agency or third party under any applicable Law; and

(iii) **"Release"** means any release, spill, leak, discharge, disposal, pumping, pouring, emission, emptying, injecting, leaching, dumping, burying, abandonment or escaping into the environment.

(d) DRIR shall indemnify, protect, defend and hold WSSA and any Released Party harmless from and against any and all claims, losses, damages, injuries penalties, fines, judgments, liens, obligations, liabilities, costs and expenses (including reasonable attorneys' and consultants' fees, costs of investigation, court costs and settlement costs) (collectively, "Environmental Liabilities") arising out of or relating to (A) the failure of DRIR or any Covered Person to comply with the provisions of this Section 8; (B) the handling, transport, use, storage, disposal or Release of any hazardous substance brought onto, or generated, stored, treated or handled at, or transported or released from, WSSA's property by, for, at the direction of or for the benefit of DRIR or any Covered Person, or related in any way to DRIR's operations or activities at, on, about or from WSSA's property; or (C) the violation or alleged violation of any Environmental Law by DRIR or any Covered

Person in connection with WSSA's property or DRIR's operations or activities thereat.

- (e) As of the date hereof, WSSA and DRIR do hereby release, acquit and forever discharge each other, and their respective present and former directors, officers, agents, employees, representatives, affiliates, subsidiaries from all claims asserted or that could have been asserted in Civil Action Nos. 96-9531 and 97-9507 pending in the United States Court of Appeals for the Tenth Circuit and related prior administrative proceeding before the Surface Transportation Board, Docket No. AB-452 (Sub-No. IX).
- (f) In addition to the environmental indemnity provided by DRIR herein, to the extent permitted by applicable Law, DRIR agrees to indemnify, protect, defend and hold WSSA and each Released Party harmless from and against all claims, losses, damages, injuries, penalties, claims, judgments, liens, obligations, liabilities, costs and expenses (including any reasonable attorneys' fees and court costs) arising out of or relating to (i) any injury (including death) or damage to any person (including DRIR's employees, even though such claim might otherwise be barred against DRIR under applicable workers' compensation or similar laws) or property whatsoever arising out of or relating to (i) any breach of this Agreement on the part of DRIR; (ii) any act or omission of

DRIR or any Covered Person relating to this Agreement or the use of WSSA's property; or (iii) DRIR's or any Covered Person's presence on WSSA's property in connection with DRIR's or any of its affiliates' use of or operations at WSSA's property. Provisions of this section shall survive the expiration or termination of this Agreement.

9. Notices given under this Agreement shall be in writing and may be given personally or sent to each respective party by express courier, facsimile, or United States certified mail at the address for each party set forth below, or to such other address as such party may designate in writing to the other parties.

If to WSSA:

Address: 4655 Humboldt Street,
Denver, CO 80216
Attention: Patrick A. Grant, President
Facsimile: 303-292-1708
Telephone: 303-297-1166

If to DRIR:

Address: 3400 E. 56th Avenue
Commerce City, CO 80022
Attention: Tom Mars, President
Facsimile: 303-296-2347
Telephone: 303-296-0900

Any notice shall be deemed given on the date of delivery if given personally, on the date of the return receipt if given by mail, on the date evidenced by the courier service receipt if given by express courier, and on the date of transmission indicated by a machine generated confirmation if sent by facsimile.

10. This Agreement shall not constitute or imply any partnership, joint venture or agency agreement among the parties for any purpose. Nothing in this Agreement shall be deemed to constitute an agreement for the benefit of any third person or entity.

11. This Agreement and the easement granted herein by WSSA may not be assigned or transferred by DRIR without the prior written approval of WSSA.

12. Attached hereto as Exhibit F is a form of Stipulation (the "Stipulation"), to be signed concurrently with this Agreement, pursuant to which WSSA and DRIR agree to dismiss Civil Action Nos. 96-9531 and 97-9507, and all claims pursuant thereto, with prejudice. WSSA and DRIR agree to prepare, execute and file such further motions or papers as may be necessary to cause the dismissal with prejudice of said civil actions.

13. No failure to require performance or observation of any provision of this Agreement shall constitute a waiver thereof unless waived in writing signed by the party benefitted by such provision. Any waiver of a provision on one occasion shall not constitute a continuing waiver or the waiver of any other provision.

14. This Agreement constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof and supersedes all prior discussions, representations, understandings and agreements, written or oral. No modifications of this Agreement shall be valid unless made in writing and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the _____ day of _____, 1997.

**THE WESTERN STOCK SHOW
ASSOCIATION**

DENVER ROCK ISLAND RAILROAD

By: _____
Patrick A. Grant
Title: President

By: _____
Thomas F. McFarland, Jr.
Title: Attorney-in-Fact

**APPENDIX 3
BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS:

That THE WESTERN STOCK SHOW ASSOCIATION ("Seller"), for the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, does hereby sell and convey and quitclaim, to DENVER ROCK ISLAND RAILROAD ("Buyer") all of Seller's right, title and interest in rail, ties, ballast, spikes, tie plates, bolts and angle irons (collectively, the "Tracks") located in Sections 14 and 23, Township 3 South, Range 68 West in the City and County of Denver, Colorado; provided, however, that the sale and conveyance hereunder of the Tracks is expressly subject to, and Seller specifically reserves all rights to use existing tracks or replacement tracks to satisfy common carrier obligations with respect to the Tracks until abandonment authority is obtained from the Surface Transportation Board, and Buyer accepts the Tracks subject to the obligations of other entities to provide common carrier services; and agrees not to remove the Tracks or replacement tracks prior to final abandonment authority being obtained from the Surface Transportation Board; and provided further, that Seller reserves the right to cross over and through the Tracks for access to and from Seller's National Western Complex for Seller and its employees, agents, invitees, licensees, guests and the livestock, vehicles and equipment of any of the foregoing, as well as the general public, at any place and for any purpose so long as such crossing and use do not unreasonably interfere with Buyer's railroad operations, and during

the month of January of each year, Buyer's use of the Tracks shall be specifically subject to the provisions of Appendix 1 attached hereto. Buyer acknowledges that any impairment by Buyer of such right to cross over and through the tracks for access to Seller's National Western Complex reserved by Seller for itself and the others identified above cannot be adequately compensated by monetary damages and that injunctive relief may be appropriate.

SELLER TRANSFERS AND CONVEYS ONLY SUCH RIGHT, TITLE OR INTEREST, IF ANY, AS IT MAY HAVE IN THE TRACKS AND DISCLAIMS ANY WARRANTY OF TITLE TO THE TRACKS.

THIS BILL OF SALE DOES NOT CONVEY ANY RIGHT, TITLE, ESTATE OR INTEREST WHATSOEVER IN OR TO THE REAL PROPERTY ON WHICH THE TRACKS ARE SITUATED.

SELLER, BY THIS BILL OF SALE, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE TRACKS, IT BEING UNDERSTOOD THAT BUYER IS PURCHASING EACH COMPONENT OF THE TRACKS "AS IS", "WHERE IS", WITH ANY AND ALL FAULTS. IN ADDITION, SELLER HAS MADE NO AFFIRMATION OF FACT AND HAS MADE NO PROMISE RELATING TO THE TRACKS WHICH HAS CREATED OR AMOUNTED TO

**AN EXPRESS WARRANTY THAT THE TRACKS WOULD CONFORM TO ANY SUCH
AFFIRMATION OR PROMISE.**

**THE PROVISIONS OF THIS BILL OF SALE SHALL BE BINDING UPON ANY
AND ALL SUCCESSORS AND ASSIGNS OF BUYER AND SELLER.**

**IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed as of the
10th day of July, 1997.**

(SEAL)

**THE WESTERN STOCK SHOW
ASSOCIATION**

ATTEST:

By: _____
Randall Weeks
Title: Secretary

By: _____
Patrick A. Grant
Title: President

APPENDIX 4

1. RAIL OPERATIONS

- A.** During the month of January of each year, and at such other times as WSSA shall notify DRIR of WSSA's need to cross DRIR's rail lines, including all existing and future rail tracks, for access to and from WSSA's National Western Complex, rail operations will be conducted on the lines only during the hours between 10:00 a.m. and 5:00 p.m., and between 10:00 p.m. and 4:00 a.m; provided, (i) there shall be no off loading of drywall products on the National Western Drive Corridor trackage at any time during the month of January, and (ii) with respect to the River Corridor trackage, there may be off loading of drywall products from railroad cars in place prior to the month of January and located so as not to interfere with WSSA's need to cross such trackage. The excluded hours (4:00 a.m. to 10:00 a.m., and 5:00 p.m. to 10:00 p.m.) are those that typically involve significant activity in the area of the tracks, moving animals, people and equipment.
- B.** For a period of approximately 16 days in January of each year (to be identified in writing by WSSA to DRIR not later than December 1 of the previous year), no rail operations will be conducted on weekends or holidays. This is the period in which the National Western Stock Show and Rodeo is held and especially large numbers of visitors are in the area, including the area where the tracks are located, on weekends.
- C.** During the period in January of each year identified by WSSA pursuant to paragraph A above, in conformity with the practice during previous Stock Shows, no methanol deliveries will be made on the lines unless a shutdown of the Commerce City methanol facility of DRIR's customer, Power Assist, makes truck deliveries unfeasible, or if an inability to deliver by truck results due to the incapacity of the Power Assist tractor-trailer, Power Assist will be required to ship by rail. If either of these contingencies occur, Power Assist can accept rail

delivery from DRIR between the hours of 10 a.m. and 5 p.m. weekdays. If Power Assist is required to ship methanol by rail, the WSSA will be notified as soon as this possibility arises.

2. **ACCESS ACROSS TRACKS**

DRIR agrees to take no action that would impede WSSA or its employees, agents, invitees, licensees, guests and the livestock, vehicles and equipment of each of the foregoing, as well as the general public, from crossing the tracks at points where such crossing has customarily taken place, including the crossing of the track along National Western Drive across the street from Drywall Products, Inc.; the crossing at the west end of the alley immediately north of the Livestock Exchange Building; the crossing where the feed concessionaire crosses from National Western Drive which is north of Le Mouton Building; the crossing which is the entry into the Aetna Building and parking lot; the crossing from National Western Drive into the property known as the Livestock Exchange Building; the crossing of the river track approximately 150 feet north of the point where the river track crosses National Western Drive (east of National Byproducts); the animal and pedestrian crossing west of "Swift Lot" and immediately southeast of cattle tie-outs; road access across tracks near Cherokee RV; and such additional points as WSSA may reasonably need so long as the cost of maintenance of the crossings at such additional points are not unreasonably burdensome to DRIR.

3. **CONSTRUCTION**

WSSA is fearful that construction of trackage and other rail facilities along National Western Drive or on the river track during the same period, when thousands of people, vehicles and animals are moving in these areas, presents an impediment to free movement in connection with the National Western Stock Show and Rodeo, and, more importantly, would present a serious safety hazard. The construction will almost certainly intrude onto the already narrow right-of-way of National Western Drive and the tie-out areas of WSSA along the river track, and the additional line opened will itself

intrude onto the shoulder area of National Western Drive. Therefore, all such construction should cease during the month of January of each year unless coordinated with the WSSA for emergency purposes only.

PLEASE RETURN TO:

**Barbara J. Mueller, Esq.
Davis, Graham & Stubbs LLP
Post Office Box 185
Denver, CO 80201-0185**

Exhibit F

National Western Center – DRIR Easement Area and Extent of DRIR-owned Track

[attached hereto]



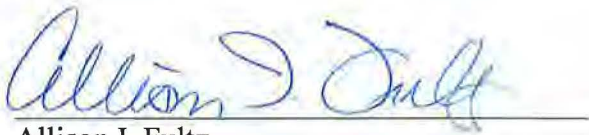
DRIR Easement locations per 1997 Easement and City Property Parcels 39, 40, 44, 45

Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing Verified Petition of the City and County of Denver for Declaratory Order to be served by first class mail, properly addressed and with postage prepaid, upon the following:

Counsel for DRIR:

Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1666
Chicago, IL 60604-1228
Attention: Thomas F. McFarland


Allison I. Fultz

Dated: December 21, 2018