

COVINGTON & BURLING

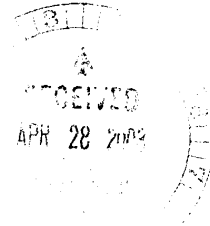
1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202.662.6000 LONDON
FAX 202.662.6291 BRUSSELS
WWW.COV.COM SAN FRANCISCO

DAVID L. MEYER
TEL 202.662.5582
FAX 202.778.5582
DMEYER@COV.COM

2-7700

2-1701

April 28, 2003



BY HAND

ENTERED
Office of Proceedings

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

APR 28 2003

Part of
Public Record

Re: Finance Docket No. 34178, Dakota, Minnesota & Eastern Railroad
Corporation and Cedar American Rail Holdings, Inc. – Control – Iowa,
Chicago & Eastern Railroad Corporation

Dear Secretary Williams:

Pursuant to Decision No. 9 in the above-captioned dockets,¹ Union Pacific Railroad Company (“UP”) is submitting for entry into the record the 1986 trackage rights agreement that granted the Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”) trackage rights over UP trackage in Owatonna, Minnesota (the “Overhead Trackage Rights Agreement”).

We are supplying (in separately-bound public and highly confidential volumes) the Overhead Trackage Rights Agreement together with (a) the Asset Purchase Agreement of which it was an Exhibit; (b) other Exhibits to the Asset Purchase Agreement bearing on DM&E’s rights and operations at Owatonna; and (c) two letter agreements amending the Overhead Trackage Rights Agreement.

¹ The decision also embraced Finance Docket Nos. 34178 (Sub-No. 1) and 34178 (Sub-No. 2).

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The Honorable Vernon A. Williams
April 28, 2003
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The specific documents that accompany this letter are as follows:

Asset Purchase Agreement, dated July 2, 1986 (Tab 1), together with
pertinent exhibits thereto:

Exhibit B – “Lines of Railroad” (Tab 2)

Exhibit E – “Related Agreements” (Tab 3)

Exhibit I – “Overhead Trackage Rights Agreement” dated Sept. 3,
1986 (Tab 4);²

Exhibit M – “Interchange Agreement” dated Sept. 3, 1986 (Tab 5);³
and

Exhibit O – “Lease of Track Agreement [Owatonna]” dated Sept. 3,
1986 (Tab 6).⁴

Letter Agreement, dated May 9, 2002 (which, *inter alia*, modifies certain
terms of the Overhead Trackage Rights Agreement) (Tab 7).

Letter Agreement, dated Nov. 5, 2002 (which, *inter alia*, modifies certain
terms of the Overhead Trackage Rights Agreement) (Tab 8).

In accordance with Decision No. 9, UP attempted to reach agreement with
DM&E on the content of this submission. However, DM&E insisted on either (a) limiting
the submission to the Overhead Trackage Rights Agreement, thereby excluding the
amendments to that agreement and the Asset Purchase Agreement of which it was a part, or
(b) expanding the submission to include a substantial number of agreements between the
parties that have nothing to do with the scope of DM&E’s trackage rights in Owatonna. We

² This is the specific agreement granting DM&E the right to operate over UP’s
Owatonna Trackage.

³ The Interchange Agreement is referenced in the parties’ May 9, 2002 letter
agreement amending the Overhead Trackage Rights Agreement, and several of its
provisions relate to DM&E operations in Owatonna.

⁴ The Lease of Track Agreement is referenced in Section 1.1 of the Overhead
Trackage Rights Agreement and in the parties’ May 9, 2002 letter agreement amending the
Overhead Trackage Rights Agreement, and several of its provisions relate to DM&E
operations in Owatonna.

COVINGTON & BURLING

The Honorable Vernon A. Williams

April 28, 2003

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believe that the group of materials included with this letter more appropriately responds to the Board's request.

We are filing an original and twenty-five copies of both the public and highly confidential volumes. One additional copy of each volume is also enclosed. Please indicate receipt and filing by date-stamping the enclosed extra copies and returning them with our messenger.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Meyer", written in a cursive style.

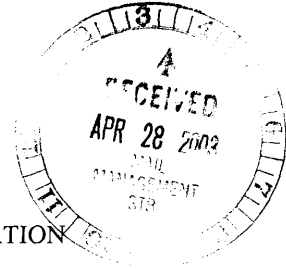
David L. Meyer

cc: William C. Sippel, Esq. (w/encls.) (by Federal Express)
All Parties of Record (w/Public Record Version)

Redacted – To Be Filed In The Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

_____ 207700
Finance Docket No. 34178



DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND CEDAR AMERICAN RAIL HOLDINGS, INC.

– CONTROL –

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

Finance Docket No. 34178 (Sub-No. 1)

207701

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
– TERMINAL TRACKAGE RIGHTS –
UNION PACIFIC RAILROAD

UNION PACIFIC'S SUBMISSION OF 1
DAKOTA, MINNESOTA & EASTERN
TRACKAGE RIGHTS OVER UNION P
IN OWATONNA, MN

ORIGINAL

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ENTERED
Office of Proceedings

APR 28 2003

Part of
Public Record

Union Pacific
(402) 271-5000

DAVID L. MEYER
MICHAEL L. ROSENTHAL
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-5582

*Attorneys for Union Pacific
Railroad Company*

April 28, 2003

Contains Color Images

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COPY

ASSET PURCHASE AGREEMENT

between

Dakota, Minnesota & Eastern Railroad Corporation

and

Chicago and North Western Transportation Company

dated

July 2, 1986

List of Exhibits

Exhibit

A	Real Estate Exclusions, Reservations and Permitted Exceptions
B	Lines of Railroad (Scheduling A Listing Main Line, Schedule B listing Branch Line)
C	Miscellaneous Equipment and Material
D	Leases, Contracts, Permits, Licenses and Other Instruments
E	Related Agreements
F	Resignation
G	Environmental Verification and Location of Asbestos Installations
H	Form of Transfer Documents
Schedule 1 -	Deed
Schedule 2 -	Assignment and Assumption
Schedule 3 -	Bill of Sale
I	Overhead Trackage Rights Agreement
J	Operating Run-Through Agreement
K	Original Property Records (only those relating solely to Rail Assets) to be Transferred at Closing
L	Grant of Trackage Rights over C&NW to DM&E (Hartland-Mason City)
M	Interchange Agreement
N	FIRPTA Withholding Affidavit
O	Lease of Track Agreement

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is made this 2nd day of July, 1986, between Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, and Chicago and North Western Transportation Company, a Delaware corporation, as follows:

1. Definitions

The following terms when used with initial capitalization in this Agreement, whether in the singular or the plural, have the meanings ascribed to them below:

- (a) "Agreement" means this Asset Purchase Agreement.
- (b) "Closing Date" is defined in Paragraph 7.
- (c) "Current Tax Year" is defined in Paragraph 37(i).
- (d) "CI" is defined in Paragraph 5(c).
- (e) "Closing" is defined in Paragraph 7.
- (f) "Commission" means the Interstate Commerce Commission, or any successor agency.
- (g) "C&NW" means the Chicago and North Western Transportation Company, a Delaware Corporation.
- (h) "DM&E" means the Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation.
- (i) "Deed" means an instrument or instruments generally in the form attached hereto as Schedule 1 to Exhibit "H."
- (j) "ENA" is defined in Paragraph 27.
- (k) The term "including" or variants thereof shall mean "including without limitation."

(1) "Know" or "knowledge", when used in this Agreement to modify a representation, warranty or other statement of C&NW, means that the facts or situations described therein are believed to be true and correct by the President, Senior Vice Presidents and/or Vice Presidents of C&NW who are responsible for the subject matter involved, and/or Messrs. K. E. Feurer, L. F. Fox, A. G. Futterman, S. F. Gassner and/or G. M. Hollander and/or any other person(s) specified, which belief, as hereby implied in each such representation, warranty or other statement, shall require the disclosure of, and only of, such material exceptions as are based on knowledge obtained by such officer, officers and/or other person(s) in their normal conduct of the business of C&NW.

(m) "Labor Dispute" is defined in Paragraph 17(k).

(n) "Line(s)" means those main lines and branch lines as listed on Exhibit "B," to be conveyed, or in which trackage rights are to be granted or assigned, to DM&E.

(o) "Miscellaneous Equipment and Material" means the assets of the C&NW listed on Exhibit "C" of this Agreement.

(p) "Note" is defined in Paragraph 5(a).

(q) "Property Records" means the originals (or copies, if available, of originals which are unobtainable) of all deeds and other instruments, maps, profiles, books, other records, maintenance manuals and other documents of C&NW in respect of the Rail Assets, including the valuation maps describing the real estate which is part of the Rail Assets and the real estate,

engineering and other property records, files and documents, except those excluded pursuant to Paragraph 4(i) hereof.

(r) "Property Taxes" is defined in Paragraph 37(i).

(s) "Purchase Agreements" is defined in Paragraph 17(b).

(t) "Purchase Price" is defined in Paragraph 5.

(u) "Rail Assets" means the assets of the C&NW identified in Paragraph 3 of this Agreement and any other assets which are conveyed or transferred to or vested in DM&E by C&NW at the Closing or pursuant to Paragraph 15 thereafter.

(v) "Rail Liabilities" means the liabilities of the C&NW to be assumed by DM&E and identified in Paragraph 9 of this Agreement.

(w) "Rail Properties" means the Rail Assets subject to the Rail Liabilities.

(x) "Railroad" means the rail operations and rail business conducted with the Rail Properties by C&NW.

(y) "Related Agreements" means all of the agreements listed in Exhibit "E" attached hereto and hereby made a part hereof, to be executed by DM&E and C&NW in accordance with the terms of this Agreement, each of which is to be in the form of the respective Exhibit "I", "J", "L", "M", or "O", attached hereto and hereby made a part hereof, designated in Exhibit "E."

(z) "Tax Advance" is defined in Paragraph 37(i).

2. The transactions contemplated by this Agreement involve the sale by the C&NW and the purchase by DM&E, on the

terms and subject to the conditions contained in this Agreement, of C&NW's right, title and interest in the Rail Assets, and the delegation by the C&NW to and assumption by DM&E of the Rail Liabilities. The consummation of the transactions and Related Agreements contemplated by this Agreement are subject to (i) exemption from the requirements of 49 U.S.C. Section 10901 (ii) any other required legal approvals, notices, filings and exemptions, and the expiration or early termination of any applicable waiting periods, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the rules and regulations promulgated thereunder, and (iii) the respective conditions precedent to the obligations of DM&E and C&NW to close contained in Paragraphs 19 and 20 hereof.

3. The C&NW agrees to sell and transfer to DM&E and DM&E agrees to purchase at and as of the Closing Date (defined in Paragraph 7), under the terms and conditions contained in this Agreement, all of the right, title and interest of the C&NW in the Rail Assets identified below (other than those which would or might constitute Rail Assets or Rail Properties except for the fact that they are specifically excluded by Paragraph 4(i)), including any after-acquired title, free and clear of all indebtedness for borrowed money, mortgages, pledges, liens, security interests, claims and encumbrances except as set forth or referred to in this Agreement, and except any which secure only obligations which DM&E is to assume pursuant to Paragraphs 9, 15 and 37 of this Agreement.

(a) Subject to the exclusions, exceptions, reservations, covenants, terms, encumbrances and restrictions shown in Exhibit A and Schedule 1 of Exhibit H, attached to this Agreement and hereby made a part thereof, all right, title and interest of the C&NW, to the extent transferable and/or assignable: (i) in all the real property located in South Dakota, North Dakota and Minnesota owned, used or held by C&NW, or with respect to which C&NW may have any claim of any nature whatsoever or may otherwise be entitled to possess, which real property directly or indirectly relates to or is in any way associated with (A) the conduct of the Railroad along, upon or under the Lines to be conveyed to DM&E, as outlined in Exhibit B attached hereto and hereby made a part hereof, and/or (B) the conduct of any real estate operations and activities of the C&NW of any nature whatsoever involving real property situate near, about, along, abutting or in the vicinity of said Lines (including, for example, real property which is leased by C&NW to third parties for agricultural purposes, storage and manufacturing, among other uses, and real property held by C&NW for sale, development or investment purposes), all of which real property forms a railroad right of way, together with all buildings, improvements, structures and railroad tracks now or hereafter located thereon and together with all easements, tenements, roadways, appurtenances, hereditaments, fixtures (and all additions thereto and replacements thereof) and together with any and all benefits, rights and privileges now or hereafter contained in, belonging to or in any

way beneficial to such real property; excepting however (A) the properties listed on Schedule 1 to Exhibit A and (B) the reversionary interest in property conveyed to the city of Pierre, South Dakota for park purposes by deed dated August 26, 1930, bearing Deed No. 60903, and (ii) in trackage rights to be granted or assigned in respect of the Lines, as outlined in Exhibit B.

(b) All of the "Miscellaneous Equipment and Material" owned by C&NW which is listed or described in Exhibit C attached hereto and hereby made a part hereof.

(c) All right, title and interest of the C&NW, to the extent transferable and/or assignable and relating to the interests in Rail Assets to be transferred to DM&E pursuant to subparagraphs (a) and (b) hereof, under leases, contracts, permits, licenses and other instruments identified or described in Exhibit D, attached hereto and hereby made a part hereof.

(d) All interests of the C&NW in rights with respect to any warranties or guarantees of any manufacturer or supplier, grantor or other transferor of the Rail Assets, to the extent transferable and/or assignable and relating to the Rail Assets.

(e) All other interests of any nature of the C&NW, to the extent transferable and/or assignable and relating to the interests in Rail Assets to be transferred to DM&E pursuant to subparagraphs (a), (b) and (c) hereof, including rights in and to general intangibles and contract rights, in addition to those identified or described in Exhibit D, including franchises, governmental and contractual operating rights and other contracts, leases, licenses, permits and privileges.

(f) To the extent available, only such original (or, if available, copies if originals are not available) Property Records which relate solely (or copies if they relate other than solely) to the Rail Assets and are generally listed or described on Exhibit K, attached hereto and hereby made a part hereof.

4. (i) The Rail Assets and Rail Properties do not include (a) any executory rights not related to the Rail Assets described in Paragraph 3(a) through (e) that relate solely to obligations and commitments not assumed by DM&E under this Agreement, (b) general ledgers, minute books and similar records required for the C&NW's corporate and tax purposes, (c) patents, trade marks, service marks, trade names, copyrights and other similar intangible rights, and (d) all assets which would or might constitute Rail Assets or Rail Properties except for the fact that they are specifically excluded by this Agreement.

(ii) For a period of five (5) years following Closing Date if C&NW intends to abandon or otherwise dispose of all or a necessary portion (i.e., other than a portion not necessary for its railroad operations on the remainder) of one or more of (a) the Winona Yard, (b) the Owatonna East-West Trackage, (c) the Mankato Terminal on the Merriam to St. James, Minnesota line or (d) the line between the North Switch at Dakota Junction, Nebraska and Colony, Wyoming including Rapid City Yard and the connection to DM&E's Lines at M.P. 649.0, DM&E shall have a right to notice, and to purchase the same in the case of an intent to abandon, and to submit an offer in the case of an intent to

otherwise dispose, and in specified circumstances a right of first refusal (such rights herein referred to as the "right to acquire"), as follows.

If C&NW intends to abandon all or a necessary portion of any one or more of such lines, the purchase price for such line or lines shall be cash in the amount of the net liquidation value thereof, determined in accordance with the accounting principles of the Commission then in effect, or any successor thereto, or by means of a substantially similar calculation if no successor thereto is then in effect, plus the assumption of the Rail Liabilities (other than indebtedness for borrowed money, mortgages, pledges and other security interests) then associated therewith, and such other terms of this Agreement, to the extent reasonably applicable, shall apply, all as if such line or lines were being transferred at the Closing of this Agreement. Notice of such intent to abandon such line or lines by C&NW shall be provided to DM&E not less than 30 days prior to the filing by C&NW with the Commission of any petition or notice for the approval or exemption of such abandonment. Within thirty (30) days after receipt by DM&E of such notice, DM&E may exercise its right of purchase by committing to C&NW in writing that it will purchase such line or lines on the aforesaid terms. DM&E shall use its best efforts and due diligence to promptly obtain all Commission, Hart-Scott-Rodino Antitrust Improvements Act of 1976 and other governmental approvals, exemptions, notices, filings and other requirements ("govern-

mental approvals"). DM&E shall have 45 days after such exercise of its right of purchase (or such longer period not in excess of one year as may be necessary to so obtain all governmental approvals) in which to close such purchase. In the event that DM&E (a) does not elect to exercise its right of purchase hereunder within such thirty (30) day period, or (b) is not ready, willing and able to close within said period allowed for closing and C&NW does not seek and obtain specific performance, C&NW may file a petition or notice with the Commission for approval or exemption of the abandonment of such line or lines and upon such filing DM&E's right of first refusal under this Paragraph 4(ii) with respect to such line or lines shall terminate. If such line or lines are not disposed of or abandoned within one year from the effective date of Commission approval or an exemption of such disposition or abandonment or within such longer period of time permitted under such approval or exemption, such line or lines shall again become subject to DM&E's right to acquire under this Paragraph 4(ii) and may not be subsequently disposed of or abandoned without compliance with the terms of this Agreement.

If, other than after the filing with the Commission of a petition for approval or exemption of the abandonment thereof, C&NW intends to dispose of all or a necessary portion of item (b) or (d) above, except under the circumstances set forth in the immediately succeeding paragraph, or item (c) above, C&NW shall provide DM&E not less than 30 days notice of such intent

(which may include notice of any other properties which C&NW seeks to include in such disposition) prior to committing to any such disposition. C&NW will consider, but shall be under absolutely no obligation to accept, any offer (which may or may not include any such other properties) which DM&E may submit during said period. If after said period C&NW disposes of such line or lines other than to DM&E, C&NW shall require the transferee thereof to assume, and C&NW shall automatically be released from, all of C&NW's obligations under the right to acquire under this Paragraph 4(ii), to the extent that they apply to such line or lines.

If, other than after the filing with the Commission of a petition for approval or exemption of the abandonment thereof, C&NW intends to dispose of all or a necessary portion of (a) the Owatonna East-West Trackage other than in connection with the disposition of either (but not both) the Spine Line between St. Paul, Minnesota and Kansas City, Missouri or the line between Sioux City, Iowa and Merriam, Minnesota, (b) the line between the North Switch at Dakota Junction, Nebraska and Colony, Wyoming including Rapid City Yard and the connection to DM&E's Lines at M.P. 649.0 and provided that at the time C&NW notifies DM&E of such intent the Lines between said connection and Pierre, South Dakota have been rehabilitated and are maintained at a level allowing freight train operation at a speed of 25 miles per hour for the transportation of freight trains composed of rail freight cars, each having a gross weight of 251,000 pounds per car, and

to meet or exceed Class 2 FRA Safety standards as defined in 49 CFR Part 213 as then in effect (or any successor thereto, or the equivalent if no successor then exists, if said standards are no longer in effect), or (c) the Winona Yard, DM&E shall have the following right of first refusal. C&NW shall give DM&E notice of a bona fide firm offer received by C&NW and any terms included therein for financing by C&NW of all or any portion of the purchase price, which offer may include other properties to be sold by C&NW. DM&E shall have 30 days in which to give C&NW a binding written commitment to meet said offer, on said financing terms if any, and 45 days after said commitment (or such longer period not in excess of one year as may be necessary in order, with best efforts and due diligence, to obtain and meet all governmental approval or exemption and other regulatory requirements) in which to close such purchase. C&NW shall be free at any time thereafter to sell the property to any purchaser (a) if DM&E is not ready, willing and able to close within said period allowed for closing and C&NW does not seek and obtain specific performance, or (b) at a price (considering the present value of differences in C&NW financing terms, if any) not less than said offer if DM&E fails to give C&NW said binding written commitment within said 30 day period. If DM&E acquires the Winona Yard pursuant to said right of first refusal, C&NW or any purchaser of C&NW's line extending eastward from Winona Yard shall have free access to and joint use of the Winona Yard, including interchange but not the right to serve industries, on the same terms as

applicable to DM&E's access and use under the Interchange Agreement attached as Exhibit M hereto except that such access and use shall be at no cost or expense to C&NW or such purchaser.

DM&E's right to acquire shall be subject to the approval, exemption, notice, filing and other requirements of the Interstate Commerce Act, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, future applicable Federal legislation and the rules and regulations promulgated under the foregoing. Said right to acquire shall not arise (a) in the event of a merger, sale, combination, consolidation or acquisition covering all or substantially all of C&NW's trackage and/or rail operations or (b) if DM&E is in breach (which breach is material, all payment defaults being conclusively deemed material, or is within the power of DM&E to cure within a thirty day period) of any of its agreements and/or obligations under this Agreement or the Related Agreements and said breach remains uncured for a period of 30 days after notice thereof by C&NW to DM&E (or an additional 30 days if DM&E has been diligently attempting a cure and continues to do so, provided that at the end of the first 30 day period it appears probable that DM&E can cure the breach within such additional 30 days), except that the cure period shall be limited to five business days after DM&E's receipt of said notice in the case of payment defaults.

After the Closing Date, DM&E may, jointly with C&NW, record a short form notice of the foregoing right to acquire and C&NW shall cooperate in connection therewith.

(iii) Both C&NW and DM&E, to the extent legally required, shall promptly file with the Federal Trade Commission and the Department of Justice the notifications and reports required to be filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the rules and regulations promulgated thereunder and shall promptly respond to any request for additional information or documentary material made in connection therewith, which notifications, reports, filings and responses will comply in all material respects with the requirements of such Act and such rules and regulations. C&NW and DM&E shall furnish to each other such information as each may reasonably request of the other to assist it to make such filings and responses as it may be legally required to make under such Act and such rules and regulations.

5. The price to be paid for C&NW's interest in the Rail Assets ("Purchase Price") is _____,* plus the assumption of the Rail Liabilities. The Purchase Price is subject to adjustment as of the Closing Date in accordance with Paragraph 6 below.

(a) At the Closing Date, DM&E shall deliver a promissory note (the "Note") to C&NW as a part of DM&E's mezzanine financing in an aggregate principal amount not to exceed the lesser of (i) 49% of the total mezzanine financing obtained by

* _____ plus additional amounts for certain Miscellaneous Equipment and Material as indicated on Exhibit C.

DM&E and (ii) . but otherwise,
except as hereinafter provided in Paragraph 5(c), with the same
rate of interest and upon the same terms and conditions as the
remaining mezzanine financing obtained by DM&E; and

(b) At the Closing Date, the remainder of the Purchase
Price shall be paid to C&NW in cash by wire transfer in United
States federal funds to an account of C&NW to be specified before
the Closing Date.

(c) The Note shall provide that DM&E shall also pay to
C&NW in contingent interest ("CI") payments to be paid
in equal annual installments of after the
end of each year (a "year"), the first year to commence with the
first full calendar month which commences on or after the day of
Closing, if total revenues earned by DM&E in such year is .

or more. Installments of CI are to be cumulative and
unearned installments of CI shall bear interest at a compounded
rate equivalent to the non-contingent interest rate on the Note
from the date on which they would have been payable if earned to
the date on which they are paid. In those years when total
revenues exceed any excess over will be
applied to increase to the total revenues of prior or
subsequent years (selected at C&NW's option) with total revenues
less than and CI of will be paid with
respect to each year so increased to . CI payments
shall continue until a total (exclusive of interest thereon) of
has been paid. The Note shall also contain provisions
(1) assuring that the outstanding principal amount thereof can at

no time be more than forty-nine percent (49%) of the outstanding principal amount of the entire mezzanine issue or issues of which it is a part and (ii) for a payment schedule no slower than payments of interest only during a period of no more than three years, and level payments of combined principal and interest during the remainder of a period (including the interest only period) of no more than ten years, from the Closing Date.

6. (a) If, between the date hereof and the Closing Date, any material Rail Assets are materially damaged or destroyed by fire or any other casualty, C&NW shall promptly give notice thereof to DM&E and payment shall be made or the Purchase Price shall be reduced in accordance with Paragraph 6(b) to the extent the loss, damage or destruction is not covered by insurance ("uninsured loss"). The amount of uninsured loss shall be the excess of the cost of repairing such Rail Asset(s) over the insurance proceeds (net of reasonable costs and expenses in collection thereof), if any, for, or reasonably allocable to, such loss, damage or destruction. If no insurance coverage is applicable to such loss, damage or destruction, C&NW will, on request, furnish to DM&E a certificate of C&NW's Vice President - Finance so stating and stating that the Rail Assets so damaged or destroyed were not excluded from insurance coverage of the subject kind of loss generally applicable to the other assets of C&NW similar to such Rail Assets. Repairs (including capital expenditures) shall be performed in accordance with C&NW's normal standards and practices, including use of reusable materials, for

work on such lines, and the cost of such repairs shall be determined on the basis of fair market value of reusable materials and C&NW's normal joint facility (or AFE construction) project accounting.

(b) (i) If the uninsured loss is less than \$250,000, C&NW shall repair such Rail Asset(s) prior to the Closing Date and be paid the amount of the uninsured loss by DM&E or, if not repaired, there shall be no adjustment to the Purchase Price; (ii) if the uninsured loss is greater than \$250,000, but less than \$500,000, C&NW shall repair such Rail Assets prior to the Closing Date and be paid \$250,000 by DM&E or, if not repaired, the Purchase Price shall be decreased by the amount by which the uninsured loss exceeds \$250,000; (iii) if the uninsured loss is greater than \$500,000, but less than \$1,000,000, C&NW shall repair such assets prior to the Closing Date and be paid one-half (1/2) of the uninsured loss by DM&E or, if not repaired, the Purchase Price shall be reduced by one-half (1/2) of the uninsured loss; provided, however, that DM&E shall have the right with respect to this clause (iii) to give prompt written notice to C&NW that this Agreement shall be renegotiated, and (iv) if the uninsured loss is greater than \$1,000,000, this Agreement shall be renegotiated. If the parties fail to reach agreement in any such renegotiation, either party may terminate this Agreement by written notice to the other party as provided in Paragraph 27(a).

Notwithstanding the foregoing adjustments to the Purchase Price, nothing herein shall be deemed to modify C&NW's representations and warranties hereunder or relieve C&NW of its obligation to maintain the Rail Assets in accordance with its normal practices, including undertaking normal and routine repair work, and the cost of normal and routine repair work shall not constitute uninsured loss.

If C&NW receives net insurance proceeds in respect of any Rail Assets which have been damaged or destroyed by fire or other casualty, they shall be applied in the computation of amounts to be paid to C&NW by DM&E and/or adjustment to the Purchase Price at the Closing pursuant to this Paragraph 6(b). If insurance claims remain outstanding at the Closing Date in respect of any of the Rail Assets so damaged or destroyed, C&NW shall prosecute such claims (but, if such claims relate solely to Rail Assets, only to the extent requested by DM&E) with diligence and in good faith (or, if such claims are assignable and relate solely to Rail Assets, such claims will be assigned to DM&E), and any net insurance proceeds of such claims shall be applied in the computation of amounts to be paid to C&NW by DM&E and/or adjustment to the Purchase Price pursuant to this Paragraph 6(b) after the Closing pursuant to the last sentence of Paragraph 8; provided, however, that in no event shall C&NW settle any such claims which it is prosecuting which relate solely to Rail Assets without the consent of DM&E, which consent shall not be unreasonably withheld or delayed. C&NW will inform

DM&E of, and permit DM&E to consult with C&NW with respect to, insurance negotiations which involve material claims with respect to Rail Assets.

(c) If any authority having the right of eminent domain shall commence negotiations or shall commence legal action for the damaging, taking or acquiring of any of the Rail Assets, either temporarily or permanently, by condemnation or by exercise of the right of eminent domain, C&NW shall promptly give notice of the same to DM&E. DM&E shall be entitled to the benefits of all awards, claims, settlement proceeds and other proceeds payable for, or reasonably allocable to, any such damaging, taking or acquiring, net of reasonable costs and expenses in collection thereof and such as shall have been applied to relocate or replace Rail Assets, and C&NW shall credit to DM&E as a Purchase Price Adjustment at the Closing or pay to DM&E promptly after C&NW's subsequent receipt thereof all such net proceeds. In the event of any negotiations solely with respect to any material Rail Asset with any authority regarding settlement on account of damaging, taking or acquiring in lieu of condemnation or eminent domain, C&NW shall inform DM&E of all such negotiations, shall consult with DM&E, and, if a break in the continuous line of Railroad would result, shall permit DM&E to take part therein and shall not enter into any settlements thereof without DM&E's prior written consent, which shall not be unreasonably withheld or delayed. C&NW will inform DM&E of, and permit DM&E to consult with C&NW with respect to, any such

negotiations which involve material Rail Assets but do not relate solely to Rail Assets.

7. The closing of the transactions contemplated by this Agreement ("Closing") shall take place at the offices of the C&NW, One North Western Center, 165 North Canal Street, Chicago, Illinois 60606 or at such other place as the senior lenders of DM&E may reasonably request, not later than 10 A.M. central daylight time on July 31, 1986 or, if the conditions set forth in Paragraph 2(i) and (ii) have not been satisfied or if all other closing conditions have not been satisfied or waived, at 10 A.M. central daylight time on the first business day following the later of (i) the satisfaction of said Paragraph 2(i) and (ii) conditions and (ii) the satisfaction or waiver of all other closing conditions, or at such other time and date as the parties may mutually agree in writing (the time and date on which the Closing occurs being the "Closing Date"); provided that, anything to the contrary herein notwithstanding, in no event shall either C&NW or DM&E be required to close after June 30, 1987.

8. The cash portion of the Purchase Price, as adjusted pursuant to Paragraph 6 to the extent then feasible, shall be paid at the Closing by wire transfer of immediately available funds to a bank account designated by the C&NW prior to or at the Closing. Subsequent adjustments pursuant to Paragraph 6 to the cash portion of the Purchase Price shall be paid in immediately available funds as directed by the party entitled to the payment.

9. As of the Closing, DM&E covenants and agrees to assume, perform, discharge and pay in accordance with their respective terms and will become responsible for each of the liabilities and obligations of the C&NW as of and after the Closing Date relating to the Railroad, the subsequent operations of DM&E and/or the Rail Assets set forth in subparagraphs (a) and (b) below ("Rail Liabilities"):

(a) All obligations under all contracts, permits, licenses, leases and other instruments which are part of the Rail Assets as listed or described in Exhibit D hereto.

(b) All other obligations under all other Rail Assets which are transferred to DM&E pursuant to Paragraph 3(d) and (e) hereof (provided that DM&E may reject any such Rail Asset promptly after it becomes aware of the existence thereof, in which case it shall be deemed to have assumed the obligation only for the period prior to such rejection) or are accepted by DM&E pursuant to Paragraph 15.

10. Except for the specific assumption of the Rail Liabilities as specified in Paragraphs 5 and 9 hereof, obligations of DM&E under Paragraph 6(a) and (b) hereof and the tax, proration and other matters provided for in Paragraph 37 hereof, C&NW agrees that DM&E shall not assume hereunder any responsibility or liability with regard to any claims, damages, expenses, loss, suits or judgments arising out of or in any way whatsoever connected with C&NW's operation or use of the Rail Assets prior to the Closing Date, including any liability for taxes or other debts of C&NW.

11. At the Closing, DM&E will pay to the C&NW the cash portion of the Purchase Price, as adjusted to the extent then feasible, and deliver the Note to C&NW; DM&E will execute the documents referred to or described in Paragraph 12 hereof to further evidence its undertaking to assume, agree to perform, pay and discharge the Rail Liabilities assumed by DM&E pursuant to Paragraphs 5 and 9 of this Agreement; and the parties will provide such other instruments and consents as shall be necessary in order to carry out the transactions contemplated by this Agreement and shall execute and deliver the Related Agreements.

12. At the Closing, the C&NW shall:

(a) Effect the transfer to DM&E of the real property portions of the Rail Assets by such quit claim Deed(s), suitable for recording in all applicable jurisdictions other than with respect to real property, if any, registered under the Torrens system of titles (which transfer will be effected by delivery to DM&E of the Owner's Duplicate Certificate(s) of Title and Deed(s) conveying the real property interest described in such Certificate(s)), provided such Certificate(s) have been located, conveying all the right, title and interest of C&NW, subject to applicable exclusions, exceptions, reservations, covenants and terms set forth or referred to in this Agreement, and the remainder of the Rail Assets by bill of sale (with warranty of title or other interest being transferred, but WITHOUT WARRANTIES OF FITNESS OR MERCHANTABILITY), and assignment without warranties and assumption, all in the forms set forth in Exhibit H. C&NW will use all reasonable efforts to locate any Certificate to transfer and convey such real property, if any, registered under the Torrens system.

(b) Make actual possession of the Rail Assets available to the DM&E to the extent provided for in this Agreement.

13. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ANY DEED OR BILL OF SALE: (A) THE C&NW MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, INTEREST, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE RAILROAD OR THE RAIL PROPERTIES; (B) ALL INSTRUMENTS OF TRANSFER MAY NEGATE ALL SUCH EXPRESS OR IMPLIED WARRANTIES AND (C) THE RAIL PROPERTIES WILL BE CONVEYED TO DM&E ON AN "AS IS, WHERE IS" BASIS.

14. The C&NW's interest in the Rail Assets will be transferred to DM&E in accordance with any required governmental authority orders and this Agreement.

15. From time to time after the Closing, at DM&E's request or C&NW's option and without further consideration other than delivery of DM&E's undertaking, effective as of the Closing Date, to assume, perform, pay and discharge (as described in Paragraph 11) the Rail Liabilities with respect to such Rail Assets, the C&NW will execute and deliver other instruments of conveyance and transfer, including delivery of the Owner's Duplicate Certificates of Title for all real properties, if any, registered under the Torrens system of titles, and take other actions as DM&E reasonably requires, to convey, transfer to and vest the C&NW's title to or interest in the Rail Assets in DM&E and/or to make possession of any of the Rail Assets available to DM&E. In the case of contracts and rights (or possession), if any, which cannot be transferred effectively without the consent

of third parties and which were therefore excluded from the Rail Assets described in Paragraph 3(c), (d) or (e), the C&NW will at the request of DM&E use all reasonable efforts to obtain those consents on a basis which does not require any further expenditures by the C&NW or to obtain them at the expense of DM&E, and once obtained they and any and all related Rail Liabilities shall become subject to this Agreement and shall become part of the Rail Properties. After Closing, DM&E shall control all discussions, negotiations, settlements and other dealings with respect to any claim, litigation or obligation assumed by DM&E, and the C&NW shall cooperate fully therein. Any expenditures, including reasonable attorneys' fees, incurred by the C&NW in connection with its cooperation shall be reimbursed by DM&E. No settlement or other disposition of a claim by DM&E shall commit the C&NW without C&NW's written consent to any injunction, prohibition or affirmative action.

16. DM&E shall be responsible for and pay all sales, recording, filing, transfer, documentary stamps or similar taxes (but not income taxes of C&NW), fees or governmental charges with respect to the sale and purchase and transfer of C&NW's interests in the Rail Assets, and take all steps necessary and, unless otherwise specifically provided herein, pay all costs to comply with any and all governmental requirements relating to the conveyance of the Rail Assets, including land subdivision or use requirements, whether any such taxes, fees, charges, costs or requirements are levied against or imposed upon the Rail Assets, the C&NW or DM&E.

17. The C&NW represents and warrants to DM&E as follows:

(a) C&NW is a validly organized and existing corporation, in good standing, under the laws of the State of Delaware; and is qualified and in good standing as a foreign corporation authorized to own and operate a railroad under the laws of the States of South Dakota, Minnesota, Iowa and North Dakota and the laws of any other jurisdiction in which the failure to be so qualified and in good standing would have a material adverse effect on its financial or business condition.

(b) All necessary corporate action of C&NW required in connection with the execution and delivery of this Agreement, the Related Agreements and each of the other agreements executed by C&NW in connection herewith or therewith, including any deeds, bills of sale and assignment and assumption agreements, (collectively, the "Purchase Agreements") and the consummation of the transactions contemplated by this Agreement and the other Purchase Agreements has been obtained, and, subject to the required approval or exemption of the Commission and other governmental authorities referred to in Paragraph 2 of this Agreement, all necessary authorizations and approvals or exemptions required of the C&NW in connection with the execution and delivery of this Agreement and the other Purchase Agreements and the consummation of the transactions contemplated by this Agreement and the other Purchase Agreements have been obtained, and this Agreement constitutes, and when executed by C&NW, each of

the other Purchase Agreements will constitute, the valid and binding obligation of the C&NW, enforceable in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability of rights of creditors generally, general principles of equity (regardless of whether considered in a proceeding in equity or at law) and the Interstate Commerce Act, but such limitation with respect to the Interstate Commerce Act shall not materially affect the practical realization of the benefits intended to be afforded thereby.

(c) The C&NW has sufficient interest in the real property interests and trackage rights included in the Rail Properties to permit the operation of the Railroad as it is presently conducted on a continuous rail system between the points specified in Exhibit B, and has the right to convey the same to DM&E pursuant to this Agreement, and there are no material encumbrances and restrictions (including the Permitted Exceptions described in Exhibit A) upon its interests in the same which would materially adversely affect the ability of the DM&E to operate a railroad upon the Rail Properties in all material respects as the Railroad is presently operated by C&NW, except to the extent such operation is limited by the terms and conditions of the Purchase Agreements.

(d) Except for the approvals of governmental authorities referred to in Paragraph 2 hereof, the execution, delivery and performance of this Agreement and the other Purchase

Agreements and the consummation of the transactions contemplated hereby and thereby do not and will not contravene any provision of the Certificate of Incorporation or Bylaws of C&NW and, to C&NW's knowledge, does not and will not (i) result in the creation of any lien, charge or encumbrance upon any of the Rail Assets or subject any of the Rail Properties to any indenture, mortgage, contract, commitment, or agreement, other than this Agreement (including the Rail Liabilities) and the Related Agreements, to which C&NW is a party or by which C&NW or any of the Rail Assets is bound, (ii) violate any provision of law, rule, regulation, order, permit, or license to which C&NW is subject or (iii) require the consent, approval or authorization of any person or public authority.

(e) All of the leases, contracts, permits, licenses and other instruments listed or described in Exhibit D, with respect to C&NW, and to C&NW's knowledge with respect to the other parties thereto, and to C&NW's knowledge the other instruments referred to in Paragraphs 3(d) and (e), are in good standing and are valid, binding and enforceable obligations in accordance with their respective terms so as to afford C&NW the right to utilize the same in its operation of the Rail Assets, and there is no material default, material event of default or event which with notice or lapse of time or both would constitute a material default under any of such leases, contracts, permits, licenses or other instruments the termination of which would materially adversely affect the ability of DM&F to operate a

railroad upon the Rail Properties. The transactions contemplated by this Agreement will not cause a default or accelerate any payment obligations under C&NW Agreement 9517 dated June 9, 1982, with the State of South Dakota and C&NW Agreement 7039 dated December 15, 1983 with the Dakota Regional Rail Authority and the State of South Dakota.

(f) C&NW has no knowledge, nor does it have any knowledge of the basis for the assertion against it, of any material liability or obligation affecting, as opposed to the "as is, where is" condition of, the Rail Assets except for those liabilities, obligations and facts which were or are (i) incurred consistent with past business practices in the ordinary course of its business and have been paid or performed, or are to be paid or performed, by C&NW when due, subject to the right of C&NW to contest the same in good faith, (ii) disclosed pursuant to Paragraph 3 or 17 of this Agreement or (iii) Rail Liabilities; provided, however, that to C&NW's knowledge, the liabilities and obligations assumed by DM&E pursuant to Paragraph 9(b) hereof will not have a material adverse effect upon DM&E's use, operation or ownership of the Rail Assets.

(g) There is no suit, action, claim, arbitration, administrative or legal or other proceeding or governmental investigation pending or, to C&NW's knowledge, threatened against or affecting the Rail Assets, nor, to C&NW's knowledge, any failure to comply with nor any default under any law, ordinance, requirement, regulation, or order applicable to, nor any viola-

tion of or default with respect to any order, writ, injunction, judgment, or decree of any court or federal, state or local department, official, commission, authority, board, bureau, agency, or other instrumentality issued or pending against, C&NW which is likely to have a material adverse effect on DM&E's ownership of or interest in or right to operate a railroad on the Rail Assets. To C&NW's knowledge, C&NW has obtained all material permits, licenses, zoning variances, approvals, and other authorization C&NW has deemed necessary for the operation of the Rail Assets in all material respects as presently operated. To C&NW's knowledge, all such permits, licenses, approvals and authorizations are presently valid and in full force and no renovation, cancellation, or withdrawal thereof has been effected or threatened and C&NW is not in material default under any of them, nor has an event occurred which with the passage of time or giving of notice or both would result in the occurrence of a material default thereunder, any of which would prevent C&NW's operation of the Rail Assets in any material respects as presently operated. C&NW will renew or revalidate any such permits, licenses, approvals, and authorizations which may become void, expired, terminated, cancelled, or withdrawn between the date hereof and the Closing Date to the extent consistent with C&NW's normal business practice.

(h) The valuation maps referred to in Paragraph 1(o) hereof have been maintained as a land record in accordance with C&NW's normal business practice and in most cases provide a basic

reference with respect to the land set forth therein; provided, however, that they should only be used as the first point of reference to reflect acquisitions and dispositions (subject to matters, including availability of records and errors of omission, commission, interpretation and judgment) and should be considered along with all other evidence available, including (i) matters whether or not of public record; (ii) matters that may be disclosed in the Property Records; (iii) matters which would or could be expected to be ascertained by inspection; (iv) matters which would or could be expected to be ascertained on the basis of examination of any abstract, title policy or other evidence of title; (v) matters or encroachments which would or could be expected to be ascertained by an accurate survey; (vi) questions and/or interpretations of surveys and other instruments; and (vii) claims by third parties, if any, including parties in possession other than by or through C&NW.

(i) Except as listed or described on Exhibit G, attached hereto and hereby made a part hereof, to the knowledge of C&NW and C&NW's Manager Environmental Control, none of the Rail Assets has been used by C&NW for the storage, deposit, disposal, treatment or recycling of toxic, dangerous or hazardous substances nor is there any tank or facility for the storage of hazardous substances, including diesel fuel, located on or in the Rail Assets. Said individuals have no knowledge of any past or present activity or circumstance on or in the Rail Assets which would subject the DM&E as owner thereof to substantial damages, penalties, injunctive relief or clean-up costs under any federal,

penalties, injunctive relief or clean-up costs under any federal, state or local law or any civil action respecting hazardous substances on such Rail Assets. For the purpose of this section a "hazardous substance" shall mean that term as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6921 et seq. and the regulations pursuant thereto, and dangerous toxic or hazardous substances or similar terms under any other state, federal or local law, and any other applicable environmental, land use or similar act, statute, ordinance or regulation or as determined at common law. C&NW agrees to provide prior to Closing, a certificate of C&NW's Manager Environmental Control substantially in the form of Exhibit G.

(j) To C&NW's knowledge, there are no patents, copyrights, licenses, franchises, permits or other intangible rights, other than the rights which are (or would be, except for the fact that any such rights are excluded by reason of (i) the fact that they are not transferable or assignable or (ii) the provisions of Paragraph 4(i)(c)) part of the Rail Assets which are in any material respect used in the operation of the Rail Assets; and, to C&NW's knowledge, none of the Rail Assets infringe or otherwise adversely affect in any material respect the rights of any person under or in respect of any patent, copyright, license, franchise, permit, or other intangible right held by such person.

(k) C&NW is not experiencing or the subject of or, to C&NW's knowledge, threatened by, any union organization campaign or any strike, slowdown, picketing, work stoppage or other labor disturbance (a "Labor Dispute") by any labor union or group of

employees that would at this time materially impair the ability of DM&E to obtain pursuant hereto, and use, the Rail Assets.

(l) Except for the contracts, agreements and other instruments listed on Exhibit D hereto, C&NW is not a party to any other material contract which is necessary for the operation and use of the Rail Assets.

(m) Since December 31, 1985, there has not been to C&NW's knowledge:

(i) Any damage, destruction or loss (whether or not covered by insurance) materially adversely affecting the Rail Assets except for damage to or destruction of the Line near Lake Preston, South Dakota caused by flood and activities related thereto; or

(ii) Any Labor Dispute between C&NW and its employees which has or is likely to have a material adverse effect on the ability of DM&E to operate a railroad on the Rail Assets.

(n) In accordance with Section 1445 and Section 897 of the Internal Revenue Code of 1954, as amended, C&NW has provided or shall provide to DM&E more than 10 days prior to the Closing Date, an affidavit certifying the C&NW is not a foreign person in the form attached hereto as Exhibit N and hereby made a part hereof.

(o) Neither C&NW nor any of its officers, directors or employees has employed or will have employed on the Closing Date, any broker, agent, finder or consultant or has incurred or will have incurred any liability for any brokerage fees, commissions, finders' fees, or other fees, in connection with the negotiation or consummation of the transactions contemplated by this

Agreement. Except as otherwise provided herein, C&NW shall be responsible for all expenses incurred by it in connection with this Agreement or the transactions contemplated hereby.

(p) All Deeds will convey all of C&NW's right, title and interest in real property which is, and to the extent, required under Paragraph 3(a) to be conveyed to DM&E; and except with respect to real properties, if any, registered under the Torrens system of titles for which Owner's Duplicate

Certificate(s) of Title have not been delivered at the Closing:

(i) all Deeds shall be in form suitable for recording in accordance with all applicable law; and (ii) all descriptions of real property to be conveyed shall be such that when all Deeds are properly recorded all such Deeds will constitute good and effective notice to all third parties in accordance with all applicable law; provided, that upon delivery of any Deed and Duplicate Owner's Certificate of Title in respect thereof after the Closing, this representation and warranty shall be deemed made with respect thereto on the date of such delivery.

(q) Notwithstanding the provisions of Paragraph 16 to the contrary, C&NW shall be responsible for the payment of all costs and expenses in connection with the obtaining of the Owner's Duplicate Certificates of the title referred to in Paragraphs 12(a) and 15.

-18. DM&E represents and warrants to the C&NW as follows:

(a) DM&E is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full corporate power and authority to carry on

its businesses as they are now being conducted and to own and operate the properties and assets now owned and operated by it. DM&E is duly qualified to do business and is in good standing as a foreign corporation in each and every jurisdiction where the failure to qualify or to be in good standing would have a material adverse effect upon its financial condition, the conduct of its business or the ownership of its property and assets.

(b) DM&E has full corporate power and authority to execute and deliver this Agreement and the other Purchase Agreements to which it is a party and to perform all of DM&E's covenants and undertakings herein and therein set forth, including without limitation the full corporate power and authority to purchase and take right, title and interest in and to the Rail Assets upon the terms and conditions set forth herein. The execution and delivery of this Agreement and the other Purchase Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of DM&E. This Agreement is, and each of the other Purchase Agreements to which it is a party when executed by DM&E will be, a valid and binding obligation of DM&E, enforceable in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors generally and general principles of equity (regardless of whether the proceeding is considered to be an action at law or in equity).

(c) Neither the execution and delivery of this Agreement or the other Purchase Agreements to which it is a

party, nor the consummation of the transactions contemplated hereby or thereby in the manner herein or therein provided, will (i) contravene any provision of the Certificate of Incorporation or Bylaws of DM&E; (ii) violate, be in conflict with, constitute a default under, cause the acceleration of any payments pursuant to, result in the creation of any lien, charge or encumbrance upon any of the assets or properties of DM&E pursuant to, or otherwise impair the good standing, validity, and effectiveness of any lease, license, permit, authorization, or approval applicable to DM&E or to any of the assets of DM&E.

(d) The performance by DM&E of its obligations under this Agreement is not subject to any contingency or the occurrence or fulfillment of any event or condition which is not expressed in this Agreement except for DM&E's obtaining a financing commitment on terms reasonably acceptable to DM&E, which will include the sale to third party investors of a majority of the equity shares of the corporation and debt which is non-recourse to the parent or any affiliate of DM&E, including but not limited to L. B. Foster Company and TXL Corporation.

(e) Neither DM&E nor any of its officers, directors or employees has employed or will have employed on the Closing Date, any broker, agent or finder or has incurred or will have incurred any liability for any brokerage fees, commissions or finders' fees in connection with the negotiation or consummation of the transactions contemplated by this Agreement. Except as otherwise provided herein, DM&E shall be responsible for all fees and expenses incurred by it in connection with this Agreement or the transactions contemplated hereby.

19. The obligations of DM&E to effect the closing of the transactions contemplated by this Agreement are subject to the satisfaction prior to or at the Closing of the following conditions. The satisfaction of any of the following conditions may be waived by DM&E in a writing delivered at or prior to the Closing.

(a) The representations and warranties contained in this Agreement of the C&NW shall be true in all material respects at the time of the Closing as if those representations and warranties had been made at that time;

(b) The C&NW shall have performed and complied in all material aspects with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, including execution and delivery of the Related Agreements;

(c) All required governmental authorizations, approvals, exemptions, notices and filings referred to in Paragraph 2 of this Agreement shall have become effective and no administrative or judicial order or decision shall contain or impose on DM&E any conditions or provisions for labor or environmental protection, any material financial obligations beyond those contemplated by this Agreement, or any other condition or provision which materially impairs the value to DM&E of the Rail Properties or the Railroad.

(d) C&NW shall have delivered to DM&E a certificate or certificates dated the Closing Date and signed on behalf of C&NW by its Secretary or Assistant Secretary to the effect that (i) (a) the copy of C&NW's Restated Certificate of Incorporation attached to the certificate is true, correct and

complete, (b) no amendment to the C&NW's Restated Certificate of Incorporation has occurred since the date of the last amendment annexed (such date to be specified and a copy of such Restated Certificate, as amended, to be annexed to such certificate), (c) a true and correct copy of the By-laws of C&NW as in effect on the date thereof and at all times since the adoption of the resolutions referred to in (d) is annexed to such certificate, (d) the resolutions by the Board of Directors of C&NW authorizing the actions taken in connection with the sale of the Rail Assets including the execution and delivery of this Agreement and each of the Purchase Agreements, were duly adopted and continue in force and effect (a copy of such resolutions to be annexed to such certificate); (ii) the officers of C&NW executing this Agreement and the other Purchase Agreements executed and delivered pursuant to or in connection with this Agreement are incumbent officers of C&NW and that the manual, machine or photocopy specimen signatures on such certificate or certificates are their genuine manual or machine signatures or photocopies thereof; and (iii) C&NW is in good standing in the states of Delaware, Minnesota, South Dakota, Iowa and North Dakota and in any other jurisdiction in which the failure to be in good standing would have a material adverse effect on its financial or business condition. The certificate required by this section shall be accompanied by (a) certificates of good standing certified by the Secretaries of State or other appropriate officials of Delaware and of the States of Minnesota, South

Dakota, Iowa and North Dakota dated as of a date not more than five days prior to the Closing Date, and (b) certificates of no liens for delinquent taxes with respect to the Rail Assets in the latter four states except for any liens on C&NW's property in Haakon County, South Dakota. Such certificate or certificates shall be in form and substance reasonably satisfactory to DM&E and DM&E's counsel.

(e) DM&E shall have obtained on terms satisfactory to it a financing commitment for its acquisition of the Rail Assets, including the sale to third-party investors of a majority of the capital stock of DM&E and the securing of debt which is non-recourse to the parent of DM&E or to any affiliate of DM&E. This closing condition and DM&E's Paragraph 27(d) right to terminate this Agreement shall be deemed waived if DM&E does not give written notice to C&NW prior to the filing by DM&E of a Section 10901 (ExParte 392 (Sub. 1)) notice that it does not have such a financing commitment.

(f) The DM&E shall have received the opinion of counsel (which may be house counsel) to C&NW, dated as of the Closing, in form and substance reasonably satisfactory to counsel to the DM&E substantially covering the matters set forth in Paragraph 17(a), (b), (d) and (g) above.

(g) On the Closing Date, (i) no proceeding shall be pending, nor shall there be a substantial threat of such a proceeding, before any court or governmental agency in which it is sought to restrain or prohibit, or to obtain labor or

environmental protection, conditions or provisions or damages or other relief in connection with, this Agreement or the other Purchase Agreements or the consummation of the transactions contemplated hereby or thereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened; and (ii) there shall be no significant Labor Disputes in progress or threatened with respect to the Railroad or the transaction contemplated hereby or thereby.

(h) The provisions of Paragraph 21(d) shall have been complied with.

(i) Except as specifically provided for in Paragraph 21(d), the Rail Assets shall not have been materially adversely affected in any way as a result of fire, explosion, earthquake, disaster, accident, Labor Dispute, any action by any governmental authority, flood, drought, embargo, riot, civil disturbance, uprising, activity of armed forces or act of God or public enemy to an extent which would prevent continuous railroad operation (which may be subject to slow orders) between the terminal points thereof.

(j) All material actions, proceedings, resolutions, instruments and documents required to carry out this Agreement and all other material related legal matters shall have been approved on or before the Closing Date by Messrs. Pepper, Hamilton & Scheetz, counsel for DM&E, in the exercise of their reasonable judgment, and DM&E or its counsel shall have been furnished with copies, satisfactory in form and substance to

DM&E's counsel in the exercise of their reasonable judgment, of all such required material corporate records and related proceedings of C&NW authorizing its execution, delivery and performance of this Agreement as DM&E or its counsel shall reasonably require.

(k) L. B. Foster Company shall have obtained all necessary consents from its lenders and investors for DM&E to enter into this Agreement, the Related Agreements and the transactions contemplated hereby and thereby.

(l) No Permitted Exception shown in Exhibit A shall, in the reasonable judgment of Messrs. Pepper, Hamilton and Scheetz, counsel for DM&E, have a material adverse effect (such as if South Dakota law would restrict real estate transfers by one railroad to another) on DM&E.

20. The obligations of the C&NW to effect the transactions contemplated by this Agreement are subject to the satisfaction prior to or at the Closing of the following conditions. The satisfaction of any of the following conditions may be waived by the C&NW in a writing delivered at or prior to the Closing.

(a) The representations and warranties of DM&E set forth in this Agreement shall be true in all material respects at the time of the Closing as if those representations and warranties had been made at that time;

(b) DM&E shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, including execution and delivery of the Related Agreements;

(c) The C&NW shall have received the opinion of counsel to DM&E, dated as of the Closing; in form and substance satisfactory to counsel to the C&NW substantially covering the matters set forth in Paragraph 18(a), (b), (c) and (d), above.

(d) All required governmental authorizations, approvals, exemptions, notice and filings referred to in Paragraph 2 of this Agreement shall have become effective and no administrative or judicial order or decision shall contain or impose any conditions or provisions for labor or environmental protection, any material financial obligations beyond those contemplated by this Agreement, or any other provision or condition which materially impairs the value to be realized by the C&NW on or after consummation of the transactions contemplated by this Agreement and the other Purchase Agreements.

(e) DM&E shall have delivered to C&NW a certificate or certificates dated the Closing Date and signed on behalf of DM&E by its Secretary or Assistant Secretary to the effect that (i)(a) the copy of DM&E's Certificate of Incorporation attached to the certificate is true, correct and complete, (b) no amendment to the DM&E's Certificate of Incorporation has occurred since the date of the last amendment annexed (such date to be specified and a copy of such Certificate, as amended, to be annexed to such certificate), (c) a true and correct copy of the By-laws of DM&E as in effect on the date thereof and at all times since the adoption of the resolutions referred to in (d) below is annexed to such certificate, (d) the resolutions by the Board of

Directors of DM&E authorizing the actions taken and authorizing the officers of DM&E to execute all documents and instruments to be executed and delivered in connection with the purchase of the Rail Assets and the business, including the execution and delivery of this Agreement and the Purchase Agreements to which it is a party, were duly adopted and continue in force and effect (a copy of such resolutions to be annexed to such certificate); (ii) the officers of DM&E executing this Agreement, the Purchase Agreements to which it is a party and the other documents executed and delivered pursuant to or in connection with this Agreement or those Purchase Agreements are incumbent officers of DM&E and that the specimen signatures on such certificate or certificates are their genuine signatures; and (iii) DM&E is qualified to do business and in good standing in the state of Delaware and all other states in which the failure of DM&E to qualify or to be in good standing would have a material adverse effect upon its financial condition, the conduct of its business or the ownership of its property and assets. The certificate required by this section shall be accompanied by certificates of good standing certified by the Secretaries of State or other appropriate officials of Delaware and of the other states referred to or described in (iii) above, dated as of a date not more than five days prior to the Closing Date. Such certificate or certificates shall be in form and substance reasonably satisfactory to C&NW and C&NW's counsel.

(f) On the Closing Date, (i) no proceeding shall be pending, nor shall there be a substantial threat of such a proceeding, before any court or governmental agency in which it is sought to restrain or prohibit, or to obtain labor or environmental protection, conditions or provisions or damages or other relief in connection with, this Agreement or the other Purchase Agreements or the consummation of the transactions contemplated hereby or thereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened; (ii) there shall be no significant Labor Disputes in progress or threatened with respect to the Railroad or the transaction contemplated hereby or thereby.

(g) All material actions, proceedings, resolutions, instruments and documents required to carry out this Agreement and all other material related legal matters shall have been approved on or before the Closing Date by counsel for C&NW, in the exercise of their reasonable judgment, and C&NW or its counsel shall have been furnished with copies, satisfactory in form and substance to C&NW's counsel in the exercise of their reasonable judgment, of all such required material corporate records and related proceedings of DM&E authorizing its execution, delivery and performance of this Agreement as C&NW or its counsel shall reasonably require.

21. The C&NW agrees that, except with the consent of DM&E, from and after the date hereof to the Closing Date C&NW shall:

(a) conduct the business of the Railroad in the ordinary course.

(b) use all reasonable efforts to preserve intact for DM&E the goodwill of suppliers, customers and others having business relationships with the Railroad.

(c) not sell, transfer, or otherwise dispose of any of the Rail Assets without the prior written consent of DM&E, except in the ordinary course of business. If C&NW sells or agrees to sell real estate included in the Rail Assets prior to the Closing Date, DM&E shall be entitled, at the Closing if received by C&NW prior thereto, or promptly after the subsequent receipt thereof, to the proceeds thereof less C&NW's out of pocket costs and a C&NW commission of 10% of the purchase price of such sale. In the case of sales which close after the Closing Date, DM&E shall deliver to the purchaser its deed, free and clear of DM&E's mortgage and, to the extent required, of other encumbrances by, through or under DM&E. Notwithstanding the foregoing, C&NW will not, prior to the Closing Date, (i) solicit sales of real estate included in the Rail Assets or (ii) agree, except with the written consent of DM&E, not to be unreasonably withheld, to sell any such real estate to any purchaser other than a shipper or a federal, state or local governmental body or agency. If any agreement or offer to purchase, as the same may be renewed, extended or otherwise amended, to which any property excluded from the Rail Assets by reason of its listing on Schedule 1 of Exhibit A is subject, terminates other than by

consummation, such property shall be conveyed by C&NW to DM&E on the same terms as if included in the Rail Assts. However, if the same are consummated, C&NW shall be entitled to retain 100% of the proceeds in the case of control numbers 4218 and 4586 and, in the case of each of the other properties so listed, C&NW shall pay 50% of the proceeds to DM&E at the Closing if received by C&NW prior thereto, or promptly after the subsequent receipt thereof.

(d) replace or repair trackage, trestles, bridges and other Rail Assets damaged or destroyed by flood near Lake Preston, South Dakota, and use all reasonable efforts to cause the State of South Dakota to enlarge the existing drainage pipe from Lake Preston which extends under U.S. Highway 14 near Lake Preston, South Dakota; or C&NW shall have made satisfactory arrangements with DM&E to fully reimburse DM&E for such repairs and any necessary detours during the period of time the said Rail Assets are out of operation.

(e) maintain the current state of repair, order and condition of the trackage, trestles, bridges and other property comprising the Rail Assets, normal wear and tear excepted and dealing with casualties in accordance with its normal business practice.

(f) use all reasonable efforts to maintain in full force and effect all existing material agreements, contracts, leases, licenses, permits, authorizations, and approvals necessary or desirable for the use or operation of the

Rail Assets in all respects and in all places as such use or operation is now conducted or is reasonably modified; and

(g) promptly advise DM&E in writing of the commencement of, and of any known threat to commence, any material suit, claim, action, arbitration, legal or administrative proceeding or governmental investigation against C&NW relating to use or operation of the Rail Assets which is likely to have a material adverse effect on DM&E's ownership of or interest in, or right to operate a railroad on, or use of, the Rail Assets.

22. From and after their execution of this Agreement, the C&NW and DM&E will use all reasonable efforts (including the prosecution of appeals where reasonable) (i) to satisfy the conditions set forth in Paragraph 2(i) and 2(ii) and the other conditions precedent to Closing set forth in Paragraphs 19 and 20 and (ii) to obtain all consents and approvals required to effectuate the purposes of this Agreement which will permit the transfer of the Rail Assets free and clear of claims of third parties arising out of, or by reason of, that transfer.

23. From the date of this Agreement to the Closing, C&NW shall cooperate fully with DM&E and shall provide DM&E and its accountants, counsel and other representatives, during normal business hours and on reasonable notice to C&NW, full access to C&NW's offices and to the books, Property Records, equipment, real estate and contracts pertaining to the Rail Assets, and shall furnish to DM&E and its representatives copies of the

Property Records and such other information with respect to the Rail Assets as DM&E or its representatives may reasonably request. The C&NW may withhold records and information which it considers may adversely affect any transaction in which the railroad operations of DM&E or any affiliate of DM&E are competitive with the operations of the C&NW. C&NW shall make available its officers and employees, during normal business hours and on reasonable notice, for discussions with DM&E and its accountants, counsel and other representatives regarding use and operation of the Rail Assets, including matters relating to personnel, marketing, operations, engineering and accounting. In addition to the foregoing right of access and information, DM&E may designate on-site observers of the operation of the Rail Assets, which observers shall be permitted such access as DM&E may reasonably request on reasonable notice to observe such operations and shall be fully informed by C&NW concerning the Rail Assets and such operations. No such investigation shall in any way affect the representations, warranties, covenants or other undertakings by C&NW in this Agreement. All accountants, counsel, representatives and observers of DM&E shall comply with all rules and requirements of C&NW applicable to persons permitted access to its properties while they are on or about the Rail Assets and DM&E hereby indemnifies C&NW, regardless of C&NW negligence, for any death, personal injury or damage to the property of such persons while on or about the Rail Assets. Except as may otherwise be agreed, DM&E shall reimburse the

C&NW for reproduction charges and the direct salary costs of employees incurred in the reproduction work. All information and records obtained by the DM&E pursuant to this Paragraph shall be maintained as confidential and shall not be disclosed to any third party, except DM&E's prospective lenders, equity participants and counsel, without the consent of the C&NW except in response to legal process or to the extent required to comply with applicable law. DM&E shall not be obligated to maintain as confidential any information obtained from the C&NW which is publicly available, readily ascertainable from public sources or known to them at the time the information was disclosed, which is rightfully obtained from a third party, or which is purchased as part of the Rail Properties unless subject to confidentiality by law or by obligation to a third party under documents or copies thereof given to DM&E pursuant to this Agreement or otherwise disclosed to DM&E by C&NW. The obligations of confidentiality arising under this Paragraph shall survive the termination or abandonment of this Agreement with respect to the Rail Properties and shall survive the Closing or the termination or abandonment of this Agreement.

24. C&NW and DM&E will each permit the other, its employees and agents to inspect and copy, to the extent available, any original Property Records and such other information with respect to the Rail Assets as may reasonably be requested on the same terms and conditions, including the second sentence thereof and confidentiality provisions, as provided for inspection and copying by DM&E under Paragraph 23 above.

25. The Deed(s) generally in the form of Schedule 1 to Exhibit H will provide for specific rights and obligations between the parties in addition to those set forth herein.

26. DM&E may extend the time for or waive the performance of any of the obligations, representations or warranties of the C&NW under this Agreement. The C&NW may take similar action with respect to the obligations, representations, warranties and conditions applicable to DM&E under this Agreement.

27. This Agreement and the consummation of the transactions contemplated by this Agreement may be terminated prior to the Closing:

(a) By the agreement of the C&NW and DM&E at any time, or if, within 30 days after renegotiations commence pursuant to Paragraph 6(b) hereof, agreement is not able to be reached and one party gives notice to the other of such termination.

(b) By DM&E, if there has been a material misrepresentation in or material breach of the representations, warranties and agreements of the C&NW contained in this Agreement, or there has been any material failure of the C&NW to comply with its obligations under this Agreement and such material breach or misrepresentation cannot be cured after 30 days notice thereof has been given.

(c) By the C&NW if there has been a material misrepresentation in or material breach of the representations, warranties and agreements of DM&E contained in this Agreement or

there has been any material failure of DM&E to comply with its obligations under this Agreement and such material breach or misrepresentation cannot be cured after 30 days notice thereof has been given.

(d) By either party if the financing commitment referred to in Paragraph 18(d) has not been obtained prior to the Closing Date.

(e) By DM&E, effective on not less than 5 business days notice delivered to C&NW not less than 30 days after C&NW commences to rely on its Paragraph 20(f)(i) closing condition as the primary basis upon which it is entitled to delay a Closing which DM&E proposes and to which DM&E is otherwise entitled, if C&NW continues to so rely on the effective date of such termination. C&NW agrees to negotiate such matters as are raised by DM&E or C&NW during said 30 day period in good faith including as to whether C&NW will mitigate or compensate DM&E in whole or in part for costs of such delay in Closing.

(f) By C&NW, effective on not less than 5 business days notice delivered to DM&E not less than 30 days after DM&E commences to rely on its Paragraph 19(g)(i) closing condition and/or its Paragraph 19(l) closing condition as the primary basis upon which it is entitled to delay a Closing which C&NW proposes and to which C&NW is otherwise entitled, if DM&E continues to so rely on the effective date of such termination.

Notwithstanding anything contained herein to the contrary, if the transactions contemplated by this Agreement are

terminated pursuant to this Paragraph 27 or otherwise, other than pursuant to item (b) or item (e) above, the obligations of Acquisition Corp. and L. B. Foster Company under that certain Exclusive Negotiation Agreement ("ENA") dated as of November 21, 1985 as amended and extended are hereby assumed by DM&E and shall apply as if DM&E's right to exclusively negotiate had terminated without entry into a definitive Purchase and Sale Agreement, and the stated \$300,000 consideration shall be paid to C&NW unless C&NW is promptly provided with the documentation listed as items a through i, both inclusive, on page 3 of said ENA.

28. Prior to Closing, no party may assign its rights under this Agreement without the prior written consent of the other party, except, in the case of C&NW, in connection with, and as part of: (i) a merger or consolidation, or (ii) a sale or lease of all or substantially all of the railroad assets of C&NW to a purchaser or lessee who assumes all of C&NW's obligations under this Agreement, in which case C&NW shall be automatically released therefrom. The C&NW and the DM&E may withhold its consent to any assignment or delegation without cause and without stating the basis on which it made the determination. Except as hereinabove provided, any assignment by either party hereunder shall not relieve such party of any obligation hereunder.

29. (a) DM&E agrees that for a 2-year period following the Closing Date it will provide storage and transportation in a manner which shall not interfere with DM&E's operation of the Rail Assets, at the risk of C&NW except for willful acts of

DM&E, with respect to tangible personal property (other than rolling stock) located on, but excluded from, the Rail Assets at the direct cost of providing these services.

(b) DM&E intends to hire employees of C&NW and agrees that at or prior to the time of each such hire, it will obtain, and promptly furnish to C&NW, the resignation of the employee in the form of Exhibit "F" attached hereto and hereby made a part hereof.

30.(a) From and after the Closing Date, C&NW shall indemnify and hold harmless DM&E from and against any and all damages, losses, obligations, deficiencies, liabilities, claims, encumbrances, penalties, costs, and expenses, including reasonable attorneys' fees, which DM&E may suffer or incur, resulting from, related to, or arising out of (i) any misrepresentation, breach of warranty, breach of guarantee, or nonfulfillment of any of the respective covenants of C&NW in this Agreement or the other Purchase Agreements, or from any misrepresentation in any Schedule or Exhibit to this Agreement; certificate, financial statement or any other document to be furnished to DM&E hereunder or thereunder and ii) any and all actions, suits, investigations, proceedings, demands, assessments, audits, judgments, and claims (including employment-related claims) arising out of any of the foregoing. Notwithstanding the foregoing, such indemnification with respect to C&NW's representations and warranties in Paragraph 17(c) shall be limited to not in excess of (i) \$12,500 per mile (or fraction thereof for fractions of a mile) of Lines

materially adversely affected and (ii) \$500,000 in total; provided, however, that neither of the aforesaid dollar limitations shall apply with respect to misrepresentations and breaches of warranty of matters (i) within the knowledge of C&NW; or (ii) on the basis of which DM&E is prevented, despite all reasonable efforts to oppose such a result, from the operation of a railroad as a continuous rail system between the points specified in Exhibit B, except pursuant to Commission approval or authority to abandon; and provided further that Paragraph 17(c) is the exclusive representation and warranty by C&NW as to those matters addressed therein to the extent also covered by Paragraph 17(d)(i), (ii) or (iii), notwithstanding anything to the contrary contained in or delivered pursuant to this Agreement or any Related Agreement.

(b) From and after the Closing Date, DM&E agrees to indemnify and hold harmless C&NW from and against any and all damages, losses, obligations, deficiencies, liabilities, claims, encumbrances, penalties, costs, and expenses, including reasonable attorneys' fees, which C&NW may suffer or incur, resulting from, related to, or arising out of any misrepresentation, breach of warranty, or nonfulfillment of any of the covenants or agreements of DM&E in this Agreement or any of the other Purchase Agreements, including the assumption of the obligations and liabilities of C&NW pursuant to Paragraph 9 hereof or any of the Purchase Agreements, or from any misrepresentation in or omission from any certificate or document furnished or to be furnished to C&NW hereunder and any and all suits, actions, investigations,

proceedings, demands, assessments, audits, judgments and claims arising out of any of the foregoing.

(c) Promptly after acquiring knowledge of any damage, loss, deficiency, liability, claim, encumbrance, penalty, cost, expense, action, suit, investigation, proceeding, demand, assessment, audit, judgment or claim against which C&NW has indemnified DM&E or against which DM&E has indemnified C&NW, the indemnified party shall give to the other party written notice thereof. Each indemnifying party shall, at its own expense, defend against and contest any damage, loss, deficiency, liability, claim, encumbrance, penalty, cost, expense, action, suit, investigation, proceeding, demand, assessment, audit, judgment, or claim against which it has indemnified an indemnified party, and each indemnified party shall give to the indemnifying party all necessary and reasonable cooperation in said defense including, but not limited to, the services of employees of the other party who are familiar with the transactions out of which any such damage, loss, deficiency, liability, claim, encumbrance, penalty, cost, expense, action, suit, investigation, proceeding, demand, assessment, audit, judgment, or claim may have arisen. In the event that an indemnifying party, after written notice from an indemnified party, fails to take timely action to defend the same, the indemnified party shall have the right to defend the same by counsel of its own choosing, but at the cost and expense of the indemnifying party. No indemnified party shall have the right to settle or compromise any claim, demand, or litigation without the

written consent of the indemnifying party, except that any indemnified party shall have the right to settle or compromise any claim, demand, or litigation against it if it has given written notice thereof to the indemnifying party and the indemnifying party has failed to take timely action to defend the same.

(d) If the damages, losses, obligations, deficiencies, liabilities, claims, encumbrances, penalties, costs, and expenses indemnified against pursuant to the provisions of this Paragraph 30 consist of an undisputed amount of money, the indemnifying party shall, within 21 days after receipt of a written notice of a claim pursuant to Paragraph 30(c), deliver to the indemnified party or other claimant either: (i) the amount of such claim by check or by wire transfer to the bank account of that party's or claimant's choosing, but may require appropriate release instruments at or prior to the time it does so, or (ii) a written notice stating that it objects to the validity of such claim and setting forth in reasonable detail the grounds on which it is contesting the validity of the claim.

(e) All amounts payable by one of the parties to the other pursuant to this Agreement, including this Paragraph 30, or any of the other Purchase Agreements shall, if not paid when due, bear interest from the due date (or, in the absence of a specified due date, from the date when payment should reasonably have been made) until the date on which paid at an interest rate 200 basis points over the Prime Rate of the Continental Illinois National Bank and Trust Company of Chicago from time to time in effect.

(f) All representations and warranties made by C&NW and DM&E in this Agreement or pursuant hereto shall survive the Closing and the delivery of the Deeds hereunder, without limitation, notwithstanding any investigation made by or on behalf of C&NW or DM&E prior to or after the Closing Date.

(g) Neither party shall have any liability to the other party for misrepresentation, breach of warranty or failure to fulfill any covenant or agreement to be performed at or prior to Closing except pursuant to this Paragraph 30.

31. DM&E agrees that, except as otherwise expressly provided in Paragraph 30, it will not, and hereby waives any right which it might otherwise hereafter have to, make any claim in any manner, including by lawsuit, third party action, counterclaim, set off or otherwise, for any loss, cost, expense, liability or obligation of any nature which it may suffer or incur by reason of the condition of the Rail Assets, including any hazardous substances or hazardous conditions thereon or therein, including damages or other liability or obligation to any third party and costs and expenses of correcting any such hazardous substance, hazardous condition or other condition of the Rail Assets.

32. This Agreement, including the Exhibits attached to this Agreement, constitute the entire agreement and understanding among the C&NW and DM&E with respect to the sale and purchase of the Rail Properties and the Railroad and the Related Agreements. All prior representations, understandings and agreements between

the parties with respect to the purchase and sale of the Rail Properties and the Related Agreements are superseded by the terms of this Agreement and the Related Agreements.

33. The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois, including for the purpose of choice of law, as though all acts and omissions related to this Agreement occurred in that State.

34. The provisions of this Agreement shall, where possible, be interpreted in a manner necessary to sustain their legality and enforceability, and for that purpose the provisions of this Agreement shall be read as if they cover only the specific situation to which they are being applied. The unenforceability of any provisions of this Agreement in a specific situation shall not affect the enforceability of that provision in other situations or of other provisions of this Agreement.

35. This Agreement may be executed in counterparts, each of which shall be considered an original, and all of which counterparts taken together shall constitute but one and the same instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by all the parties hereto. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

36. All notices given pursuant to this Agreement shall be deemed delivered if delivered by hand or sent by same day or

overnight courier or by United States registered mail, postage prepaid, addressed as follows (or to such other address or person as a party may specify by notice to the other):

(i) If to the DM&E:

Dakota, Minnesota & Eastern
Railroad Corporation
415 Holiday Drive
Pittsburgh, PA 15220
Attention: Edward Hurley

with copies to:

L. B. Foster Company
415 Holiday Drive
Pittsburgh, PA 15220
Attention: Edward Hurley

and

TXL Corporation
Great Valley Corporate Center
Five Great Valley Parkway
Malvern, PA 19355
Attention : John Ruse

and

Pepper, Hamilton & Scheetz
123 South Broad Street
Philadelphia, PA 19109
Attention: James A. Ounsworth

(ii) If to C&NW:

Chicago and North Western
Transportation Company
One North Western Center
165 North Canal Street
Chicago, Illinois 60606
Attention: President
with a copy to:

James P. Daley, Esq.
Vice President-Law and Real Estate
Chicago and North Western
Transportation Company
One North Western Center
165 North Canal Street
Chicago, Illinois 60606

37. (1) Centrally assessed (i.e. on assessed values determined by state, rather than county or other local, assessors) ad valorem property taxes ("Property Taxes") levied against the Rail Assets for calendar tax year 1986 (the "Current Tax Year") shall be paid by the C&NW, but DM&E shall be responsible for that portion of such Property Taxes applicable to the Rail Assets for the period commencing on the Closing Date. Within 45 days after Closing, DM&E shall advance to C&NW an amount equal to a daily proration for DM&E's share of such Property Taxes, based on the time remaining to December 31, 1986 and commencing on the Closing Date, applied to taxes paid by C&NW on the Rail Assets for the year ending on December 31, 1985 (the "Tax Advance"). Promptly after the actual amount due for Property Taxes for the Current Tax Year is paid by C&NW, DM&E shall pay to C&NW if the Tax Advance is insufficient, or C&NW shall pay to DM&E if the Tax Advance is excessive, the difference between the proration for DM&E's portion of the actual Property Taxes for the Current Tax Year and DM&E's Tax Advance to C&NW.

Where Rail Assets are only a portion of the C&NW property within a county, the Property Taxes will be a proration of C&NW ad valorem taxes within that county based upon the proration that Rail Assets track miles bear to the total C&NW rail properties track miles having situs in said county. If any credits, exemptions or exclusions with respect to South Dakota Property Taxes are disallowed that would have been available to

C&NW had this Asset Purchase Agreement been closed on or after January 1, 1987, DM&E shall reimburse the C&NW for the difference between the actual amount of taxes paid for the Current Tax Year and the amount that C&NW would have paid had Closing taken place on or after January 1, 1987.

C&NW shall be responsible for that portion of Property Taxes applicable to the Rail Assets for the period prior to the Closing Date.

Locally assessed (i.e. on assessed values determined by county or other local assessors) ad valorem property taxes (excluding taxes billable to lessees) shall be prorated as of the Closing Date on the daily proration basis set forth in the first paragraph of this Paragraph 37(i) except that C&NW shall advance its proration to DM&E at Closing, DM&E shall be responsible for the payment thereof when due and there shall be no adjustment after actual taxes are paid.

Special assessments and maintenance charges, and installment payments thereon, on the Rail Assets due and payable prior to the Closing Date shall be paid by C&NW. DM&E shall be responsible for all special assessments and maintenance charges, and special assessment installment payments, which are or become due and payable after the Closing Date.

C&NW shall promptly forward to DM&E any tax, special assessment or maintenance charge bill received by C&NW the payment of which is DM&E's responsibility, and any notice received of assessments for improvements levied after the Closing Date.

certificate as to the correctness of and/or the right to audit, determinations by the other party of amounts payable by one party to the other hereunder, including CI, uninsured loss and longitudinal use payments under Paragraphs 5(c), 6(b) and 25, respectively.

38. Words of gender may be read as masculine, feminine, or neuter, as required by context.

39. Words of number may be read as singular or plural, as required by context.

40. Each Exhibit and Schedule referred to herein is incorporated into this Agreement by such reference.

41. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement will not constitute a waiver of any of its rights hereunder.

42. Subject to the provisions of Paragraph 29, this Agreement, including all representations, warranties, covenants and agreements contained therein, binds, inures to the benefit of, and is enforceable by the successors and assigns of the parties, and does not confer any rights on any other persons or entities.

43. This Agreement may be amended, supplemented and, except as otherwise provided herein, terminated only by a written instrument duly executed by both parties hereto.

44. This Agreement may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered shall be

EXHIBIT "B"
LINES OF RAILROAD

I. Lines to be conveyed

A. Main Line: (See Schedule A)

B. Branch Line: (See Schedule B)

II. Trackage Rights

A. Grants (See Schedules A and B attached hereto)

B. Assignments (See Schedules A and B attached hereto)

SCHEDULE "A" to Exhibit "B"

MAIN LINES (CONVEYANCE AND GRANT
OR ASSIGNMENT OF TRackage/OPERATING RIGHTS)

Sub-Division	Station		Milepost		Conveyance	Grant or Assignment* of Trackage Rights	Remarks
	From	To	From	To			
MAIN LINE							
Markato	Winona Yard	-	0.0	3.0		3.0	
Markato	Winona	Owatonna	3.0	86.1	83.1		
Markato	Owatonna	-	86.1	88.6		2.5	
Markato	Owatonna	Markato	88.6	129.6	41.0		
Markato	Markato Yard	-	129.6	131.3		1.7	
			and 82.6	86.2		3.6	
Huron	Markato Yard	-	0.0	2.9		2.9	
Huron	Markato	Huron	2.9	362.8	220.9		Equation: M.P. 24.5 = M.P. 163.5
Pierre	Huron	Pierre	362.8	480.5	117.7		
PRC	Pierre	E. Rapid City	480.5	649.0	168.5		
PRC	Rapid City Yard	-	649.0	97.0		2.4	Equation: M.P. 649.2 = M.P. 99.2
TOTAL MAIN LINE					631.2	16.1	647.3

OVERHEAD TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, made and entered into this 3RD day of SEPTEMBER, 1986, by and between the CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware Corporation, (hereinafter sometimes referred to as "Lessor" or "C&NW"), and the DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, (hereinafter sometimes referred to as "Lessee" or "DM&E")).

WITNESSETH:

WHEREAS, Lessor is the owner of certain railroad facilities between Mile Post 649.0 near Rapid City, South Dakota and the Yard of C&NW in Rapid City; between Mile Posts 129.6 and 131.3, 82.6 and 86.2, and 0.0 and 2.9 in the vicinity of Mankato, Minnesota; between Mile Posts 88.6 and 86.1 in the vicinity of Owatonna, Minnesota; and between Mile Post 3.0 near Winona, Minnesota and the Yard of C&NW in Winona; consisting of main line track, right-of-way grounds, switches, signals, communications, and other appurtenances, as more particularly shown in red color upon the prints dated June 26, 1986, marked Exhibits "A" and "A-1", attached hereto and by reference herein made a part hereof (hereinafter collectively called "Facilities"); and

WHEREAS, Lessee desires to use said Facilities for the sole purpose of bridging Lessee's trains over said Facilities; and

WHEREAS, Lessor is agreeable to the use of said Facilities by Lessee but only upon the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein the parties hereto agree as follows:

SECTION I - GRANT

1.1 Except as hereinafter provided, Lessor hereby grants to Lessee the use of said Facilities for the sole purpose of bridging Lessee's trains, engines, and cars manned by Lessee's crews. In the use of said Facilities, Lessee shall not be entitled to serve any existing or future industries or interchange trains or cars with any third party railroad located upon or connected to said Facilities. Notwithstanding the foregoing, Lessee shall have the right to serve Lessor's industries and make interchange with the Soo Line Railroad Company at Owatonna, Minnesota, pursuant to the terms of a separate Lease of Track Agreement entered into between the parties hereto as of the date hereof.

1.2 It is not the purpose of this Agreement to coordinate either the maintenance or operation work of the employees of the parties hereto.

SECTION II - USE OF LEASED FACILITIES.

2.1 C&NW shall employ all persons necessary to operate, maintain and renew the Facilities described in this Agreement. Said Facilities described in this Agreement at Mankato, Owatonna and Winona, Minnesota, shall be maintained by C&NW at FRA Class 2 standards subject to weight limitations not to exceed 263,000 pounds gross per car and said Facilities between M.P. 649.0 near Rapid City, South Dakota and the yard of C&NW in said City of Rapid City shall be maintained by C&NW at FRA standards presently in effect on said line. In the event DM&E desires that any of the Facilities be rehabilitated and maintained at standards in excess of those described herein the cost and expense of such rehabilitation and maintenance to place the tracks in a condition in excess of standards herein established shall be borne solely by DM&E.

2.2 Lessee, in respect to use of said Facilities and the bridging of its trains, engines or cars thereover and Lessor with respect to the maintenance of said Facilities, shall comply with all applicable Federal and State laws and

regulations and applicable rules, regulations and orders promulgated by any municipality, board or commission in respect thereto for the protection of persons, or otherwise, and if failure on the part of either party so to comply therewith shall result in any fine, penalty, cost or charge being imposed or assessed on or against the other party, the party at fault shall promptly reimburse and indemnify the other party for or on account of such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in defending any action which may be brought or threatened against said other party on account thereof; and the party at fault shall, in the event of any such action, upon notice thereof being given to it by the other party, defend such action free of cost, charge and expense to said other party.

2.3 Subject to rights hereinbefore, hereinafter and otherwise reserved, Lessee shall have the right to use the railroad Facilities. Lessor shall direct and control the train movement and operation of Lessee upon and over the Facilities and hereby reserves the right to go onto and operate over the Facilities with its own employees when it deems such operations necessary for the performance of general transportation services. It is further understood and agreed that for the maintenance, repair and renewal of the Facilities, Lessor may occasionally require the use of trackage owned by Lessee and Lessee hereby grants to Lessor the right to operate such work equipment upon and over Lessee's tracks as may be required for the maintenance, repair and renewal of the Facilities.

2.4 This agreement is not for the purpose of coordinating the work of the parties. The parties agree that trains and cars handled by Lessor train and engine crews shall be in its account and that trains and cars handled by Lessee train and engine crews shall be in its account except for isolated incidental movements, such as handling bad order cars or clearing a wreck on the Facilities. The work of train and engine crews of the parties shall not be coordinated.

SECTION III - PAYMENTS BY LESSEE.

3.1 For and in consideration of the rights herein granted to DM&E by C&NW to the use of the Facilities, DM&E agrees to pay to C&NW for maintenance and rental the rate of per loaded car mile operated upon or over the Facilities, or any portion thereof, by DM&E. Said rate shall be subject to adjustment on July 1, 1987 and on each July 1 thereafter by utilization of Indexes for Material Prices, Wage Rates and Supplements combined (excluding fuel) issued for the Western District by the Association of American Railroads in Series RCCR. In making said adjustment the final Indexes published for the calendar year 1985 shall be compared to the final Index for the calendar year immediately preceding the year in which said revision is to become effective. In the event the base for the Index shall be changed (1977=100), appropriate revision shall be made in the base as herein established for the year 1985. If the Association of American Railroads, or any successor association, discontinues such Indexes an appropriate substitute for determining in a similar manner the percentage of increase or decrease shall be agreed upon by the parties hereto.

3.2 DM&E shall, within fifteen days after the close of a calendar month, render to C&NW a statement showing the number of trains and loaded and empty cars operated by DM&E in each direction upon each facility during such month.

3.3 Any bills rendered hereunder for cost and expense incurred by either party hereto pursuant to the terms and conditions of this agreement shall be paid by the other party within thirty (30) days after receipt thereof and said payment shall not be delayed for errors of ordinary character likely to occur in railroad accounts, the necessary corrections to be made within a reasonable time in a subsequent bill.

3.4 In billing hereunder for such cost and expense as may arise from the existence of this Agreement, the billing party may, except for the car mile rate as herein established or as adjusted from time to time, add to labor and material costs and deduct from credits for material released and charge for equipment rental, percentages, charges and rates prescribed by its standard billing practices which are in effect at the time such labor, material and equipment is used.

3.5 The records of each party hereto, insofar as they relate to matters covered by this Agreement, shall be open at all reasonable times for inspection by the properly authorized representatives of the other party hereto.

SECTION IV - SIGNALS, COMMUNICATIONS, AND SAFETY DEVICES.

4.1 All such highway crossing or other signals, communications and safety devices required upon the Facilities for the sole or exclusive operation of Lessee's trains or as a result of any governmental intervention shall be so installed and maintained by Lessor at the sole cost and expense of Lessee, provided that the cost of installing and maintaining any such devices upon Facilities which are used by both parties shall be apportioned on a wheelage basis.

SECTION V - SWITCHING SERVICE AND REVENUE.

5.1 Except as provided for in Section 1.1, Lessee shall not be entitled to use the Facilities to perform switching service for any cars originating at or delivered to industries served by C&NW or be entitled to use the Facilities to interchange cars with any third party railroad connecting with said Facilities. In addition to any other remedy possessed by Lessor whether at law, equity or by contract in the event that Lessee performs any such switching or interchange as described in this Section V, then, in such event, Lessee shall pay as liquidated damages in each instance to Lessor an amount equal to Lessee's division of line haul rates for hauling such cars to or from, as the case may be, said industries or third party railroad.

5.2 Notwithstanding the provisions of paragraph 5.1 hereinabove or any other Agreement, but except as provided in the Lease of Track Agreement dated as of the date hereof, it is understood and agreed that this Agreement is being entered into for the exclusive benefit of the parties hereto, the terms and conditions of which shall never be construed as permitting Lessee through or by any means to allow the use of the Facilities or grant any rights upon or over same to any other rail carrier, it being understood that Lessor retains the sole right to permit use of the Facilities by any other rail carrier upon such terms and conditions as it may deem proper, provided, however, that such use shall not unreasonably interfere with Lessee's operations. In the event that, without Lessor's permission, any other carrier obtains any use of or rights upon or over the Facilities, unless Lessee shall have taken no action to permit, and shall have made every reasonable effort requested by Lessor in governmental proceedings to oppose the obtaining of such use or rights by such other carrier, Lessor shall have all rights, subject to any required regulatory approval or exemption, as may be required to permit the operation of the trains, engines and cars of Lessor upon and over trackage purchased by Lessee from Lessor at and between Owatonna and Tracy, Minnesota, pursuant to a Service Agreement between the parties hereto dated as of the date hereof. Said grant by Lessee to Lessor shall be upon the same payment terms and conditions as those contained in Paragraph 3.1, and upon substantially similar terms as contained in the remainder, of this Agreement, provided, however Lessor shall have the right to serve all existing and future industries located along said line at and between Owatonna and Tracy and make interchange with all third party railroad carriers.

SECTION VI - LIABILITY, OBLIGATIONS.

6.1 Lessee in connection with its overhead movements shall, during the term of this Agreement, at its sole cost and expense, operate over and use said

declare this Agreement terminated and Lessor shall be entitled to all rights and remedies at law or in equity.

SECTION IX - ASSIGNMENT

9.1 This Agreement shall not be assigned by Lessee to any third party without the advance written consent of Lessor, which consent shall not be unreasonably withheld, and, subject thereto, this Agreement binds, inures to the benefit of and is enforceable by the successors and assigns of Lessor and Lessee, and does not confer any rights on any other persons or entities. Any assignment by either party hereunder shall not relieve such party of any obligation hereunder. The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois, including for the purpose of choice of law, as though all acts and omissions related to this Agreement occurred in that state.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in duplicate as of the day and year first above written.

(SEAL)

ATTEST:

BY

(SEAL)

ATTEST:

BY

#2 Clemons - Dakota/MN/EN 1-9

CHICAGO AND NORTH WESTERN TRANSPORTATION
COMPANY

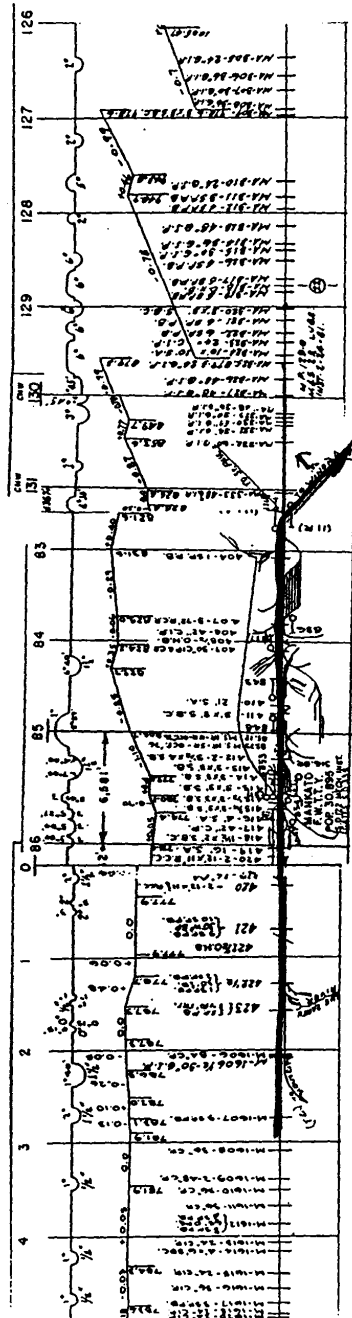
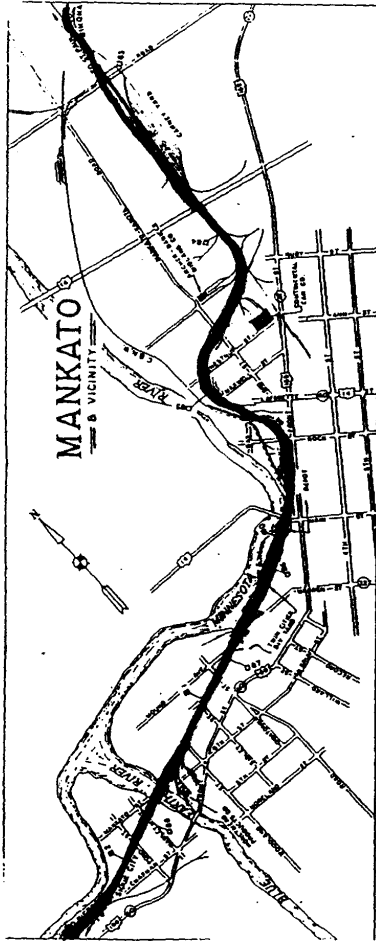
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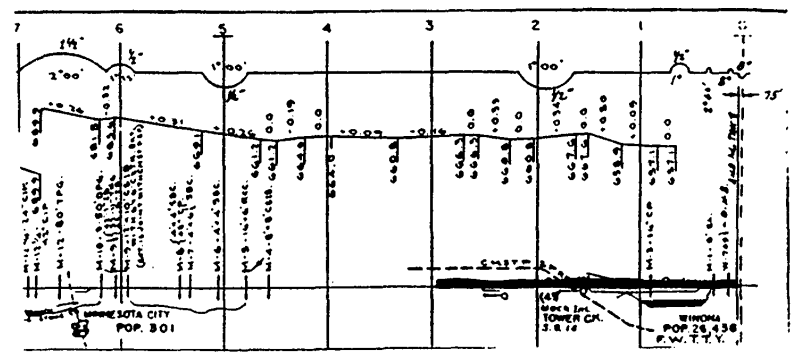
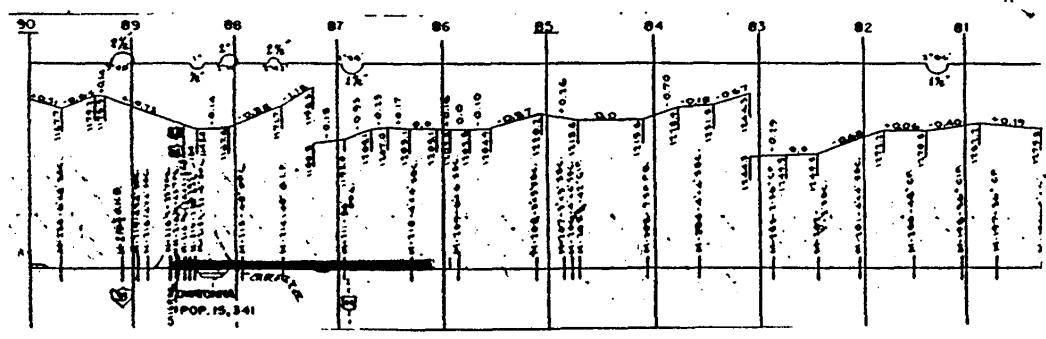
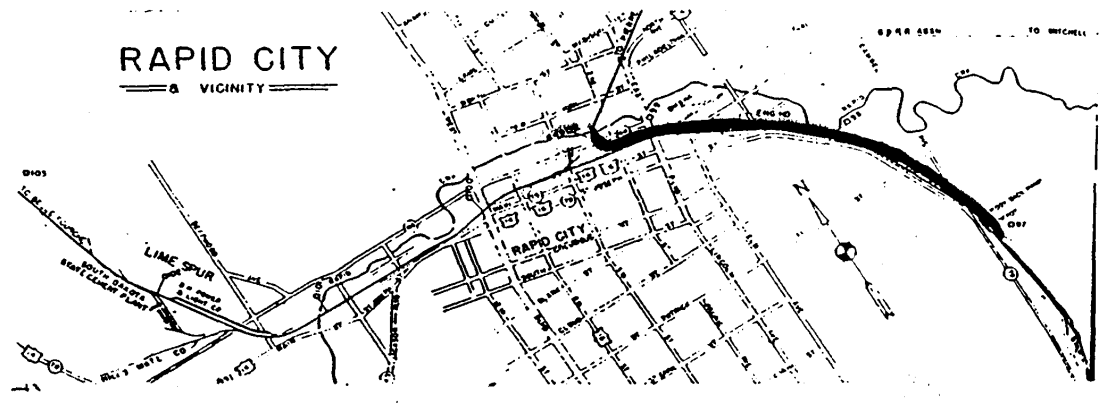
Senior Vice President
Government Affairs & Corporate Analysis-
Acquisition & Planning

DAKOTA, MINNESOTA & EASTERN RAILROAD
CORPORATION

BY

PRESIDENT





INTERCHANGE AGREEMENT

THIS AGREEMENT, made and entered into this 3rd day of September, 1986, by and between the CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, hereinafter called "C&NW" and the DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, hereinafter called "DM&E".

WITNESSETH:

WHEREAS, pursuant to agreement dated July 2, 1986, DM&E has acquired certain assets of C&NW including substantially all of the line of railroad owned by C&NW between Winona, Minnesota and Rapid City, South Dakota and certain branch lines connected thereto; and

WHEREAS, by separate trackage rights agreement dated as of the date hereof, C&NW has granted to DM&E the right to operate its trains, engines and cars, in bridge service only, upon and over certain segments of trackage owned by C&NW and not included in said purchase; and

WHEREAS, in addition to said bridge rights, it is the desire of the parties hereto that DM&E acquire the right to operate its trains, engines and cars upon and over said trackage and such additional side and yard trackage owned by C&NW at Rapid City, South Dakota; Mankato, Owatonna and Winona, Minnesota and Mason City, Iowa, as may be required for the sole and only purpose of making convenient interchange with C&NW, except as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. C&NW hereby grants to DM&E the right to use such adequate tracks in the Rapid City, Mankato, Owatonna, Winona and Mason City Yards of C&NW as C&NW may from time to time designate for the sole purpose of delivering loaded and empty cars to be interchanged to C&NW or picking up loaded and empty cars interchanged

to DM&E except as hereinafter provided. The tracks in said yards as may, from time to time, be designated by C&NW shall hereinafter be referred to as the "Interchange Trackage" or "Trackage" and C&NW shall use all reasonable effort to designate tracks for interchange so as to minimize interference with DM&E operations in connection with interchange of traffic with C&NW. This Agreement is not for the purpose of coordinating the work of the parties. The parties agree that trains and cars handled by DM&E train and engine crews shall be in its account and that trains and cars handled by C&NW train and engine crews shall be in its account. Said rights herein granted by C&NW at Rapid City, Mankato, Winona and Mason City shall be strictly limited to the interchange of cars between the parties hereto and shall not entitle DM&E to physically serve or hold itself out to serve industries located within said terminals of C&NW or interchange directly with third party carriers within said terminals.

2. DM&E shall have the right to physically serve C&NW industries at Owatonna, Minnesota and make direct interchange with the Soo Line Railroad Company ("SOO") on any such car originating or terminating at those industries and for the limited purpose of handling cars to or from any industries served by Soo in Owatonna open to reciprocal switching, as provided for in that certain Lease of Track Agreement entered into by and between the parties hereto as of the date hereof. DM&E shall not be entitled to interchange any other cars at Owatonna, for further movement beyond said City of Owatonna, with any carrier other than C&NW for handling via C&NW between the designated Interchange Trackage and the SOO-C&NW interchange track. DM&E shall provide C&NW with a locomotive unit for use by the employees of G&NW in the handling of such cars. Said locomotive unit shall be deemed to be in the possession of C&NW from the time same is placed on the designated Interchange Trackage until released back to DM&E upon said Trackage. The equalization of said locomotive unit shall be in accordance with the provisions of a run-through agreement entered into by and between the parties hereto as of the date hereof.

3. The cost and expense of transporting cars interchanged or to be interchanged hereunder shall be assumed by the party hereto whose employees and equipment are handling said cars to or from said yards. Cars delivered to C&NW by DM&E shall be placed upon the Interchange Trackage in said yards, as may from time to time be designated by C&NW in accordance with the provisions of Section 1.

4. Cars (including cars handled by C&NW in intermediate service) shall be considered as interchanged and in possession of the other party when placed on the Interchange Trackage in said yards accompanied or preceded by the necessary data to permit the further movement of same, as prescribed by the Code of Car Service and Interchange Rules issued by the Association of American Railroads (or any successor thereto, or if none an appropriate similar substitute shall be agreed to by the parties hereto.)

5. The mechanical inspection of cars interchanged between the parties hereto shall, unless otherwise mutually agreed upon, be performed in said yards by the receiving party. If, as a result of said inspection, a mechanical defect is noted which requires repairs prior to further movement of any car or if such defect requires the transfer of lading therefrom or if it is necessary to adjust the lading thereon the parties hereto shall abide by the rules of the Association of American Railroads pertaining to interchange of cars between railroads or any successor thereto, or if none an appropriate similar substitute shall be agreed to by the parties hereto), including settlement of the cost and expense associated with such repairs, transfer or adjustment.

6. DM&E agrees that in its use of the Interchange Trackage it will in all respects abide by the operating rules and regulations established by C&NW and that the movement of the trains, locomotives, cars and equipment upon and over said Trackage shall at all times be subject to the orders of the transportation officers of C&NW. In the event of any violation of any operating rule or practice by the employees of DM&E a joint investigation or hearing shall be conducted by

C&NW and DM&E officers. Pending the results of such investigation or hearing C&NW shall have the right to require DM&E to withhold such employee from service on said Trackage. If in the judgment of C&NW the result of such investigation or hearing warrants, such employee or employees shall upon written request by C&NW be restricted by DM&E from operating on said Trackage and DM&E shall release and indemnify C&NW from and against any and all claims and expenses because of such restriction.

7. The parties hereto further agree to comply with all applicable Federal and state laws and regulations and all applicable rules, regulations and orders promulgated by any municipality, board or commission in respect thereto for the protection of persons, or otherwise, and if failure on the part of either party so to comply therewith shall result in any fine, penalty, cost or charge being imposed or assessed on or against the other party, the party so failing to comply shall promptly reimburse and indemnify the other party for or on account of any such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in defending any action which may be brought or threatened against the other party on account thereof; and the party so failing, in the event of such action, upon notice thereof being given to it by the other party, shall defend such action free of cost, charge and expense of the other party.

8. C&NW shall employ all persons necessary to operate, maintain, repair and renew the Interchange Trackage described in Section 1 of this Agreement.

9. Should any locomotive, car or caboose in the possession of either party be derailed or damaged while being run or operated upon the Interchange Trackage same shall be picked up and removed by C&NW and the cost and expense thereof, including restoration of roadbed, track and structures, shall be treated as an item of expense to be borne and assumed by the parties hereto under the provisions of Section 10 of this Agreement. DM&E may, however, at its sole cost

and expense, reraill its locomotives, cars and cabooses when the use of on-track or off-track rerailling equipment is not required.

10. In billing hereunder for such cost and expense as may arise from the existence of this Agreement, the billing party may, except for the cost and expense mentioned in Section 4, include direct labor and material costs, together with the surcharges, overhead percentages and equipment rental rates prescribed by its standard billing practices and which are in effect at the time the work is performed. Any bill rendered hereunder for the cost and expense incurred by either party which is the responsibility of the other party pursuant to the terms and conditions of this Agreement shall be paid by the other party within thirty (30) days after receipt thereof and said payment shall not be delayed for errors of ordinary character likely to occur in railroad accounts, the necessary corrections to be made within a reasonable time in a subsequent bill.

11. Whenever loss of, damage to, or destruction of any property whatsoever (including the Interchange Trackage) or injury to or death of any person or persons whomsoever occurs with the trains, locomotives, cars or equipment of one party only being involved, that party shall assume all liability therefor and all costs and expense in connection therewith, and shall indemnify the other party against and save it harmless from any such liability, cost and expense. When any such loss, damage, destruction, injury or death occurs with the trains, locomotives, cars or equipment of both parties being involved, each party agrees to assume all liability for loss or destruction of or damage to said trains, locomotives, cars or equipment being operated by it (including lading) and for injury to or death of any person or persons whomsoever employed by it, while as to the loss or destruction of or damage to all other property (including the Interchange Trackage) and injury to or death of any other person or persons whomsoever such liability for loss, damage, destruction, injury or death shall be borne and assumed by the parties hereto equally. DM&E shall not make or have any claim or demand against C&NW for any damage to or loss or destruction of any

property whatsoever or for any injury to or death of any person or persons whomsoever resulting from any failure or neglect on the part of C&NW to maintain, repair or renew the Interchange Trackage.

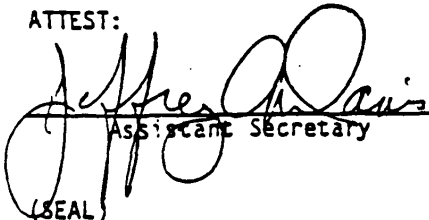
12. This Agreement shall become effective as of the day and year first hereinabove written and, unless sooner terminated by mutual agreement of the parties hereto with respect to any or all of said interchange points, shall remain in effect for a term of ninety nine (99) years.

13. This Agreement shall not be assigned by DM&E to any third party without the advance written consent of C&NW, which consent shall not be unreasonably withheld, and, subject thereto, this Agreement binds, inures to the benefit of and is enforceable by the successors and assigns of C&NW and DM&E, and does not confer any rights on any other persons or entities. Any assignment by either party hereunder shall not relieve such party of any obligations hereunder. The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois, including for the purpose of choice of law, as though all acts and omissions related to this Agreement occurred in that State.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate as of the day and year first herein above written.

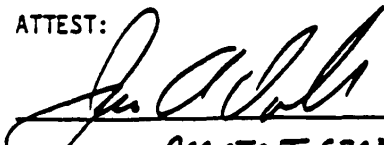
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ATTEST:


Assistant Secretary

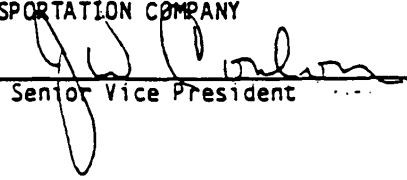
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PHM 1-6 ASSISTANT SECRETARY

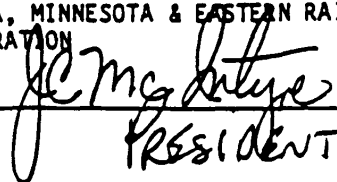
CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By


Senior Vice President

DAKOTA, MINNESOTA & EASTERN RAILROAD
CORPORATION

By


PRESIDENT

5/3/86

EXHIBIT "O"

LEASE OF TRACK AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 1986, by and between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called "Lessor") and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, by separate agreement Lessor has granted to Lessee the right to operate Lessee's trains, engines and railcars in bridge service only on Lessor's line of railroad between milepost 88.6 and 86.1 at Owatonna, MN ("Owatonna").

WHEREAS, Lessor is willing to lease to Lessee industry and side tracks adjacent thereto (the "Track") for the purpose of allowing Lessee to serve industries located thereon, including switching of traffic to or from those industries on the Track, and to handle to or from the interchange with the Soo Line Railroad (the "Soo Line") traffic that originates at or is destined to the industry track presently serving Owatonna Canning Company (the "Owatonna Canning Company Facility"); and

WHEREAS, Lessor is willing to permit Lessee to use that portion of Lessor's mainline trackage between Milepost 88.6 and 87.9 at or around Owatonna solely for the purpose of handling railroad freight traffic as permitted by this Agreement; and

NOW, THEREFORE, in consideration of the premises and the following terms and conditions the adequacy of which being hereby acknowledged, the parties hereto agree as follows:

1. Lessor grants to Lessee the nonexclusive right to use the Track, as more fully described in Exhibit A, attached hereto and hereby made a part hereof, for the limited purposes of originating or terminating traffic at industries located on said Track and for handling traffic that is switched to or from the Owatonna Canning Company Facility. In addition, Lessor grants its permission to Lessee to use that portion of Lessor's main line between Milepost 88.6 and 87.9 solely for the purposes above specified, and subject to the restrictions of Lessee's use in paragraph 2.

2. In the use of said Track, Lessee shall not be entitled to use said Track for the purpose of directly interchanging traffic with any other common carrier at Owatonna except to or from the Lessor, provided that, the Lessee shall be entitled to directly interchange traffic that originates or terminates on the Track or originates or terminates at the Owatonna Canning Company Facility with any common carrier serving Owatonna.

3. During the term of this Agreement, Lessee shall, with its own employees and equipment, and at Lessee's sole discretion and sole cost, charge and expense, operate Lessee's trains, engines and railcars on the Track.

4. Lessee, with respect to the use of said Track and the operation of Lessee's trains, engines and/or railcars thereon, shall comply with all applicable Federal and State laws and regulations and all applicable rules, regulations and orders promulgated by any municipality, board or commission with respect

thereto for the protection of persons, or otherwise, and if failure on the part of Lessee so to comply therewith shall result in any fine, penalty, cost or charge being imposed or assessed on or against Lessor, Lessee shall promptly indemnify and reimburse Lessor for or on account of such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in defending any action which may be brought against Lessor on account thereof; and Lessee shall, in the event of any such action, upon notice thereof being given to Lessee by Lessor, defend such action at Lessee's sole cost, charge and expense.

5. Lessee in the course of using and operating said Track may at Lessee's sole discretion and at Lessee's sole cost, charge and expense make improvements, additions and betterments thereto or retirements therefrom, provided, however, that all such improvements, additions, betterments or retirements shall neither increase nor decrease the Rental Payments to be made by Lessee to Lessor as hereinafter defined in Paragraph 8. Said improvements, additions, betterments or retirements shall be subject to approval by Lessor, which approval shall not be unreasonably withheld.

6. Lessee shall have no right, authority or power to bind Lessor or any interest of Lessor in the Track for the payment of any claim for labor or material and will not suffer any mechanics' or materialmen's liens of any kind ("Liens") to be enforced against the Track for any work done or material furnished at the Lessee's instance or request. If any such Liens are filed on or against the Track, Lessee agrees to promptly

remove the same at Lessee's sole cost, charge and expense and to satisfy any judgment which may be entered against Lessor or the Track, and should Lessee fail, neglect or refuse to so promptly remove or so satisfy, Lessor shall have the right to pay any amount required to remove, satisfy or release any such lien or liens or to defend any action brought thereon, and to pay any judgment entered therefor, and the Lessee shall be liable to Lessor for all costs, charges, damages, expenses, fines, penalties and reasonable Attorneys' fees, and any amount reasonably expended in defending any proceedings or in the payment of any of said liens or any judgment obtained therefor.

7. Upon execution of this Agreement and annually thereafter in advance on each anniversary of the execution of this Agreement, Lessee, in consideration of the grant in Paragraph 1 given by Lessor, shall pay to Lessor an annual Rental Payment of

8. The Rental Payment to be paid by Lessee to Lessor under Paragraph 7 hereof shall be subject to annual adjustment on each anniversary of the Effective Date of this Agreement and shall be adjusted upward or downward, as the case may be, by fifty per cent (50%) of the increase or decrease in the U. S. Department of Labor Consumer Price Index for the immediate preceding calendar year as compared with the previous calendar year's Index, provided, however, that Lessee's annual payment to Lessor shall never be less than .

9. Lessee agrees to pay Lessor for annual maintenance, repair and renewal of the Track during the term of this Agreement, provided that Lessee shall advise Lessor in writing of the need for, and nature of, said maintenance and Lessor shall not perform any maintenance of the Track other than that requested by Lessee. If after 30 days of receiving notice, Lessor does not undertake to perform such maintenance on the Track, Lessee may perform such maintenance at the cost and expense of Lessee. The parties shall by mutual consent arrange for times during normal business hours for Lessor's performance of maintenance of the Track to minimize disruption of train operations on the Track. Notwithstanding the provisions of this Paragraph 9, Lessor shall be bound only to use reasonable and customary care, skill and diligence in maintenance, repair or renewal of the Track and Lessee shall not by reason of any defect in the Track or by reason of the failure or neglect on the part of Lessor to repair or modify any such defect have or make against Lessor any claim or demand for any loss, damage, injury or death whatsoever resulting from any such defect, neglect or failure.

10. Lessee shall pay promptly and before the same becomes delinquent, all taxes and assessments, special or otherwise, that may be taxed or assessed after the Effective Date of this Agreement against the Track except those based on or measured by the net income of Lessor. In the event that Lessee shall fail to pay any such taxes or assessments referred to before the same become delinquent, Lessor may pay the same and the amount

of such payment shall constitute an indebtedness of Lessee under the terms of this Agreement and shall be payable on demand; provided, however, Lessee shall not be required to pay any tax or assessment so long as it is contesting the same in good faith and by appropriate legal proceedings. Lessee shall not be required to pay any taxes or assessments upon any property of Lessor which Lessee does not lease for Lessee's railroad operations. It is further mutually covenanted and agreed that a proper apportionment shall be made between the parties of any taxes, rentals or other sums payable under this Agreement in respect of property of Lessor only part of which Lessee has the right to use under this Agreement, and/or which Lessee and one or more additional users have such right, and/or in respect of any period of time not wholly included within the term of this Agreement.

11. If during the term of this Agreement any governmental body having jurisdiction shall order the installation of automatic protective devices at any highway or roadway crossings on the Track, Lessee at its sole expense shall install, maintain, repair and renew the same. Lessee shall be the owner of said devices and upon termination of this Agreement, Lessee shall, at Lessee's option, either remove said devices and restore the Track to its previous or original condition at Lessee's sole cost and expense (subject to required authorization, if any, by any governmental agency having jurisdiction), or sell same to Lessor, and Lessor shall purchase for cash, at the net depreciated value thereof as reflected in the books of account of Lessee as of the date of termination.

12. Lessor shall have the sole right to admit other common carriers to the use of the Track on and after the Effective Date hereof provided that such use shall not interfere with use of the Track by Lessee and there will be a pro rata adjustment, based on the number of cars (loaded and empty) handled, to the appropriate costs paid by Lessee hereunder, and Lessee agrees that any contract or agreement for use of said Track, or any part thereof, between Lessor and such other common carrier, shall not entitle Lessee to any monies or compensation paid Lessor for such use, it being specifically understood and agreed between the parties hereto that the only Rental Payments to be made to Lessor during the term of this agreement are those shown in Paragraph 7 hereof.

13. Lessee shall be required to pay any reciprocal switch charge in connection with traffic it handles to or from the Owatonna Canning Company Facility and shall be entitled to receive payments for reciprocal switch charges from Soo Line for traffic Lessee handles from industries on the Track switched to the Soo Line.

14. If during the term of this Agreement Lessee shall exercise its right in Paragraph 5 hereof to make improvements or additions to the Track, Lessee shall have the right upon the termination of this Agreement to remove such improvements or additions and restore the track to its previous or original condition at Lessee's sole cost and expense unless Lessor shall elect to purchase and pay for such improvements or additions at their then net depreciated value as reflected in the books of account of Lessee. If Lessee shall fail to diligently so remove

any such improvements and/or additions, the same shall be conclusively deemed abandoned by Lessee to Lessor.

15. Lessee, during the term of this Agreement, in connection with Lessee's operations, will furnish all necessary motive power, rolling stock, equipment, tools and supplies and comply with and perform all properly applicable legal requirements with respect to Lessee's operation and use on, over and about the Track.

16. Lessee agrees to save Lessor harmless from and against all damages and liabilities whatsoever that may be caused by the acts or omissions of Lessee in the operation or use of the Track; provided, however, that all claims against and liabilities of Lessor arising from events occurring prior to the Effective Date of this Agreement and any and all labor claims of whatsoever kind and nature, including claims for severance pay, displacement, allowance, pensions and the like, made by or on behalf of Lessor's employees or agents subsequent to the Effective Date of this Agreement shall remain Lessor's obligations.

17. It is understood and agreed that the consideration hereinbefore provided does not in any case include any cost or expense which may be incurred on account of loss of or damage to property or injury to or death of persons, arising out of or in connection with the maintenance, operation, repair or renewal of the Track, or the making of improvements, additions or betterments thereto, or retirements therefrom. The term "loss and damage" as used in this Agreement relates to any cost or expense arising as a result of loss and damage to the Track, including facilities

connected therewith, and embraces all loss of and damage to property of either party, to property of persons employed by either party and to that of third persons and to injury to or death of persons employed by either party or of third persons, and all liability therefor including amounts paid under any State or Federal Compensation or Employers' Liability Law, and also embraces all cost and expense incident to such loss and damage.

18. Solely for the purpose of allocating liability hereunder:

- (a) all employees, and any machinery, equipment, tools or other property of Lessor, while engaged in the maintenance, repair and renewal of the Track or the making of additions thereto or retirements therefrom or while directing the movement of trains, engines or railcars upon or over the Track shall, while so engaged, be deemed to be the joint employees and the joint equipment of the parties hereto; and
- (b) all employees, and any machinery, equipment, tools or other property of Lessee, while engaged in any activity permitted under Paragraphs 5, 11 or 14 hereof, shall, while so engaged, be deemed to be the sole employees and the sole equipment of Lessee; and
- (c) all employees of either party engaged in the operation of trains upon and over the Track, or any part thereof, and the locomotives, railcars,

- cabooses or other property of either party hereto in said trains, including lading contained therein or upon such equipment shall, while so engaged, be deemed the sole employees, equipment, property and lading of the party so operating said train; and
- (d) all employees of either party operating wrecker or work trains, or assigned thereto while clearing wrecks or derailments or engaged in the repair and renewal of the Track subsequent to any wreck or derailment, and any machinery, equipment, tools or other property of either party used in such service incident to the performance of such work shall be deemed to be the sole employees, property and equipment of the party hereto whose employees, railcars, locomotives, cabooses or trains were, in the first instance, solely involved in the accident; or in case of collision or other accident involving the employees, property and equipment of both parties hereto, such employees, property, and equipment shall be deemed to be the joint employees, property and equipment of the parties hereto. Any outside Contractor used by either party in the performance of said work shall, as the case may be, likewise be considered as the employees, property and equipment of the party or parties hereto so involved in such accident or derailment.

19. Except as otherwise provided herein, liability for any loss and damage whatsoever in connection with the maintenance, operation, repair or renewal of the Track or the making of additions thereto or retirements therefrom, shall be fixed between the parties as follows:

When due to

- (a) the acts or omissions, negligent or otherwise, of the sole employee or employees of one of the parties hereto; or to
- (b) the concurring acts or omissions, negligent or otherwise, of a joint employee or joint employees and of the sole employee or employees of one of the parties hereto; or to
- (c) defect in or failure of any kind in the sole equipment, property or facilities of either party hereto; other than the Track,

liability for such loss and damage shall be borne solely by the party whose sole employee, property or equipment is involved or concerned.

When due to

- (d) the concurring acts or omissions, negligent or otherwise, of the sole employee or sole employees of both parties hereto; or to
- (e) the acts or omissions, negligent or otherwise of a joint employee or employees; or to

- (f) the concurring acts or omissions, negligent or otherwise, of a joint employee or joint employees and the sole employees of both parties hereto; or to
- (g) defects in or failure of any kind in the sole or joint equipment or property of both parties hereto, including the Track; or to
- (h) any other cause whatsoever;

liability for such loss and damage shall be borne

- (1) solely by each party as to its own property (other than the Track) and/or lading or other property in its custody or control and as to its sole employees; and
- (2) jointly and equally by the parties hereto as to third persons, or any other persons and their property, the joint employee or employees and their property, the Track and/or joint equipment or other joint property.

20. Anything to the contrary notwithstanding, neither party shall have any claim against the other

- (i) for any loss or damage which may occur to its rolling stock equipment or to such equipment in its possession, or to the contents of either, while on the Track, arising by reason of fire, whether such fire be due to the negligence of the other party or otherwise, or

(ii) for loss or damage caused by or resulting from interruption of or delay to such party's business.

21. If a claim is made involving joint liability of the parties hereto, the party hereto against which such claim is made shall give prompt notice thereof to the other, and the party so notified shall be bound for its proportionate share of any settlement of such claim or expenses incident thereto. If a claim is made against either party hereto which under this Agreement is not chargeable solely to the party against which such claim is made, such party shall notify the other party immediately in writing.

22. All releases taken pursuant to the settlement of any and all claims involving joint liability shall include both parties, and copies thereof shall be furnished each of them; provided no settlement of joint liability claims in excess of \$5,000.00 shall be voluntarily made by either party without first having obtained in writing the consent of the other party.

23. If a judgment should be recovered against and satisfied by one party involving liability which should under this Agreement be borne entirely or participated in by the other party, then all expenses of whatsoever nature, including reasonable costs and fees connected with such judgment and with the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of this Agreement, and the party against which such judgment is recovered shall be promptly reimbursed by the other party to the extent to which the latter is indebted.

injured, or the property of both parties hereto is damaged, the representatives of each party hereto who handle such claims shall agree among themselves as to which one of them shall make the investigation, and such representatives shall determine from time to time which one of the parties hereto shall investigate all other claims or demands arising hereunder.

28. This Agreement shall become effective as of the date of first use of the Track by Lessee and may be terminated by either party on 30-days written notice.

29. This Agreement is not for the purpose of coordinating the work of the employees of the parties hereto. The parties agree that trains and railcars in the account of Lessor shall be handled by Lessor's train and engine crews and the trains and railcars in the account of Lessee shall be handled by Lessee's train and engine crews except for isolated incidental movements such as bad order carloads.

30. This Agreement shall not be assigned by Lessee to any third party without the advance written consent of Lessor, which consent shall not be unreasonably withheld, and, subject thereto, this Agreement binds, inures to the benefit of and is enforceable by the successors and assigns of Lessor and Lessee, and does not confer any rights on any other persons or entities. The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois, including for the purpose of choice of law, as though all acts and omissions related to this Agreement occurred in that state.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in triplicate as of the day and year first above written.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

(SEAL)

By: _____
Title: _____

ATTEST:

DAKOTA, MINNESOTA & EASTERN
RAILROAD COMPANY

(SEAL)

By: _____
Title: _____

ATTEST:





DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

337 TWENTY-SECOND AVENUE SOUTH
POST OFFICE BOX 178
BROOKINGS, SOUTH DAKOTA 57006
(605) 697-2400
FAX: (605) 697-2499

KEVIN V. SCHIEFFER • President & CEO

May 9, 2002

Mr. Jerald B. Groner
Sr. Manager - Interline Marketing
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Dear Jerry:

This letter will memorialize the agreement between Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Union Pacific Railroad Company ("UP") to resolve certain issues between them relating to the Overhead Trackage Rights Agreement ("the Trackage Rights Agreement"), the Lease of Track Agreement ("the Lease Agreement") and the Interchange Agreement (collectively "the Agreements"), all dated September 3, 1986 between DM&E and the Chicago and North Western Transportation Company, a predecessor of UP. Specifically, the parties agree as follows:

1.

2.

3.

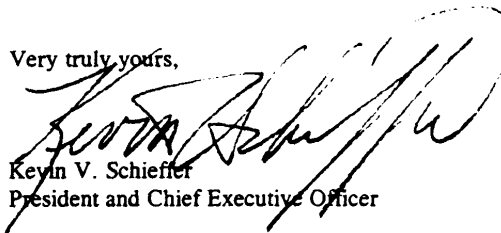
Mr. Jerald B. Groner
May 9, 2002
Page 2

4.

5. UP shall permit I&M Rail Link, LLC or its successors ("IMRL") with IMRL's own forces or its designated agents, and at no cost to UP, to replace the existing diamond crossing of their respective lines at Owatonna, Minnesota with track switches allowing a direct connection between the UP trackage used by DM&E under the Agreements and trackage owned by IMRL as shown on the plan attached hereto. The purpose of such track changes is to allow the movement of DM&E and IMRL trains through the area at restricted speed and to avoid the cost of maintaining the diamond. Effective with the date of this letter agreement, DM&E shall have the right to maintain and dispatch all trackage owned by UP and used by DM&E at or in the vicinity of Owatonna, MN, under the Overhead Trackage Rights Agreement. Notwithstanding the track changes described in this paragraph, the restrictions set forth in the Agreements on DM&E's interchange of trains and cars with other carriers at Owatonna, Minnesota, shall remain in full force and effect and shall apply to DM&E's use of the new connection. This agreement neither diminishes nor enhances either party's position relative to those restrictions.

If you agree that the above accurately sets forth the agreement between the parties, please indicate your acceptance on the line provided below and return a copy of this letter to me for my file.

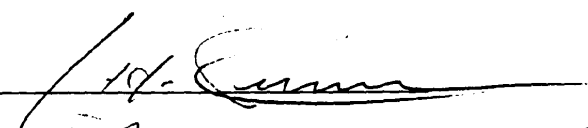
Very truly yours,


Kevin V. Schieffer
President and Chief Executive Officer

KVS:jeb(j:\kvs\word\jgroner8.doc)

Attachments

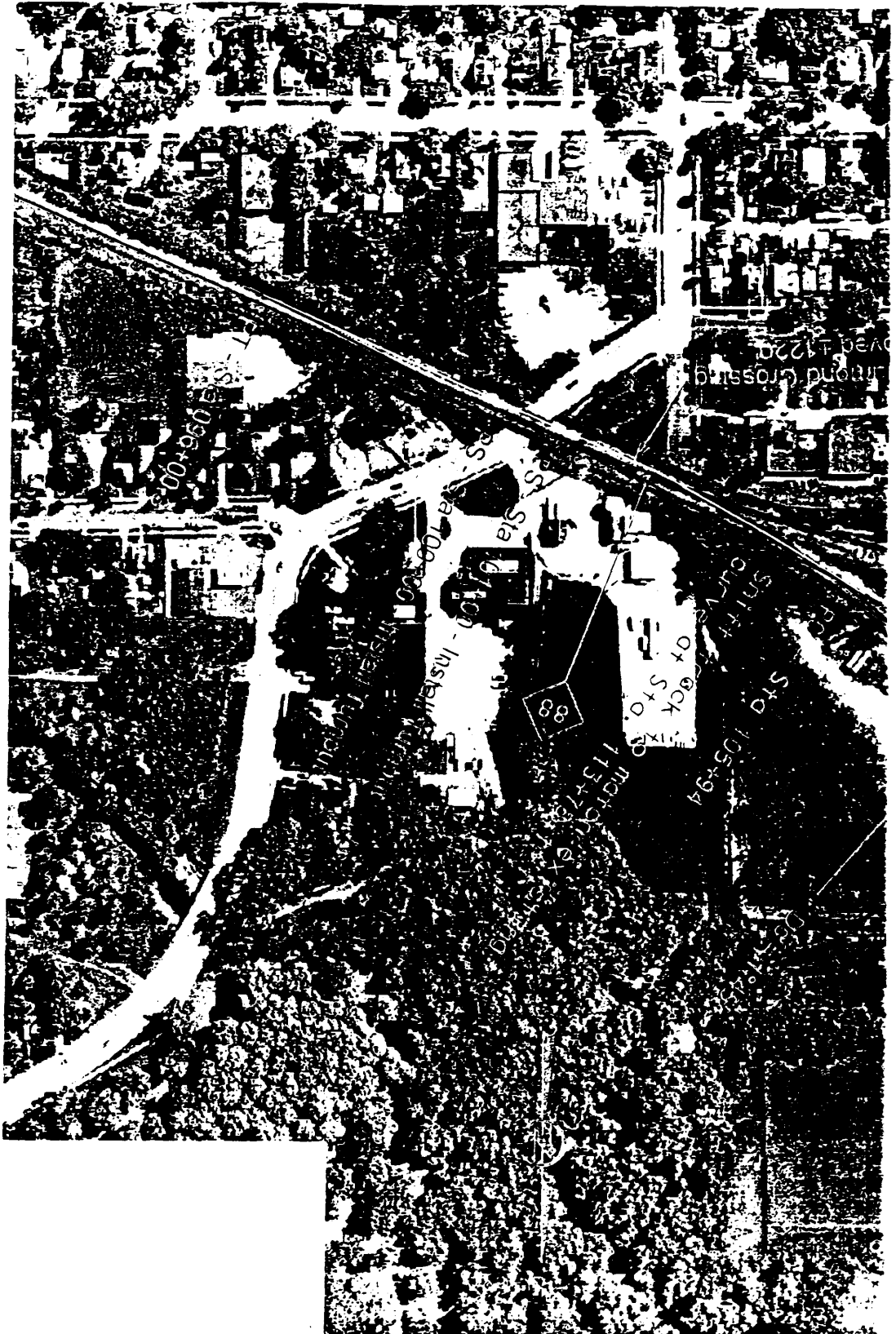
AGREED:

By 

Title Vice President - Network and Service Planning

Date 10/14/14 2012

EXHIBIT 1



7

140 NORTH PHILIPS AVENUE
SIOUX FALLS, SOUTH DAKOTA 57104
POST OFFICE BOX 1260
SIOUX FALLS, SOUTH DAKOTA 57101
(605) 782-1200
FAX: (605) 782-1299

DM&E

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

KEVIN V. SCHIEFFER • President & CEO

5 November 2002

Mr. Jerald B. Groner
Sr. Manager - Interline Marketing
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Dear Jerry:

As a follow-up to our discussions, this letter is intended to document the terms upon which DM&E agrees to assume dispatching and maintenance responsibility over the approximately 2.5 miles of UP-owned trackage in and around Owatonna, MN ("Owatonna Trackage") over which DM&E has trackage rights.

For so long as DM&E and/or its designee has ^{sole use of} exclusive trackage rights over the Owatonna Trackage, DM&E shall assume all maintenance obligations therefor. DM&E shall maintain the Owatonna Trackage to FRA Class 1 standards (or better), provided that if for any reason in the future the line or the maintenance of the line is returned to UP or its designee, DM&E shall ensure that such trackage is returned to UP or its designee in FRA Class 2 condition, or better. In consideration for and upon the assumption of such maintenance obligations, any and all trackage rights payment obligations of DM&E related to the Owatonna Trackage (as specified in the September 3, 1986 Agreement ("1986 Agreement") and any other agreement relating to such Owatonna Trackage shall terminate. In lieu thereof, DM&E shall pay to UP an annual rent for the Owatonna Trackage in the amount of (a) cars that traverse the Owatonna Trackage and (b)

At the end of each full calendar year following the execution of this agreement, DM&E shall provide to UP the car count for all cars traversing the Owatonna Trackage, and the payments required pursuant hereto. Said annual rent and per car charge shall be escalated pursuant to the provisions of the 1986 Agreement, beginning in the first quarter of 2004. For the remainder of 2002, DM&E shall pay for any cars which traverse the Owatonna Trackage between the date hereof and December 31.

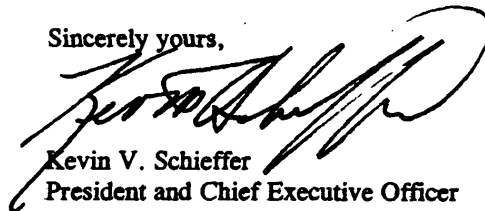
DM&E is currently seeking terminal rights at Owatonna. The parties are currently negotiating a settlement of that issue. In the event settlement discussions are unsuccessful, and if relief is granted by the STB, the parties will negotiate to reach mutual agreement as to whether additional compensation is required and amounts, if any. DM&E's position is that current fees (as modified by this agreement) provide adequate compensation in the circumstances of this case. UP's position is that additional compensation is warranted. This agreement revises the current trackage rights fees by lowering DM&E's fees but increasing its other financial obligations. It

Letter to Jerry Groner
November 5, 2002
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does not attempt to address or resolve the terminal trackage rights case (either as to access or as to compensation), and both parties specifically reserve their rights relative thereto in the event a negotiated settlement is not reached, including the right to seek judicial review of any STB decision addressing the terminal trackage rights. This agreement in no way affects the parties' rights or respective positions relative to the terminal trackage rights case.

If this arrangement is agreeable to UP, please indicate by your countersignature in the space designated below. Should you have any questions, please let me know.

Sincerely yours,



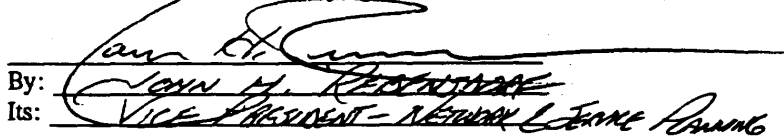
Kevin V. Schieffer
President and Chief Executive Officer

KVS:jeb(jgrone11.doc)

Union Pacific Railroad hereby agrees to the terms and conditions set forth herein.

By:

Its:



~~JOHN H. PETERSON~~
VICE PRESIDENT - NETWORK & LEASE DIVISION