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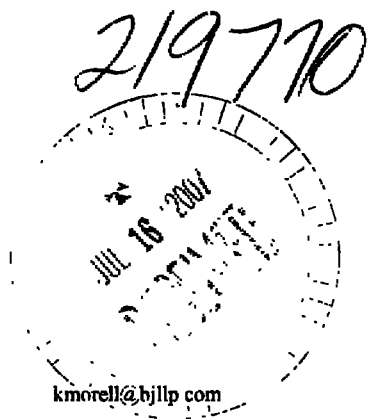
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July 16, 2007

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

**RE: Finance Docket No. 35068, Soo Line Railroad Company d/b/a
Canadian Pacific Railway – Acquisition and Operation
Exemption – BNSF Railway Company**

FILED

JUL 16 2007

Dear Secretary Williams:

**SURFACE
TRANSPORTATION BOARD**

Attached for filing are the original and ten copies of a Petition for
Exemption under 49 U.S.C. § 10502, and a check covering the \$5,700 filing fee.

Please time and date stamp the extra copy of the Petition and return it with our
messenger.

If you have any questions, please contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Karl Morell".

Karl Morell
Counsel for BNSF Railroad Company

**ENTERED
Office of Proceedings**

JUL 16 2007

**Part of
Public Record**

Enclosures

FEE RECEIVED

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35068

SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY
--ACQUISITION AND OPERATION EXEMPTION--
BNSF RAILWAY COMPANY

JOINT PETITION FOR EXEMPTION

EXPEDITED HANDLING REQUESTED

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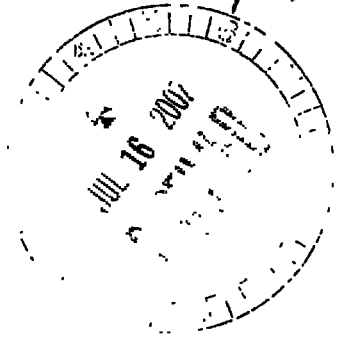
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Dated: July 16, 2007

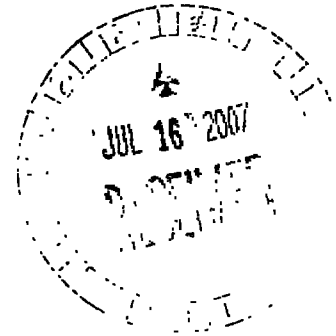
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35068



SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY
--ACQUISITION AND OPERATION EXEMPTION--
BNSF RAILWAY COMPANY

JOINT PETITION FOR EXEMPTION

Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CPR") and BNSF Railway Company ("BNSF") hereby petition the Surface Transportation Board ("Board") for an exemption from prior review and approval under 49 U.S.C. §§ 11323-25 of CPR's acquisition and operation of BNSF's interests in the 35.26-mile rail lines now jointly owned by CPR and BNSF and the contiguous 9.96-mile rail line now solely owned by BNSF.

SUMMARY OF TRANSACTION

CPR and BNSF have entered into a Purchase and Sale Agreement, dated July 10, 2007 (the "Agreement")¹, pursuant to which BNSF has agreed to transfer to CPR all of BNSF's property interests² in: (A) the 32.54-mile rail line located between BNSF Milepost 89.5, at Crosby, North Dakota, and BNSF Milepost 56.96, at Lignite Junction, North Dakota; (i) the 1.16-mile connecting track located between CPR Milepost 549.64, at Rival, North Dakota, and CPR Milepost 550.8, at Lignite Junction, North Dakota; (ii) the 1.07-mile connecting track

¹ A redacted copy of the Agreement is attached as Exhibit 2. An un-redacted copy of the Agreement is being filed under seal simultaneously with this Petition.

² Pursuant to Section 2.2 of the Agreement, BNSF is retaining certain mineral rights in the properties being conveyed.

located between BNSF Milepost 64.5, at Kincaid, North Dakota, and CPR Milepost 558.28, at Columbus, North Dakota;³ and (iii) the 0.49-mile connecting track at Crosby extending from CPR Milepost 582.35 to the original CPR main line extending west to Whitetail, Montana, which are currently jointly owned and operated by CPR and BNSF (the “Joint Line”); and (B) the 9.96-mile rail line located between Milepost 56.96, at Lignite Junction, and Milepost 47.0, near Lignite, North Dakota, which is solely owned and operated by BNSF (the “BNSF Line”)(the Joint Line and the BNSF Line are collectively referred to as the “Conveyed Lines”). Maps of the Conveyed Lines are attached as Exhibit 1.

Pursuant to Section 2.3 of the Agreement, BNSF is retaining its ability to solicit rail transportation business on the Conveyed Lines. At the closing of the proposed transaction, if authorized by the Board, CPR and BNSF will enter into an Haulage Service Agreement (“Haulage Agreement”)⁴ pursuant to which CPR will agree to haul loaded and empty rail cars tendered by BNSF in the revenue waybill and car hire account of BNSF between Minot, North Dakota and BNSF customers on the Conveyed Lines (“Haulage Operations”).⁵ Also on the date of closing of the proposed transaction, CPR will enter into an agreement with Dakota, Missouri Valley and Western Railroad, Inc. (“DMVW”), pursuant to a separate Notice of Exemption (STB Finance Docket No. 35055) to be filed with the Board, whereby DMVW will lease and operate certain rail lines including the Joint Line and the BNSF Line. The purpose of the proposed transaction is to foster more efficient and economical operations on the Conveyed

³ CPR does not have its own milepost designation at Kincaid and BNSF does not have its own milepost designation at Columbus.

⁴ A redacted copy of the Haulage Agreement is included as an exhibit to the redacted Agreement attached as Exhibit 2. An unredacted copy of the Haulage Agreement is being filed under seal as part of the unredacted Agreement.

⁵ Car haulage is a private arrangement between carriers and does not require prior Board approval. See Finance Docket No. 31293, *Burlington N.R.R. Co. – Exemption – Joint Project to Relocate a Line Railroad Between Tulsa and Muskogee, OK* (not printed), served July 19, 1988.

Lines and in the region while, at the same time, preserving competitive options for the two active customers located on the Joint Line and enhancing competition for the two active customers located on the BNSF Line.

BACKGROUND

BNSF is a Class I carrier that owns and operates lines of railroad in 28 states. CPR is a Class I carrier that operates lines of railroad in 8 states on owned and trackage rights lines.

Prior to 1959, BNSF's predecessor, Great Northern Railway Company ("Great Northern") and CPR's predecessor, Minneapolis, St. Paul & Sault Ste. Marie Railroad Company ("Soo") had rail lines that ran parallel to each other -- Soo from Crosby, ND eastward through Rival, ND and Great Northern from Crosby, ND eastward through Lignite, ND -- and between Hankinson, ND and Geneseo, ND. In the interest of economies, Great Northern and Soo reached an agreement, dated September 18, 1959, whereby Soo abandoned its redundant rail line between Rival and Crosby and Great Northern abandoned its redundant rail line between Hankinson and Geneseo ("1959 Agreement"). In turn, Soo was given a one half undivided interest in the Joint Line and Great Northern was given a one half undivided interest in the Hankinson-Geneseo line. The savings of these arrangements were divided proportionately by the parties.

Pursuant to the 1959 Agreement, each party has a right to operate over the Joint Line. Initially, neither party had a right to serve industries that were exclusively served by the other party, but each had the right to participate in serving new industries. As a result of a condition imposed by the Interstate Commerce Commission in (Great Northern-Northern Pacific merger) 331 I.C.C. 228 (1967), Soo gained access to all industries which were situated on or adjacent to

the Joint Line on September 18, 1959.⁶ Pursuant to the 1959 Agreement, BNSF has the obligation to maintain the Joint Line at its sole expense.

In August 1990, the 1959 Agreement was amended to permit DMVW to operate over the Joint Line as part of DMVW's lease and operation of other CPR-owned rail lines in the region. *See* Finance Docket No. 31720, *Dakota, Mo. Valley and W. R.R., Inc. – Lease and Operation Exemption – Soo Line Railroad Company* (not printed), served September 19, 1990. DMVW recently renewed and supplemented its arrangement with CPR. *See* STB Finance Docket No. 34904, *Dakota, Mo. Valley and W. R.R., Inc. – Lease and Operation Exemption – Soo Line R.R. Co.* (not printed), served July 28, 2006.

There are currently four active rail shippers located on the Conveyed Lines. CHS, Inc. ("CHS") operates numerous grain elevators in the western United States. As pertinent here, CHS has an elevator at Lignite from where it ships grain to a number of destinations. For the past several years, CHS has shipped an average of 300-400 cars of grain annually from Lignite. CHS's Lignite elevator is currently rail served exclusively by BNSF. Once this transaction is consummated, CHS will gain access to CPR and retain access to BNSF via DMVW-CPR and the Haulage Operation. In other words, CHS will be a one to two shipper. Consequently, CHS's rail transportation options will be enhanced by the proposed transaction. CHS supports the proposed transaction and urges prompt approval by the Board. *See* Exhibit 3.

Bearpaw Energy operates a natural gas liquids plant at Lignite. Its exclusive marketer, Lodgepole Energy ("Lodgepole"), ships approximately eight rail cars of Natural Gas Liquids per week from the Lignite plant to a variety of destinations in the United States and Canada. The

⁶ The ICC authorized Soo's expanded rights in Finance Docket No. 20837, *Soo Line R.R. Co. – Modification of Trackage Rights – Burlington N. Inc., Lines Between Lignite & Crosby, N.D.* (not printed), served August 4, 1971.

Lignite plant is currently rail served exclusively by BNSF. Once this transaction is consummated, Lodgepole will gain access to CPR and retain access to BNSF via DMVW-CPR and the Haulage Operation. As with CHS, Lodgepole will be a one to two shipper. Consequently, Lodgepole's rail transportation options will be enhanced by the proposed transaction. Lodgepole wholeheartedly supports the proposed transaction. *See Exhibit 4.*

New Century Ag ("New Century") is a co-operative with facilities at Noonan and Crosby, ND which are jointly served by BNSF direct and CPR via the DMVW. New Century also has three facilities located on the rail line west of Crosby which are exclusively served by DMVW for CPR. All of these facilities are rail served for outbound shipments of grain and an occasional inbound shipment of fertilizer. New Century ships approximately 16,000,000 to 22,000,000 bushels of grain per year with BNSF and DMVW-CPR to and from the jointly served facilities at Crosby and Noonan. Once this transaction is consummated, New Century will retain access to CPR via the DMVW and retain its present access to BNSF via DMVW-CPR and the Haulage Operation. Consequently, New Century's rail options will be unaffected by the proposed transaction. New Century also supports the proposed transaction and strongly encourages the Board to expedite approval. *See Exhibit 5.*

Superior Grains, Inc. ("Superior Grains") operates, among others, a facility in Crosby from where it currently utilizes the services of BNSF and CPR via DMVW. Once this transaction is consummated, Superior Grains will be able to retain access to CPR via DMVW and access to BNSF via DMVW-CPR and the Haulage Operation. Consequently, Superior Grains' rail options will also be unaffected by the proposed transaction.

ARGUMENT

I. THE PROPOSED TRANSACTION SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. §§ 11323-25.

Under 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to purchase the line of another rail carrier.

Pursuant to 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
 - (a) the transaction is of limited scope, or
 - (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation - Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the

conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

In reviewing an exemption petition under Section 10502, the Board does not undertake a broader analysis than it would apply to a transaction under the statutory provision that would apply in the absence of the exemption. *Blackstone Capital Partners – Control Exemption – CNW Corp.*, 5 I.C.C.2d 1015, 1019 (1989)(“*Blackstone*”); *Vill. of Palestine v. I.C.C.*, 936 F. 2d 1335 (D.C. Cir. 1991).

The proposed transaction does not involve the merger or control of at least two Class I rail carriers. Therefore, absent an exemption, the proposed transaction would be subject to Board review under the standards set forth in 49 U.S.C. § 11324(d). Section 11324(d) provides that the Board “shall approve” the transaction unless it finds both that:

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d).

In transactions subject to Section 11324(d), the primary focus is on the probable competitive effects of the proposed transaction. *See, e.g.*, Finance Docket No. 32579, *Canadian Pac. Ltd., and Soo Line R.R. Co. - Control - Davenport, Rock Island & N. W. Ry.* (served February 10, 1995), slip op. at 5; *Wilmington Terminal R.R., Inc. - Purchase & Lease - CSX Transp., Inc.*, 6 I.C.C. 2d 799, 803 (1990), *pet. for review denied sub nom., Ry. Labor*

Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991). The public interest factors are considered only where significant anticompetitive effects are found. *Id.*

A finding of competitive harm under Section 11324(d)(1) must be grounded on a showing that any adverse competitive effects are both “likely” and “substantial.” *Wisc. Cent. Transp. Corp. – Continuance in Control – Fox Valley & W. Ltd.*, 9 I.C.C.2d 233, 238 (1992). Examples of adverse competitive impacts that would trigger the balancing of the public interest factors under Section 11324(d)(2) “would be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two.” *Blackstone*, at 1019 (footnote omitted). Even if such showings were made, the proposed transaction may not be disapproved unless the anticompetitive effects of the proposed transaction outweigh the public interest factors. See Finance Docket No. 31991, *CSX Corp., CSX Transp., Inc. and Carrollton R.R. – Control – Transkentucky Transp. R.R.* (not printed), served April 15, 1991, slip op. at 2.

The acquisition of a rail line by one rail carrier from another rail carrier does not result in harm to competition unless the acquisition creates or enhances the ability of the acquiring carrier to exercise market power. The Board and its predecessor have defined market power as the ability of a carrier profitably to increase rates above competitive levels or to reduce the quality of service for a significant period of time without losing traffic to competing carriers or other sources. See, e.g., *CSX Corp. – Control – Am. Commercial Lines*, 2 I.C.C.2d 490, 515 (1984), *pet. for review denied sub nom., Crounse Corp. v. ICC*, 781 F.2d 1176 (6th Cir.), *cert. denied*, 479 U.S. 890 (1986). In addition, only competitive harm that is directly and causally related to a proposed transaction -- and not pre-existing conditions -- are considered by the Board in determining whether a transaction will lessen competition. *Burlington N. R.R. Co. – Control and Merger – The Atchison, Topeka and Santa Fe Ry. Co.*, 10 I.C.C. 2d 661, 728 (1995).

As is demonstrated in this Petition, there are no anticompetitive effects that flow from the proposed transaction. The proposed transaction will not lead to higher rates or worsened service. To the contrary, the proposed transaction, in combination with the arrangement between CPR and DMVW, will improve rail service for all of the shippers located on the Conveyed Lines.

A. Regulation Of The Proposed Transaction Is Not Necessary To Carry Out The Rail Transportation Policy.

Detailed scrutiny of the proposed transaction under 49 U.S.C. §§ 11323-25 is not necessary to carry out the Rail Transportation Policy (“RTP”). By minimizing the administrative expense of considering the proposed transaction, the requested exemption will expedite regulatory decisions and reduce barriers to entry and exit [49 U.S.C. §§ 10101(2) and (7)].

Currently, both BNSF and DMVW operate over and service the customers on the Joint Line. BNSF is currently responsible for maintaining the Joint Line. BNSF trains operate from Minot, ND, via Berthold and Niobe to service the customers on the Conveyed Lines. CPR has a parallel route between Minot and Lignite Junction. Once this transaction is consummated, the CPR traffic will continue to move as it does today. The BNSF traffic will be originated or terminated on the Conveyed Lines by DMVW and handled between Lignite Junction and Minot, ND in conjunction with CPR pursuant to the Haulage Agreement. Because the BNSF traffic originating or terminating on the Conveyed Lines can be handled in existing DMVW-CPR trains to and from Minot, the proposed transaction will eliminate the redundant BNSF trains currently moving over the parallel BNSF line. Thus, the proposed transaction will create greater efficiency in the operations of BNSF, CPR and DMVW and improve service for the customers on the Conveyed Lines.

In addition, DMVW will assume the maintenance responsibilities for the Conveyed Lines which it can perform more efficiently and economically than BNSF. DMVW already maintains

the CPR track west and east of the Joint Line, and handles considerably more traffic (including originating, terminating and overhead traffic) over the Joint Line than BNSF. The Joint Line has a tendency to flood in the spring which has forced BNSF to embargo the track until repairs can be made. DMVW has plans to make repairs to the Joint Line, which should enhance service for the existing customers, including those customers west of the Joint Line served exclusively by DMVW for CPR, and improve CPR's and BNSF's ability to compete for additional traffic currently moving by other modes.

Consequently, the proposed transaction will help promote a safe and efficient rail transportation system [49 U.S.C. § 10101(3)], ensure the continuation of a sound rail transportation system with effective competition among rail carriers [49 U.S.C. § 10101(4)], foster sound economic conditions in transportation and ensure effective competition [49 U.S.C. § 10101(5)], encourage honest and efficient management [49 U.S.C. § 10101(9)], and promote energy conservation [49 U.S.C. § 10101(14)]. Other aspects of the RTP will not be adversely affected.

B. The Proposed Transaction Is Of Limited Scope.

BNSF is simply conveying its 9.96-mile rail line to CPR and its one-half interest in the contiguous 35.26-mile jointly owned rail lines. The Board and its predecessor have found the acquisition and operation of greater lengths of rail line to be limited in scope. *See, e.g., Ind. R.R. Co. – Acquisition & Operation – Ill. Cent. R.R. Co.*, 6 I.C.C.2d 1004, 1011 (1990)(acquisition of 90.3 miles of rail line found limited in scope); Finance Docket No. 31482, *Mid Michigan R.R. Co. – Purchase Exemption – The St. Joseph & Grand Island R.R. Co. Line Between St. Joseph, MO and Upland, KS* (not printed), served August 7, 1989 (acquisition of 107.3 miles of rail line found limited in scope); Finance Docket No. 32149, *Genesee & Wy. Indust., Inc. – Continuance*

in Control Exemption – Allegheny & E. R.R., Inc. (not printed), served October 23, 1992 (acquisition of control of carrier operating 147.1 miles of rail line and serving 8 customers found limited in scope).

Moreover, the change in ownership of the Conveyed Lines will not affect traffic volumes on the Conveyed Lines or the routings available to the shippers other than shifting the BNSF traffic from a BNSF-owned rail line to the parallel CPR rail line. Because of the Haulage Operation, the proposed transaction will not significantly increase CPR's share of the transportation service market in the region. The proposed transaction will not have any measurable impact on the national, regional or local rail industry. Consequently, the proposed transaction is of limited scope.

C. Regulation Of The Proposed Transaction Is Not Necessary To Protect Shippers From An Abuse Of Market Power.

Even if the proposed transaction were not limited in scope, the transaction should nevertheless be exempted because the transaction will not result in any abuse of market power by either BNSF or CPR. The proposed transaction represents merely a change in the ownership of the Conveyed Lines. There will be no loss of rail competition. CPR will continue to operate as it does today. Through the Haulage Agreement, BNSF retains the right to service all customers on the Conveyed Lines.⁷ Thus, BNSF will continue to provide common carrier service to all shippers on the Conveyed Lines at competitive rates and there will be no material change in the level or nature of service provided to those shippers. All of the customers will be able to ship

⁷ The Board has recognized that car haulage can be an effective means of preserving competition. *See, e.g., Union Pacific/Southern Pacific Merger*, 1 S.T.B 233, 252 (1996)(“Through trackage rights, haulage, ratemaking authority or other mutually acceptable means, BNSF will be able to provide competitive service to all 2-to-1 shippers...”); *CSX Corp. – Control – Conrail Inc.*, 3 S.T.B. 196, 388 (1998)(CSX ordered to negotiate with CPR a haulage or trackage rights agreement over the east-of-the-Hudson Conrail line to provide CPR access to Fresh Pond in Queens, NY).

their products as they have previously and two of the customers will gain additional options. The bridge traffic that currently moves over the Joint Line will continue to move as in the past.

Existing customers on the Joint Line will retain the services of both BNSF and CPR while the two customers on the BNSF Line will not only retain BNSF service but will gain access to CPR, and thus will have an enhanced competitive position. Consequently, the proposed transaction will not result in an abuse of market power. Rather, the proposed transaction, overall, will enhance intra-modal competition. See STB Finance Docket No. 33609, *Norfolk S. Ry. – Purchase Exemption – Union Pac. R.R. Co.* (not printed), served October 29, 1998, slip op. at 3 (finding no anticompetitive effect where “transaction represents only a change in owners”); Finance Docket No. 31469, *S.C. Cent. R.R. – Purchase – CSX Transp., Inc. Line Between E. Greenville and Laurens, SC* (not printed), served July 30, 1990, slip op. at 3 (finding no anticompetitive effect where the number of competitive alternatives available to shippers remains unchanged). As a practical matter, the proposed transaction will only result in a change of ownership and not a change in service or adverse change in competition. Accordingly, regulation is not necessary to protect shippers from an abuse of market power.

II. LABOR PROTECTION.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption power to relieve a rail carrier of its statutory obligation to protect the interests of employees. Therefore, as a condition to granting the exemption, petitioners have no objection to the Board imposing the employee protective conditions set forth in *N.Y. York Dock Ry. – Control – Brooklyn E. Dist. Terminal*, 360 I.C.C. 60 (1979).

III. ENVIRONMENTAL AND HISTORIC IMPACTS.

CPR is acquiring BNSF's interests in the Conveyed Lines for continued rail operations. Further Board approval is required for CPR to abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Petition for Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

CPR's acquisition will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. CPR's acquisition of BNSF's interests in the Conveyed Lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

IV. EXPEDITED CONSIDERATION REQUESTED.

Petitioners respectfully request expedited processing of this Petition. This spring BNSF was forced to embargo the Joint Line because of flooding which the Joint Line experiences on a fairly routine basis. DMVW is planning to make repairs to the Joint Line to improve service but cannot begin the repairs and upgrades until this transaction is exempted by the Board and

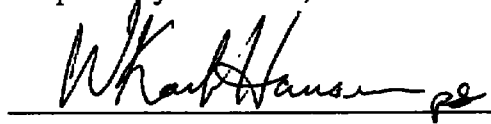
DMVW's lease transaction with CPR is also exempted by the Board. In order to complete the repair work before the winter weather sets in, DMVW would need to start by early September. Because the proposed transaction will not result in any significant change in operations or any harm to shippers or employees, opposition to the proposed transaction is not expected.

Nevertheless, petitioners are serving this Petition upon the Governor of North Dakota, the North Dakota Transportation Department, the North Dakota Public Service Commission, all active shippers on the Conveyed Lines and DMVW.

CONCLUSION

Regulation of the proposed transaction is not necessary to carry out the RTP. Also, the proposed transaction is limited in scope. Furthermore, regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Consequently, petitioners respectfully request that the Board exempt from the prior approval requirement the proposed acquisition by CPR of BNSF's interests in the Conveyed Lines and to grant such exemption expeditiously to be effective within seven days from the Service Date.

Respectfully submitted,



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COMPANY D/B/A CANADIAN PACIFIC
RAILWAY

Dated: July 16, 2007

EXHIBIT 1

MAPS

corner section 1
1656

Part 1
1970

LIGNITE - CROSBY, NORTH DAKOTA

MILEPOST 89.5
CROSBY

NOONAN

LARSON BURKE CO.
BURKE COUN.

STAMPEDE

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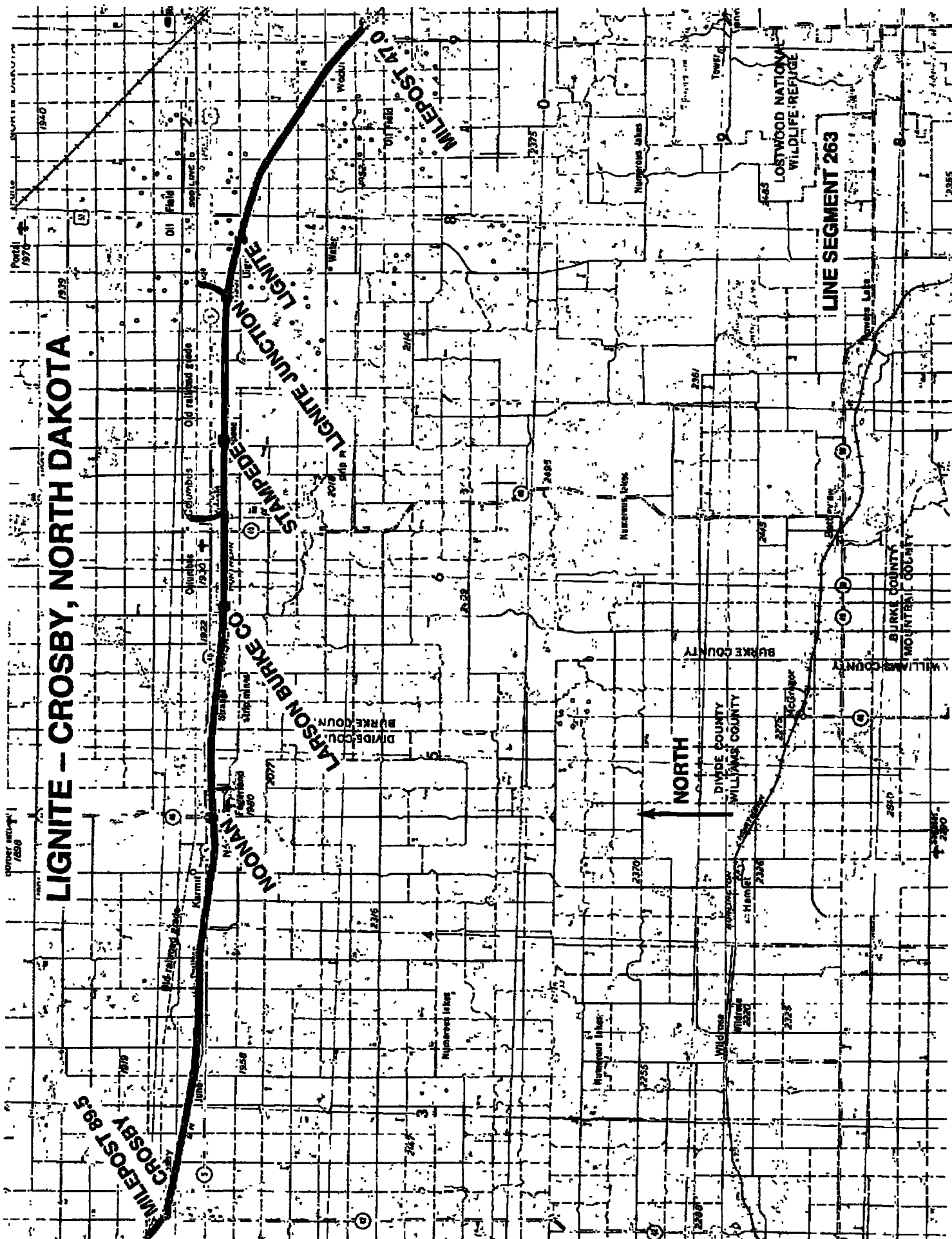
DIVIDE COUNTY
WILLIAMS COUNTY

BURKE COUNTY

BURKE COUNTY
MOUNTAIN COUNTY

LOSTWOOD NATIONAL
WILDLIFE REFUGE

LINE SEGMENT 263



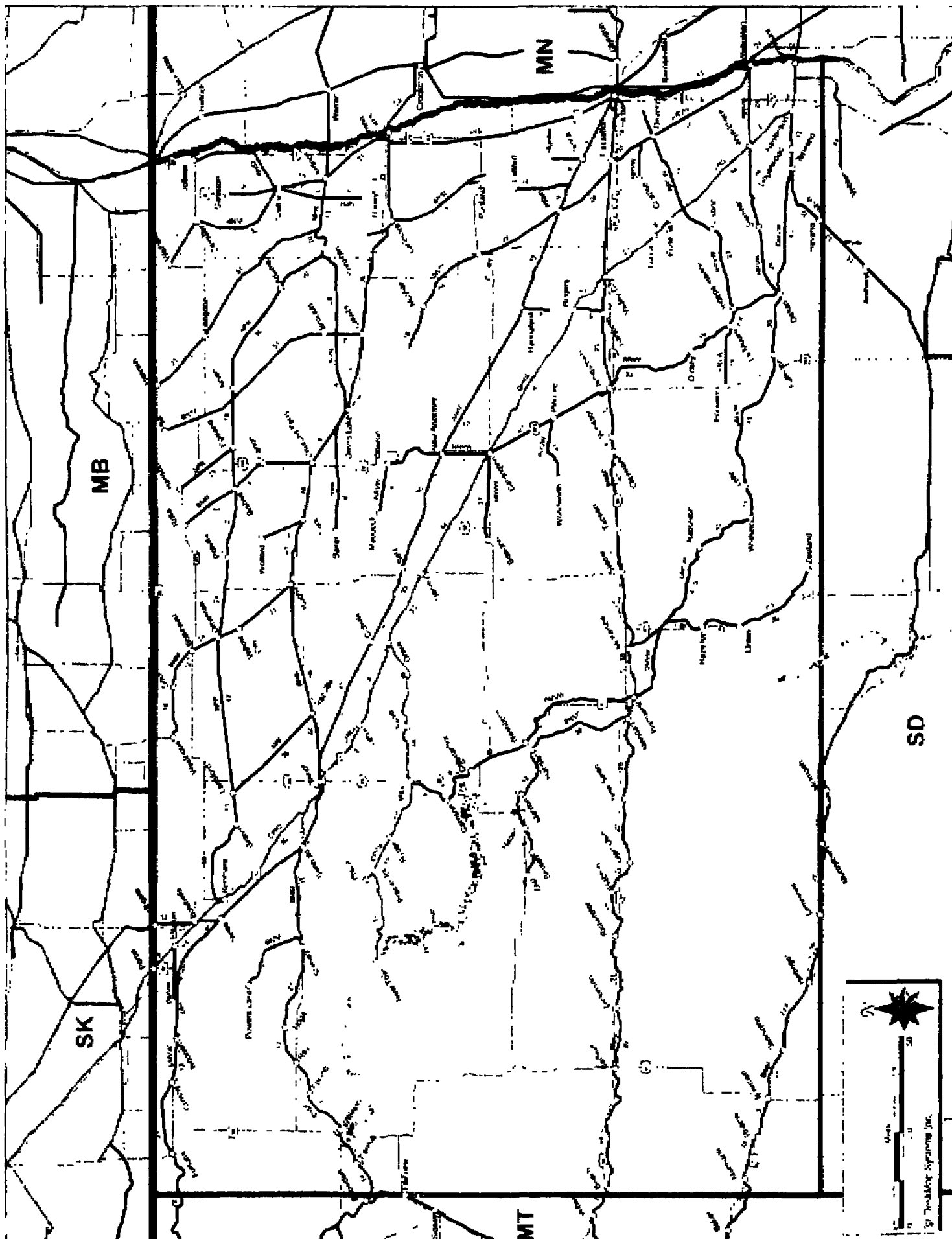


EXHIBIT 2

PURCHASE AND SALE AGREEMENT
(REDACTED)

PRIVILEGED AND CONFIDENTIAL – June 29, 2007

**PURCHASE AND SALE AGREEMENT FOR RAIL OPERATIONS
AND REAL AND PERSONAL PROPERTY
BETWEEN CROSBY AND A POINT EAST OF LIGNITE
IN DIVIDE AND BURKE COUNTIES, NORTH DAKOTA**

BY AND BETWEEN

BNSF RAILWAY COMPANY, SELLER

AND

**SOO LINE RAILROAD COMPANY, dba Canadian Pacific Railway,
BUYER**

DATED JULY 10, 2007

AGREEMENT DIRECTORY

SECTION NUMBER / NAME

ARTICLE I. DEFINITIONS; INTERPRETATION

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**PURCHASE AND SALE AGREEMENT FOR RAIL OPERATIONS
AND REAL AND PERSONAL PROPERTY
BETWEEN CROSBY AND A POINT EAST OF LIGNITE
IN DIVIDE AND BURKE COUNTIES, NORTH DAKOTA**

BY AND BETWEEN

BNSF RAILWAY COMPANY, SELLER

AND

**SOO LINE RAILROAD COMPANY, dba Canadian Pacific Railway,
BUYER**

This Agreement is entered into as of June __, 2007 (the "Effective Date") between BNSF RAILWAY COMPANY, a Delaware corporation with its principal place of business at 2500 Lou Menk Drive, Fort Worth, Texas, 76131 (hereinafter referenced as "Seller" or "BNSF"), and SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as Canadian Pacific Railway (hereinafter referenced as "Buyer" or "CPR").

WHEREAS, Seller desires to sell and transfer to Buyer, on the terms and conditions set forth in this Agreement, all of Seller's rail operations and real property interests in: (1) the jointly owned and operated Crosby-Lignite Junction rail line located between Milepost 89.5±, at the connection to Buyer's line at Crosby, North Dakota, and Milepost 56.96±, at the connection to Buyer's line at Lignite Junction, North Dakota; and (2) the BNSF-owned rail line located between Milepost 56.96±, at Lignite Junction, North Dakota, and Milepost 47.0±, east of Lignite, North Dakota, and to transfer certain other rights and obligations as specified in this Agreement; and

WHEREAS, Buyer desires to purchase and acquire, pursuant to the terms and conditions set forth in this Agreement, such operations, property, and related rights and obligations as specified in this Agreement.

NOW THEREFORE, Buyer and Seller agree as follows:

ARTICLE I
DEFINITIONS; INTERPRETATION

Section 1.1 *Definitions.* The terms as defined and set forth in Exhibit A to this Agreement, when used in this Agreement, shall have the meanings set forth in said Exhibit A.

Section 1.2 Interpretation. Unless a clear contrary intention appears or the context otherwise requires, in this Agreement:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any gender includes each other gender;
- (c) reference to any applicable law means such applicable law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder;
- (d) reference to any Article, Section or Exhibit means such Article, Section or Exhibit hereof;
- (e) "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section, Exhibit or other provision hereof; and
- (f) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term.
- (g) It is the intent of the parties that the provisions of this Agreement and all provisions of the other transaction documents be given effect where possible. In the event of a conflict between the terms set forth in any Exhibit and the main body of this Agreement, the terms of the main body of this Agreement shall control, unless and except to the extent expressly provided otherwise in either the main body or the Exhibit(s).

ARTICLE II

DESCRIPTION OF PREMISES

Section 2.1 Conveyance of Premises. Seller shall convey and quitclaim to Buyer on the Closing Date, subject to the terms and conditions set forth in this Agreement and the terms, conditions, reservations and exceptions set forth in the Quitclaim Deeds in the form attached hereto as Exhibit B, and incorporated herein by reference, all of Seller's interests, if any it may have, in the following described railroad lines:

The jointly owned and operated Crosby-Lignite Junction railroad line from Milepost 89.5±, at the connection to Buyer's line at Crosby, North Dakota, to Milepost 56.96±, at the connection to Buyer's line at Lignite Junction, North Dakota ("Joint Line") and the BNSF-owned railroad line from Milepost 56.96±, at the connection to Buyer's line at Lignite Junction, North Dakota, to Milepost 47.0±, east of Lignite, North Dakota ("BNSF Line") including all of Seller's sidings and related trackage and the connecting tracks identified in Article II, Sections 10(a), (b), (c) and (d) of the 1959 Agreement, all as more particularly described in Seller's Quitclaim Deeds attached hereto as Exhibit B ("Real Property") and Seller's Bill of Sale attached hereto as Exhibit C (the "Personal Property"). The conveyance of the Real Property, appurtenances, and Personal Property on the referenced Real Property shall be referred to collectively as the conveyance of the "Premises." The

conveyance of the Premises shall be made subject to this Agreement and subject to any covenants, conditions, restrictions and reservations contained elsewhere in this Agreement.

Section 2.2 Covenants, Conditions, Restrictions and Reservations. The following covenants, conditions, restrictions and reservations set forth in this Section 2.2 shall run with the land and shall be binding upon the successors and assigns of Buyer and inure to the benefit of Seller and its successors and assigns.

- (a) Seller reserves access rights across and to the entire Real Property for the exercise of rights related to retained interests in the Real Property under Section 2.2(b) below, as reasonably deemed necessary or advisable by Seller, without charge, provided that (i) Seller's access shall not in any way interfere with or impede railroad operations, or materially interfere with other uses of the Premises by Buyer, its successors or assigns, and their respective lessees, licensees and agents, (ii) such access rights shall be exercised to the least extent required for enjoyment of the retained interests, (iii) such rights shall not include use of the Real Property for a roadway or use of the railroad tracks for any purpose, and (iv) prior to exercising any such right of access, Seller, its successor or assign, and their contractors and agents shall execute in each instance the right of entry agreement customarily used by Buyer, its successor or assign for such purpose at that time, or such other agreement as is mutually acceptable to the parties.
- (b) Seller reserves for itself, its successor and assigns, the rights to all iron, natural gas, coal, oil and minerals of any nature whatsoever upon or in the Real Property, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of said minerals by any means or methods suitable to Seller, its successors and assigns, but in such manner as not to damage the surface of said Real Property or to interfere with the use thereof by Buyer, its successors or assigns.

Section 2.3 Retention of Rail Transportation Business. Pursuant to the Haulage Agreement, Seller is retaining the rail transportation business which Seller conducts on the Premises, subject to the terms and conditions set forth in this Agreement, in the Quitclaim Deeds, the Bill of Sale, or in any Assumed Contract.

Section 2.4 Conveyance of Property Annexed to and Personal Property on Premises. Seller shall convey and transfer to Buyer on the Closing Date, by a Bill of Sale substantially in the form attached hereto as Exhibit C, and incorporated herein by reference, all of Seller's interest in all rail, ties, spikes, tie plates, rail anchors, bridges, trestles, culverts, signaling equipment, and other supporting structures, ballast, track materials and supplies (excluding any vehicles, maintenance equipment on wheels, radios, computer equipment, or office furnishings or supplies) that, on the Closing Date, are not already being conveyed to Buyer by virtue of the Quitclaim Deeds, but which then are present on the Real Property; provided, however, Seller does not purport to own any interest in signaling or grade crossing equipment or property to the extent that it may be owned by a third party, such as a governmental authority or municipality. Seller does convey and transfer whatever rights and obligations it may have to possess or use such signaling or grade crossing equipment. Any and all personal property owned by Seller or any third parties located on the

Premises and not expressly conveyed herein may be removed by Seller prior to Closing. Except as may be expressly provided otherwise herein, any and all personal property of Seller remaining on the Premises as of Closing and not expressly reserved herein, in the Deeds or in the Bill of Sale shall pass to Buyer on the Commencement Date. Buyer acknowledges and affirms that Buyer's purchase of the Premises in no way entitles Buyer to any right, title, interest or use in, to and of any BNSF trademark, service mark or other intellectual property not exclusively related to the Premises.

Section 2.5 Conveyance Subject to Conditions and Restrictions. The conveyance of the Premises shall be subject to any other terms and conditions set forth in this Agreement or any exhibits hereto and the Assumed Contracts. Conveyance of the Premises shall be subject to any Encumbrances affecting the Premises as of the Closing, whether of record or not; provided, however, that Buyer shall not assume any obligations of Seller except as provided in Section 2.7. Seller shall conduct an in-depth search of Seller's records in locations where Encumbrances affecting the Premises might reasonably be located, list those documents in Exhibit M and provide Buyer all such documents within twenty (20) days after the date of this Agreement. In the event Seller subsequently locates any additional document constituting an Encumbrance on the Premises, Seller shall promptly deliver a copy of the same to Buyer and, if located prior to Closing, Exhibit M shall be revised to reflect the same. Seller represents and warrants that all documents delivered to Buyer in accordance with this Section shall be true and complete copies of the original documents, except as stated otherwise by written notice delivered to Buyer with such copies. In the event that after Closing either party locates any additional document constituting an Encumbrance on the Premises, the parties will resolve any dispute over that document pursuant to Section 15.10.

Section 2.6 No Warranties as to Title. Buyer acknowledges that Seller's interest in the Premises may be subject to reversion upon abandonment of use for railroad purposes or other conditions, and that the Quitclaim Deeds shall release and convey only Seller's interest, if any it may have, in the Premises.

Section 2.7 Assignments.

- (a) Seller shall assign to Buyer on the Closing Date, subject to all terms and conditions set forth in this Agreement, or in any agreement assumed by Buyer in accordance with the terms of this Agreement (all such agreements being identified in Exhibit D attached hereto and, except for any agreements rejected by Buyer by written notice to Seller prior to Closing, collectively, hereinafter referred to as the "Assumed Contracts"), all assignable rights and obligations of Seller to the extent that they relate to the ownership of the Premises (other than those pertaining to ownership of the retained interests under Section 2.2 above) or are necessary for the conduct of rail freight transportation business on the Premises and/or are set forth in any Assumed Contract; provided, however, that Buyer shall assume only such obligations as arise on or after the Commencement Date and Seller shall retain and perform all such obligations as arose prior to the Commencement Date. Buyer shall accept, effective as of the Commencement Date, the assignment of all such rights and obligations, in accordance with their terms and the terms of this Agreement. Seller shall reserve all rights set forth in any agreement identified in Exhibit D to the extent those rights are required for the conduct of rail freight

transportation on one or more of the other rail lines or property owned or operated by Seller at the time of Closing ("Seller's Lines"), and provided that Seller shall continue to assume all obligations related to such reserved rights to the extent such obligations pertain to rail freight transportation on Seller's Lines. Notwithstanding the foregoing, Buyer's assumption of Seller's obligations shall be limited to Seller's obligations under the Assumed Contracts and such other of Seller's obligations, if any, as are expressly identified in Exhibit D and the Assignment and Assumption Agreement to be executed by the parties at Closing. Buyer's acceptance of the assignment of any of Seller's rights hereunder shall not be construed as Buyer's assumption of any other obligations of Seller whatsoever.

- (b) Seller shall furnish to Buyer copies of the Assumed Contracts within twenty (20) days after the date of this Agreement. If any assignable contract referenced in this Section is not identified in Exhibit D, but is located prior to Closing, Seller shall promptly provide to Buyer a copy of such contract upon locating it, Buyer shall at its option assume the rights and obligations in such contract and Exhibit D shall be amended to include any such contract assumed by Buyer. Seller represents and warrants that all documents delivered to Buyer in accordance with this Section shall be true and complete copies of the original documents, except as stated otherwise by written notice delivered to Buyer with such copies. Except as may otherwise be provided in any other written agreement between Buyer and Seller entered into simultaneously or after the date of this Agreement, Buyer shall make no Claim against Seller arising out of any failure to obtain a consent to assignment from any party to an agreement assigned by Seller to Buyer, in whole or in part. It is the intent of both Seller and Buyer that, unless prohibited by the terms of such contracts, all assignments of rights and assumptions of obligations related to the Premises shall be effective as of the Commencement Date, whether or not any consents to such assignments have then been obtained. Seller shall make reasonable efforts to obtain all necessary consents to assignments related to the Premises. At Closing, except as otherwise provided in this Agreement, Buyer shall assume all rights, liabilities, and obligations arising or accruing on and after the Commencement Date under the Assumed Contracts. If any of the Assumed Contracts requires consent to assignment and such consent has not been obtained prior to Closing, Buyer may require Seller to obtain such consent as a condition to Closing. If any assignable contract referenced in this Section is located after Closing, the parties will resolve any dispute over the assignment of such contract pursuant to Section 15.10.

Section 2.8 *Delivery of Records*. Seller shall deliver to Buyer, within thirty (30) days after the date of this Agreement and thereafter prior to the Closing Date as is necessary to keep Buyer fully informed, originals or copies of whatever records, prints, archival information, or other materials which bears upon the use or maintenance or title or condition to or of the Premises during the time the Premises were owned or operated by Seller ("Records") that Seller locates upon conducting a search of Seller's records in locations where such documentation might reasonably be located. Except with respect to Encumbrances, Assumed Contracts and Seller's Environmental Reports, Seller makes no representations or warranties as to the

completeness or accuracy of any such Records. Notwithstanding the foregoing, within twenty (20) days after the date of this Agreement, Seller shall furnish to Buyer copies of all material reports or other documentation currently in Seller's possession concerning Environmental Defects and other environmental conditions at, in or under the Premises (collectively, "Seller's Environmental Reports"). If any additional Seller's Environmental Reports are prepared prior to Closing, the preparer of such additional reports shall expressly authorize reliance by Buyer and Seller shall promptly furnish copies of the same to Buyer.

Section 2.9 Rights and Obligations Transferred to Buyer. On and after the Commencement Date, Buyer, or Buyer's designee, agrees to perform the rail freight transportation services that Seller conducts on the Premises subject to the Haulage Agreement between Buyer and Seller taking effect on the Commencement Date, and provided that Buyer shall not be obligated to perform rail transportation services hereunder in the event it obtains STB authority or exemption to abandon or discontinue service over the Joint Line or the BNSF Line.

Section 2.10 Telecommunications Equipment. The Telecommunications Disposition Plan is attached as Exhibit E to this Agreement. The Telecommunications Disposition Plan shall set forth all telecommunications equipment which shall remain on the Premises and be transferred and sold to Buyer under the terms of this Agreement and all such equipment which may be removed or relocated by Seller at any time prior to Commencement Date. In the event any equipment designated for removal or relocation is not removed or relocated by the Commencement Date, such equipment shall be deemed to be a part of the Premises conveyed to Buyer pursuant to the terms of this Agreement.

Section 2.11 Buildings. Seller and Buyer jointly own a depot located at Crosby, North Dakota. All of Seller's right, title and interest in and to the building at Crosby will be sold and transferred to Buyer as part of this transaction, and where a Bill of Sale or other documentation may be required for the conveyance of any such building, Seller shall deliver such instrument at Closing pursuant to Section 2.1 hereinabove. No personal property, including without limitation, furnishings and computer equipment, within the building shall be conveyed in this transaction; provided, however, that any personal property that is not removed or relocated by the Commencement Date shall be deemed to be a part of the Premises conveyed to Buyer pursuant to the terms of this Agreement.

2.12 Inspections Prior to Closing. In accordance with the provisions of this Section and subject to Buyer's execution of Seller's Standard Right of Entry Agreement, attached as Exhibit F, Buyer, or its designated representatives, shall have reasonable access to the BNSF Line and may conduct, at its sole cost and expense (except as otherwise provided in this Agreement), such surveys, studies, tests, or inspections as it deems appropriate. In accordance with the provisions of the 1959 Agreement, Buyer, or its designated representatives, has reasonable access to the Joint Line and may, without permission of Seller, conduct, at its sole cost and expense, such surveys, studies, tests, or inspections as it deems appropriate. Buyer shall provide copies of any such reports to BNSF. Prior to conducting any such surveys, studies, tests, or inspections on the BNSF Line, Buyer shall require all contractors doing any test or inspection of the BNSF Line to provide Seller with a certificate of insurance evidencing Commercial

General Liability insurance coverage of at least \$1,000,000 with Seller named as an additional insured and showing worker's compensation coverage with a waiver of subrogation rights against Seller. Buyer shall conduct all surveys, studies, tests and inspections of the Premises in a manner that will not materially interfere with the operations of Seller thereon and will not materially harm or damage the Premises or cause any Claim materially adverse to Seller, and immediately following such surveys, studies, tests, and inspections, Buyer shall restore the Premises to substantially the same condition existing immediately prior to such activities. Buyer shall give Seller reasonable prior notice of any such surveys, studies, tests, or inspections and Seller shall have the right to be present during any such surveys, studies, tests or inspections. Prior to Closing, Buyer shall not disclose the results of any such surveys, studies, tests, or inspections to any third parties (other than its representatives, advisors and consultants) except as required by applicable law or with written consent of Seller. In the event this Agreement is terminated pursuant to Article XVII, Buyer shall provide to Seller the original and all copies of any such surveys, studies, tests and inspections that pertain solely to the BNSF Line, and copies of any such surveys, studies, tests and inspections that pertain to the Joint Line, within ten (10) days of the termination of this Agreement.

2.13 ASTM Phase I Due Diligence. Not more than 180 days prior to Closing, at Buyer's option, Buyer and Seller shall have an ASTM Standard E 1527-05 Phase I Environmental Site Assessment ("Phase I Assessment") prepared by a contractor selected by Buyer and reasonably acceptable to Seller, covering all or a portion of the Premises. Buyer shall arrange for completion of the Phase I Assessment and, at Buyer's option, may elect to have the Phase I Assessment completed sooner than 180 days prior to Closing and subsequently updated prior to Closing. Any such update(s) shall be considered part of the Phase I Assessment for all purposes of this Agreement. Seller shall be responsible for paying up to \$25,000 for the Phase I Assessment. In the event the cost of the Phase I Assessment exceeds \$25,000, the parties shall negotiate the sharing of any such excess cost. If the parties are unable to reach an agreement on the sharing of such excess costs, either party may terminate this Agreement pursuant to Article XVII.

ARTICLE III

CONSIDERATION FOR PURCHASE AND SALE

Section 3.1 Buyer Obligations. In consideration for Seller's sale of its interests in the Premises and conveyance of the other rights, interests and obligations described in Article II of this Agreement, Buyer agrees to all of the following:

- (a) To accept all transferred real and personal property "AS IS, WHERE IS" and "with all faults," except for the specific representations and warranties and covenants expressed in this Agreement, the Quitclaim Deeds, the Bill of Sale or any other instrument executed simultaneously with this Agreement or at or before Closing.
- (b) To pay on the date of Closing a cash purchase price of:
payable by cash, check or wire transfer attributable to the sale and purchase of all of the assets, rights and obligations referred to in this Agreement.

- (c) To pay in addition to the cash purchase price its own out-of-pocket costs of Closing. Closing costs shall include, but are not limited to, any service fees, real estate transfer taxes, recording fees and sales taxes associated with this Agreement or any of the conveyances governed by this Agreement. Each party shall bear its own attorneys' fees, accounting expenses, and consultants' and other professional service fees. The parties will split the cost of any closing or escrow fees charged by a title insurance company or other third party assisting with the Closing or administration of any escrow.
- (d) To support and not oppose or otherwise frustrate Seller's efforts, if any, to abandon its line of railroad located east of MP 47.0, near Lignite, North Dakota and west of MP 35.0, near Niobe, North Dakota, in the event Seller files for abandonment approval, or exemption from approval, prior to January 1, 2010. Buyer further agrees not to file an Offer of Financial Assistance in such abandonment proceeding without providing Seller 30 days' advance notice.
- (e) To support and not oppose or otherwise frustrate Seller's discontinuance of all or portions of Seller's trackage rights over the rail line located between Hankinson, North Dakota and Geneseo Junction, North Dakota, defined as the Geneseo Joint Section in the 1959 Agreement, provided that the common carrier rights of all of Seller's assignees, or others operating under such common carrier rights, operating over such rail line are simultaneously discontinued.

Section 3.2 *Seller Obligations.* In consideration for Buyer's purchase of Seller's interests in the Premises and acquisition of the other rights, interests and obligations described in Article II of this Agreement, Seller agrees to the following:

- (a) To pay its own out-of-pocket costs of Closing. Closing costs shall include, but are not limited to, attorneys' fees, accounting expenses, and consultants' and other professional service fees. The parties will split the cost of any closing or escrow fees charged by a title insurance company or other third party assisting with the Closing or administration of any escrow.
- (b) To support and not oppose or otherwise frustrate Buyer's efforts, if any, to abandon or discontinue operations on all or parts of the Premises, in the event Buyer files for abandonment or discontinuance approval, or exemption from approval, prior to January 1, 2010. Seller further agrees not to file an Offer of Financial Assistance in such abandonment proceeding without providing Buyer 30 days' advance notice.

ARTICLE IV CLOSING

Section 4.1 *Conditions of Closing.* The following shall be conditions to Seller's and Buyer's respective obligation to consummate the transaction. In the event any of these conditions are not satisfied by the Closing Date, Seller or Buyer respectively may in its sole discretion elect to extend the Closing Date (subject to the provisions of Article XVII, paragraph

(a)) or terminate this Agreement by written notice to the other party. In the event Seller and Buyer elect to proceed to Closing, the following terms and conditions, to the extent they may remain unfulfilled, shall survive Closing.

- (a) Buyer and Seller shall have obtained all Governmental Approvals required under Section 5.1. In the event any Governmental Body shall impose additional material terms or conditions upon this conveyance or revoke the authority to enter into this Agreement, either party may terminate this Agreement without liability to the other. In such event, neither Buyer nor Seller shall be entitled to any reimbursement for payment of any fees or costs of the transaction, provided that payment of any part of the purchase price paid by Buyer to Seller for the Premises shall be refunded to Buyer without interest.
- (b) Buyer and Seller shall have fulfilled any conditions required by any Governmental Body which may be imposed as a condition of consummation of this transaction.
- (c) Buyer and Seller shall have performed each of their respective pre-Closing obligations under this Agreement.
- (d) To the extent Buyer and Seller shall have identified any Claims they have against each other relating to the Premises, Buyer and Seller shall have agreed on a reasonable manner of settling such Claims at Closing. All such Claims and manner of settlement shall be set forth in Exhibit K, which shall be amended as required prior to Closing.
- (e) Buyer shall have made arrangements for the provision of rail transportation service over the Premises on terms acceptable to it in its sole discretion.
- (f) Buyer and Seller shall have completed the Phase I Assessment pursuant to the provisions of Section 2.13, and such further environmental assessments as are required pursuant to Article VIII, and shall have agreed upon any Action Plan that is required pursuant to Article VIII.
- (g) Seller shall have complied with Seller's maintenance and other obligations set forth in the 1959 Agreement with respect to the Joint Line. Buyer, at Buyer's sole cost and expense, shall have made an assessment of the track conditions on the Joint Line and Seller, at Seller's sole cost and expense, shall have remedied identified deficiencies. In addition, Buyer, at Buyer's sole cost and expense, shall have made an assessment of the track conditions on the BNSF Line and Seller, at Seller's sole cost and expense, shall have remedied identified deficiencies and complied with Federal Railroad Administration Class 1 track standards pursuant to 49 CFR Part 213 with respect to that portion of the BNSF Line Buyer will utilize for rail transportation service after Closing, including but not limited to that portion between Lignite Junction and customers

at Lignite, and shall have maintained the BNSF Line in operable condition east of that point to MP 47.0.

- (h) Seller and Buyer shall have amended the 1959 Agreement as shown in Exhibit I.
- (i) Seller and Buyer shall have entered into a Haulage Agreement in the form attached as Exhibit G.
- (j) Seller shall have secured necessary consents to assignment of the agreements set forth in Exhibit D.
- (k) The representations and warranties of Seller and Buyer, all of which shall be deemed remade as of the Closing Date, shall be true and correct in all material respects up through and including the Closing Date.
- (l) There shall not have occurred a material adverse effect on or to the Premises, or any adverse findings by Buyer or other event or condition that would allow the parties to terminate this Agreement pursuant to Article XVII below.

Section 4.2 Closing Date. Subject to satisfaction of the conditions to Closing set forth in this Agreement, the closing of the transactions contemplated hereby (the "Closing") shall take place within ninety (90) days of the effective date of a final STB decision authorizing, or exempting from authorization, the sale of the Premises to Buyer or a final, non-appealable Court decision on review of the STB decision, if any ("Final Decision"). The Closing shall take place at a mutually agreed upon location, date and time, which location, date and time shall be agreed upon by the parties in writing within 30 days of the Final Decision (the actual date of Closing, the "Closing Date"). The Commencement Date shall be 12:01 a.m., Central Time on the day following the Closing Date, or such other date as the parties may mutually agree in writing. Payments to be made by either party shall be payable to the other party by means of a corporate check or paid via electronic funds transfer.

Section 4.3 Closing Obligations. At or before the Closing:

- (a) Seller shall deliver the following:
 - i. duly executed Quitclaim Deeds to the Premises substantially in the form attached as Exhibit B and sufficient for recordation;
 - ii. duly executed Bill(s) of Sale substantially in the form attached as Exhibit C;
 - iii. customary affidavit of Seller indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against or involving Seller or the Premises; that there has been no skill, labor, or material furnished to the Premises for which payment has not been made or for which mechanics' liens could be filed; and there are no other unrecorded

interests in the Premises known to Seller, as required by the issuer of any title insurance policy desired by Buyer;

- iv. such other assignments, documents and other instruments of transfer and conveyance as may be required to effect the terms of this Agreement, each in form and substance mutually agreed upon between Buyer and Seller;

- v. payment to Buyer in the amount of _____, as a refund of the annual equalization fee under the 1959 Agreement, in the event the Closing Date occurs within 90 days of the Final Decision, except where the delay in Closing beyond 90 days of the Final Decision is the sole fault of Seller;

- vi. a duly executed Haulage Agreement substantially in the form attached as Exhibit G;

- vii. a duly executed Second Amendment to the 1959 Agreement substantially in the form attached as Exhibit I;

- viii. release of liens except for the Encumbrance identified in Exhibit M;

- ix. payment to Buyer in the amount set forth in Exhibit K as the amount Seller owes Buyer, if any, under the 1959 Agreement;

- x. payment to Buyer in the amount of the sum of all security deposits, if any, held by Seller under the Assumed Contracts, which amounts shall be set forth in the Assignment and Assumption Agreement to be executed by the parties at Closing;

- xi. payment to Buyer of its prorated share, if any, of real property taxes, franchise fees, special assessments, if any, rentals, utilities and other income or fees attributable to the Assumed Contracts; and

- xii. a duly executed closing settlement statement in the form attached hereto as Exhibit P, or such other form as is mutually agreeable to the parties.

- xiii. an affidavit of rail traffic to and from points between MP 47.0 and MP 53.0 on the BNSF Line, by calendar month from January 1, 2005 to Closing.

(b) Buyer shall deliver the following:

- i. payment to Seller in the amount of _____;
- ii. a duly executed Haulage Agreement substantially in the form attached as Exhibit G;

- iii. a duly executed Second Amendment to the 1959 Agreement substantially in the form attached as Exhibit I;
- iv. such other assignments, documents and other instruments of transfer and conveyance as may be required to effect the terms of this Agreement, each in form and substance mutually agreed upon between Buyer and Seller;
- v. a check in the amount set forth in Exhibit K as the amount Buyer owes Seller, if any, under the 1959 Agreement;
- vi. payment to Seller of its prorated share, if any, of real property taxes, franchise fees, special assessments, if any, rentals, utilities and other income or fees attributable to the Assumed Contracts; and
- vii. a duly executed closing settlement statement in the form attached hereto as Exhibit P, or such other form as is mutually agreeable to the parties.

Section 4.4 Further Assurances. The parties agree to take any action (including, but not limited to, the execution, acknowledgement and delivery of documents, and filing of applications, petitions, or other documentation with any regulatory authorities) as may reasonably be required by the other party for the implementation or continuing performance of this Agreement.

Section 4.5 [Reserved].

Section 4.6 Pro-Rations. Real property taxes, franchise fees, special assessments, if any, rentals, utilities, and other income or fees attributable to the Assumed Contracts shall be prorated between Seller and Buyer as follows:

(a) Miscellaneous revenue and other income (such as rental or easement income) billed or billable for any period shall be prorated for such period on the basis of the actual number of calendar days in such period occurring before and after the Commencement Date, with Seller being entitled to the portions that are attributable to all days prior to the Commencement Date and Buyer being entitled to the portions that are attributable to all days on and after the Commencement Date; provided, however, that such prorations shall be adjusted as necessary to give each party 100% of any revenue and other income pertaining to the Joint Line prior to the Commencement Date to which such party is entitled under the 1959 Agreement.

(b) Real property taxes and installments of special assessments payable therewith (whether assessed against the land, trackage or buildings), franchise fees, rentals, utilities or other fees paid or payable for any period shall be prorated for such period on the basis of the actual number of calendar days in such period occurring before and after the Commencement Date, with Seller being responsible for the portions that are attributable to all days prior to the Commencement Date and Buyer being responsible for the portions that are attributable to all days on and after the

Commencement Date; provided, however, that such prorations shall be adjusted as necessary to hold each party fully responsible for all such amounts pertaining to the Joint Line prior to the Commencement Date as such party is responsible under the 1959 Agreement. If, at the time of Closing, the amount of real property taxes due for the year of Closing is not known, such taxes shall be prorated based on the taxes due for the immediately preceding year plus ten (10%) and the parties shall reconcile promptly when the actual amounts for the year of Closing are known; provided, however, that if the total of actual taxes due for the year of Closing is within ten percent (10%) of the total used for prorations at Closing, then the prorations at Closing shall be final. Any amount due after reconciliation of such taxes shall be paid by the owing party within thirty (30) days after written demand by the other party. Taxes for any separately taxed parcel that are payable by a third party, such as a lessee, shall not be prorated; provided, however, that in the event Seller has collected any such third party taxes or any such taxes attributable to the BNSF Line are past due, Seller shall at its option pay the amounts so collected or past due to the appropriate taxing authority, or pay to Buyer at Closing all such amounts and then Buyer shall be liable for payment to the taxing authority and Seller shall have the right to seek from the responsible third party reimbursement of any payments for past due amounts.

Section 4.7 Public Works. Prior to Closing, Seller shall make reasonable inquiry as to whether any government-funded public works projects (e.g., grade separation, rail rehabilitation, and crossing protection projects) on the Premises are pending and shall provide Buyer such information as Seller is able to obtain concerning the subject matter, which information shall be listed on Exhibit O to this Agreement and updated as necessary to be current as of the Closing Date. Seller shall pay all assessments associated with work performed on government funded public works projects before the Commencement Date, and Buyer shall pay all assessments associated with work performed on these projects on or after the Commencement Date. Any payments received by Buyer or Seller from any Governmental Body for such public works projects shall be apportioned on the basis that Seller shall receive that share of the payments applicable to work performed on these projects through the Closing Date, and Buyer shall receive that share of the payments applicable to work performed on these projects after the Closing Date. Seller does not undertake to convey any properties owned by any governmental authorities or third parties, including any grade crossing materials or equipment which may be owned by any such authorities or third parties, and it shall be Buyer's responsibility to determine the ownership of any such materials or equipment which may be owned in whole or in part by any such authorities or third parties.

ARTICLE V

GOVERNMENTAL APPROVALS

Section 5.1 Acquisition Approvals. Promptly following execution of this Agreement, Seller, at its sole expense, shall prepare on behalf of Seller and Buyer such documents as may be required to secure approval, or exemption from approval, of this transaction by the STB. Buyer shall assist Seller in preparing such documents and shall make all reasonable efforts to obtain STB approval, or exemption from approval, in a timely manner. Seller and Buyer, at their joint expense, shall prepare and file such documents as may be required, if any, to secure all other Governmental Approvals and satisfy all other Legal Requirements required by any Governmental Body for this transaction, if such approval or exemption from approval is

necessary or appropriate. Buyer and Seller shall review and cooperate on the content and form of documents to be filed with any Governmental Body, to secure any required Governmental Approvals or satisfy any Legal Requirements.

Section 5.2 Cost of Governmental Approvals. Seller shall bear and assume all expense of preparing the documents necessary to secure approval, or exemption from approval, of this transaction from the STB. Buyer and Seller shall jointly bear and assume any and all other expenses of acquiring other required Governmental Approvals, if any.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller and Seller's successors and assigns the following facts as of the Effective Date of this Agreement, except where specifically noted otherwise in this Agreement:

- (a) Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of Minnesota and is qualified to do business in the State of North Dakota.
- (b) Authority to Acquire. Buyer has or shall have acquired on or before the Closing Date all requisite corporate authority to acquire the Premises and assume Seller's rights and obligations which are conveyed to Buyer by this Agreement, to enter into this Agreement, and to perform all of Buyer's obligations under this Agreement.
- (c) Enforceability. The execution and consummation of this Agreement have been duly authorized and approved by all necessary company actions by Buyer, and immediately upon execution of this Agreement by Buyer's authorized representative, all of Buyer's obligations set forth in or referenced in this Agreement shall constitute legal, valid and binding obligations of Buyer or Buyer's successors or assigns, which obligations are enforceable in accordance with their terms against Buyer or Buyer's successors or assignees.
- (d) No Conflict. The execution, delivery, and performance by Buyer of this Agreement has been duly authorized and does not and will not (i) violate any law, rule, regulation, order or decree of any Governmental Body; (ii) violate Buyer's articles of incorporation or bylaws; or (iii) contravene, interfere with, or constitute a default or breach under any instrument, indenture, agreement or other obligation to which Buyer or any of Buyer's Affiliates is bound.
- (e) No Brokers or Finders Claims. No Person has or will have, as a result of this Agreement, any right, interest or Claim against or upon Seller for any commission, fee or other compensation as a finder or broker as a result of any act or omission by Buyer.

Section 6.2 **Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer and Buyer's successors and assigns the following facts as of the Effective Date of this Agreement, except where specifically noted otherwise:

- (a) **Organization.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.
- (b) **Enforceability.** The execution and consummation of this Agreement have been duly authorized and approved by all necessary company actions by Seller, and immediately upon execution of this Agreement by Seller's authorized representative, all of Seller's obligations set forth in or referenced in this Agreement shall constitute legal, valid and binding obligations of Seller or Seller's successors or assigns, which obligations are enforceable in accordance with their terms against Seller or Seller's successors or assignees.
- (c) **No Conflict.** The execution, delivery, and performance by Seller of this Agreement has been duly authorized and does not and will not (i) violate any law, rule, regulation, order or decree of any Governmental Body; (ii) violate Seller's organizational documents; or (iii) contravene, interfere with, or constitute a default or breach under any instrument, indenture, agreement or other obligation to which Seller is bound as a party thereto.
- (d) **No Brokers or Finders Claims.** No Person has or will have, as a result of this Agreement, any right, interest or Claim against or upon Buyer for any commission, fee or other compensation as a finder or broker as a result of any act or omission by Seller.
- (e) **Physical or Environmental Defects.** As of the Closing Date, there are no known physical defects or Environmental Defects on the Premises, other than those identified in the Phase I Assessment and in Exhibit H. As of the Closing Date, Seller has furnished copies of Seller's Environmental Reports to Buyer, which copies are true and complete except as stated otherwise by written notice to Buyer.
- (f) **Interest in Premises.** Seller owns or otherwise possesses sufficient real and personal property rights and interests (including, without limitation, trackage and operating rights) to carry on the operation and use of the Premises as now being conducted and used, subject to the Encumbrances set forth in Exhibit M. To the knowledge of Seller there are no Encumbrances which would affect in any material respect its interest in the Premises so as to materially and adversely affect Buyer's ability to conduct operations with the Premises following Closing as currently conducted or, to the knowledge of Seller with respect to any Encumbrances which would materially and adversely affect the costs of Buyer to acquire, own use or operate the Premises. Except for the mortgage identified on Exhibit M hereto and any UCC filing made in connection therewith, there are no

liens of any mortgages or UCC filings securing monetary obligations of BNSF that encumber the Premises.

- (g) **Assumed Contracts.** To the best of Seller's knowledge, Seller has in all material respects performed all obligations required to be performed by it to date and is not in default under any Assumed Contract to which it is a party or by which it is otherwise bound. To the best of Seller's knowledge, all Assumed Contracts are in effect and enforceable according to their respective terms, and there is not under any of such Assumed Contract any existing default or event of default or event which, with notice or lapse of time or both, would constitute an event of default thereunder, or otherwise give any other party to the Assumed Contract the right to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Assumed Contract. To the best of the Seller's knowledge, all parties having an Assumed Contract with the Seller are in compliance therewith and none are in default in any respect thereunder.
- (h) **Other Information.** None of the information and documents which have been or may be furnished by the Seller or any representatives of the Seller to the Buyer, or any of their representatives in connection with the transactions contemplated hereby, or in or pursuant to this Agreement, or in connection with the Buyer's and their representative's review of the business of Seller, is or will be materially false or misleading or contains or will contain any material misstatement of fact or omits or will omit any material fact necessary to be stated in order to make the statements therein not misleading.

ARTICLE VII

BUYER'S INSPECTION

Section 7.1 **Acknowledgement of Inspection.** By signing this Agreement, Buyer acknowledges that as of the Closing, Buyer will have inspected the Premises, including all improvements and structures on the Premises. Buyer further acknowledges that:

- (a) No representation has been made by Seller to Buyer concerning the state or condition of the Premises or the age of any improvements on or quality of title to the Premises, except for the representations expressly made by Seller in this Agreement;
- (b) Buyer has not relied upon any statement or declaration of Seller with respect to the physical condition of the Premises, Seller's title to the Premises, Seller's freight traffic volumes to or from the Premises, or any other matter, either oral or in writing, as an inducement to enter into this Agreement, other than the representations, warranties and covenants expressly made by Seller in this Agreement; and
- (c) The sole consideration for execution of this Agreement by Buyer is set forth in this Agreement.

Section 7.2 Condition of Property. As a material consideration of Seller's willingness to enter into this transaction, Buyer represents and warrants that, except for the representations, warranties and covenants expressly made by Seller in this Agreement and as otherwise expressly stated in this Agreement, **BUYER IS AWARE THAT BUYER IS ACQUIRING THE PREMISES ON AN "AS-IS, WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING WITHOUT LIMITATION THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE REAL PROPERTY, AND THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM SELLER AS TO ANY MATTERS CONCERNING OR RELATED TO THE PREMISES,** including the physical condition of the Premises; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; historical or archaeological significance; whether the Premises are in compliance with Environmental Laws or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Premises; the presence of any Hazardous Materials, wetlands, asbestos, silica dust, fuel or fuel residue, MTBE's, lead, lead-based paint, or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Premises; the condition or existence of any of the above or underground structures or improvements, including tanks and transformers in, on or under the Premises; the condition of title to the Premises; and any leases, easements, reservations, permits, orders, licenses, or other rights or agreements affecting the Premises. Except for the warranties expressly made by Seller in this Agreement, **SELLER EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES FOR THE PREMISES OR APPURTENANCES THERETO OR PROPERTY THEREON, INCLUDING, WITHOUT LIMITATION, OTHER WARRANTIES AS TO TITLE, MERCHANTABILITY, HABITABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR CONFORMITY OF THE PREMISES TO ITS INTENDED USE.**

ARTICLE VIII

ENVIRONMENTAL ASSESSMENT

Section 8.1 Environmental Assessment; Known Conditions. Within 180 days of the Closing Date, Seller and Buyer shall have a Phase I Assessment completed pursuant to Section 2.13. The Phase I Assessment may include a physical examination of portions of the Premises and any structures, facilities or equipment located thereon, soil samples, ground and surface water samples, storage tank testing, review of pertinent records, data or documents. Within thirty (30) days of receipt of the Phase I Assessment, Buyer and Seller shall determine whether the results of the Phase I Assessment warrant additional investigation ("Phase II Assessment") and the cost sharing for the Phase II Assessment. If the parties cannot agree on whether a Phase II Assessment is warranted or the cost sharing for such Assessment, this Agreement may be terminated by either party pursuant to Article XVII. If this Agreement is terminated pursuant to Article XVII, Buyer shall provide Seller the original and all copies of the Phase I Assessment to the extent it pertains solely to the BNSF Line within ten (10) days of the termination of this Agreement. If the Phase I or Phase II Assessment identifies a Release of Hazardous Materials or other Environmental Defect that requires remediation or further evaluation under applicable Environmental Law or in order to meet state and federal risk-based

standards for commercial/industrial property uses, then the parties will agree upon a plan to remedy or otherwise address the Release ("Action Plan") that is consistent with such risk-based standards and other applicable guidelines of any Governmental Body with jurisdiction over the Release, including reasonable use restrictions or institutional controls if appropriate. If the parties cannot agree on the Action Plan, this Agreement may be terminated by either party pursuant to Article XVII. If this Agreement is terminated pursuant to Article XVII, Buyer shall provide Seller the originals and all copies of the Phase I and Phase II Assessments to the extent they pertain solely to the BNSF Line, and otherwise shall provide Seller with copies of the Phase I and Phase II Assessments, within ten (10) days of the termination of this Agreement. Seller shall be solely responsible for the cost of preparing and implementing any Action Plan for the BNSF Line. Seller and Buyer shall share the cost of preparing and implementing any Action Plan for the Joint Line as follows:

- (i) if the Hazardous Material was Released solely as a result of acts or omissions of one of the parties, or an agent of one of the parties, then that party shall be solely responsible for the cost of preparing and implementing the Action Plan;
- (ii) if the Hazardous Material was Released as a result of acts or omissions of both parties, including an agent of one of the parties, then each party shall be responsible for the cost of preparing and implementing the Action Plan to the extent of the party's responsibility for the Release;
- (iii) if the Hazardous Material was Released by a third party, or if the cause of the Release cannot be determined with reasonable certainty, then each party shall be responsible for fifty percent (50%) of the cost of the Action Plan and each party, at its option, may seek remedies against any third party to the extent of the Losses (as hereinafter defined) incurred by such party. In the event that any party seeks remedies against a third party, the other party shall cooperate with the party seeking remedies.

For purposes of this Section 8.1, the acts or omissions of any corporate predecessor, parent, subsidiary or Affiliate of a party, and their respective employees, agents, contractors, tenants, licensees and invitees, shall be deemed an act or omission of such party.

Upon full implementation of the Action Plan, including obtaining appropriate written acknowledgments by any Governmental Body with jurisdiction over the Release, neither party shall have any further responsibility or liability to the other party with respect to the Release giving rise to the Action Plan, except as provided in Section 10.7.

Section 8.2 Storage Tanks. ALTHOUGH ALL ABOVE GROUND AND UNDERGROUND STORAGE TANKS LOCATED ON THE PREMISES, IF ANY, ARE NOT OWNED BY SELLER, BUT ARE OWNED BY SOME OTHER PARTY, AND ALTHOUGH SELLER AND ANY PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES OF SELLER EXPRESSLY DISCLAIM ANY OWNERSHIP INTEREST IN ANY SUCH TANKS, BUYER IS HEREBY NOTIFIED THAT ALL UNDERGROUND AND ABOVE GROUND STORAGE TANKS ON OR UNDER THE PREMISES ARE PRESUMED TO BE REGULATED BY THE NORTH DAKOTA STATE DEPARTMENT OF HEALTH, AND

MAY BE SUBJECT TO CERTAIN REGISTRATION AND CONSTRUCTION NOTIFICATION REQUIREMENTS FOUND IN CHAPTER 23-20.3 OF THE NORTH DAKOTA CENTURY CODE (AS AMENDED FROM TIME TO TIME), AND MAY BE SUBJECT TO CERTAIN REGISTRATION, NOTIFICATION AND OTHER REQUIREMENTS. Seller represents and warrants to Buyer that all underground and above ground tanks known by Seller to be located on or under the Premises are identified in Exhibit H, and that neither Seller nor its parent company, subsidiaries or Affiliates owns any of such tanks.

Section 8.3 Environmental Reporting. The parties acknowledge and agree that certain reporting obligations under the laws and regulations of any Governmental Body may arise as a result of the Phase I or Phase II Assessment conducted pursuant to the terms of this Agreement. The parties agree that, unless this Agreement is terminated prior to any such reporting, each shall cooperate with the other to comply with any such reporting obligations, to the extent any reporting may be required by applicable law. If this Agreement is terminated prior any such reporting, Seller shall be solely responsible for complying with any such reporting obligations as they pertain to the BNSF Line.

ARTICLE IX

LIABILITY AND INDEMNITY

Section 9.1 Cooperation in Defense. Buyer and Seller agree that, on and following the Commencement Date, they will cooperate as necessary in defense of any Claim arising out of Seller's or Buyer's acquisition, transfer, use, occupation, possession or operation of the Premises.

Section 9.2 Definition of Losses. In this Agreement, the term "Losses" shall include all losses, costs, expenses, fees or liabilities of any kind, including but not be limited to, all costs of Claims, activities in response to enforcement, damages, judgments, awards, orders, decrees, payments, fines, penalties, environmental related assessments, court costs, and attorney, consultant and expert witness fees. Losses shall exclude incidental, consequential and lost opportunity damages or lost profits, as well as costs of preparing and implementing any Action Plan under Article VIII of this Agreement (which costs shall be governed by Section 8.1).

Section 9.3 Seller's and Buyer's General Liability and Indemnity. All Losses stemming from events or circumstances occurring on the Joint Line prior to the Commencement Date and arising from damage to property or bodily injury or death of any person shall be apportioned between the parties as follows:

(a) If the Losses solely involve trains, locomotives, equipment or employees of one of the parties, then that party shall be solely responsible for such Losses, even if caused partially or completely by another party.

(b) If the Losses involve trains, locomotives, equipment and/or employees of both Buyer and Seller, then (i) Buyer and Seller each shall be solely responsible for any damage to its own employees, locomotives and equipment and those cars in its own revenue account (including lading), and (ii) the parties shall each be responsible for 50 percent of the Losses to

the Joint Line and associated facilities and any Losses sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Losses.

(c) Notwithstanding anything to the contrary in this Section 9.3, when any Losses occur as a result of Environmental Liability, the liability of the parties shall be governed by Section 10.4.

(d) Seller shall be solely responsible for all Losses stemming from items identified on Exhibit N.

Section 9.4 Seller's General Liability and Indemnity. Except as provided in Section 9.3 and in Article X of this Agreement governing Environmental Liability, Seller shall be responsible for and shall indemnify, defend and hold harmless Buyer fully against all Losses which:

- (a) arise out of Seller's ownership or operation of the BNSF Line prior to the Commencement Date, or
- (b) result from any breach by Seller of any of its representations or warranties set forth in this Agreement, or any failure by Seller to perform any of its obligations under this Agreement.

Section 9.5 Buyer's General Liability and Indemnity. Except as provided in Section 9.3 and in Article X of this Agreement governing Environmental Liability or in the Haulage Agreement, Buyer shall be responsible for and shall indemnify, defend and hold harmless Seller fully against all Losses which:

- (a) arise out of Buyer's acquisition, use, occupation, possession or operation of the Premises on and after the Commencement Date; or
- (b) result from any breach by Buyer of any of its representations or warranties set forth in this Agreement, or any failure by Buyer to perform any of its obligations under this Agreement; or
- (c) arise out of Buyer's performance or failure to perform rail freight service on the Premises on and after the Commencement Date except pursuant to abandonment or discontinuance authority from the STB, or exemption therefrom, or as required by the ICC Termination Act of 1995; or
- (d) result from Third Party Claims caused by Buyer's nonperformance under any Assumed Contract.

ARTICLE X
ENVIRONMENTAL LIABILITY AND INDEMNITY

Section 10.1 Inspection. Buyer acknowledges that Buyer and Seller will arrange for the performance of a Phase I Assessment. Buyer further acknowledges that Seller makes no representations and warranties to Buyer concerning the existence of any Hazardous Materials on or near the Premises or compliance of the Premises with Environmental Law on or near the Premises other than those contained in Section 6.2 (e) and Exhibit H.

Section 10.2 Seller's Liability and Indemnity. As part of the consideration for this Agreement, Seller shall be responsible for and shall indemnify, defend, and hold harmless Buyer fully against Losses due to any violation of any applicable Environmental Law or any Release of Hazardous Materials occurring on, in or under the BNSF Line prior to the Commencement Date, to the extent such Losses:

- (a) do not result from Releases that were fully remediated pursuant to an Action Plan under Section 8.1; and
- (b) do not result from any negligence of Buyer occurring on or after the Commencement Date; and
- (c) exceed in the aggregate in any year.

Section 10.3 Buyer's Liability and Indemnity. As part of the consideration for this Agreement, Buyer shall be responsible for and shall indemnify, defend and hold harmless Seller fully against Losses due to any violation of any Environmental Law or any Release of Hazardous Materials occurring on, in or under the Premises after the Commencement Date, to the extent such Losses:

- (a) do not result from any negligence of Seller occurring on or after the Commencement Date; and
- (b) exceed in the aggregate in any year.

Section 10.4 Seller's and Buyer's Liability and Indemnity. All Losses due to any violation of any Environmental Law or Release of Hazardous Materials occurring on, in or under the Joint Line prior to the Commencement Date shall be apportioned between the parties as follows:

- (a) Losses arising from Releases that were fully remediated pursuant to an Action Plan under Section 8.1 shall be governed solely by Section 8.1.
- (b) If the Losses arise solely from acts or omissions of one of the parties, including an agent of one of the parties, then that party shall be solely responsible for such Losses, even if caused partially or completely by a third party.

- (c) If the Losses arise from acts or omissions of both parties, including an agent of one of the parties, then each party shall be responsible for such Losses to the extent such Losses arise from that party's acts or omissions.
- (d) If the Losses were caused solely by a third party or if the cause cannot be determined with reasonable certainty, then each party shall be responsible for fifty percent (50%) of such Losses and each party, at its option, may seek remedies against any third party to the extent of the Losses incurred by such party. In the event that any party seeks remedies against a third party, the other party shall cooperate with the party seeking remedies.

For purposes of this Section 10.4, the acts or omissions of any corporate predecessor, parent, subsidiary or Affiliate of a party, and their respective employees, agents, contractors, tenants, licensees and invitees, shall be deemed an act or omission of such party.

Section 10.5 Cost Allocation. Any dispute between Seller and Buyer as to allocation between them of the costs of any Action Plan for which Seller and/or Buyer are responsible under the terms of this Agreement shall be settled by binding arbitration pursuant to the dispute resolution procedures set forth in Section 15.10 of this Agreement, unless prior to the dispute resolution this Agreement is terminated pursuant to Article XVII.

Section 10.6 Condition of Indemnity. Each party's indemnity is expressly conditioned on the other party providing prompt notice of the Claim; provided, however, that failure to provide such notice shall not be a defense to a party's indemnity obligation except to the extent that such party has been prejudiced by such failure.

Section 10.7 Exclusivity of Remedies. Except for Third Party Claims or toxic tort Claims, Seller and Buyer agree that the remedies and obligations set forth in Section 8.1 with respect to Releases of Hazardous Substances that are remediated pursuant to Action Plans shall be exclusive remedies and obligations of each one to the other with respect to any Losses relating to such Releases.

Section 10.8 Right of Entry. Upon reasonable request from Seller and execution of a customary license agreement, Buyer will allow Seller to enter upon the Premises for any matter related to the Premises for which Buyer claims liability or indemnity against Seller or for which Seller assumes liability or indemnity under this Agreement. Such right of entry shall include, but is not limited to, a right to enter upon the Premises to perform environmental assessments or undertake remediation activities for which Buyer has given its advance, written consent. Entry upon the Premises for surveys or reconnaissance by Seller in response to alleged Losses incurred and/or claimed or potential Claims of liability or indemnity shall not be deemed an admission of liability or assumption of any obligation to indemnify or defend. In no event shall this Section 10.8 obligate Seller to enter upon the Premises and/or perform any inspections or surveys.

ARTICLE XI
HAULAGE AND INTERCHANGE

At or prior to Closing, the parties shall have executed and delivered a Haulage Agreement substantially in the form set forth in Exhibit G. Interchange as provided for in the Minot Interchange Agreement dated March 15, 1988, as amended, shall remain unaffected by this Agreement.

ARTICLE XII
LIENS AND ENCUMBRANCES

Section 12.1 **No Representations.** Buyer's purchase of the Premises shall be subject to all mortgages, liens and Encumbrances on the Premises set forth in Exhibit M, and Buyer acknowledges that Seller makes no representations or warranties concerning the existence or nonexistence of any mortgages, liens or Encumbrances which may affect the Premises except as expressly stated elsewhere in this Agreement.

Section 12.2 **Liens of Seller's Mortgages.** Seller shall deliver to Buyer, who shall place of record, good and sufficient releases of the lien secured by the mortgage identified in Exhibit M, and any UCC filing made in connection therewith, within one hundred eighty (180) days after the first meeting of Seller's Board of Directors held after Closing. At Closing, Seller will provide Buyer a letter agreement indemnifying Buyer against and from any loss or damage, to a maximum of \$_____, arising solely out of any valid claim or claims by the mortgage trustees because of a failure to obtain and furnish Buyer with a release of the lien on the Premises.

Section 12.3 **Judgment Liens of Seller.** Seller represents and warrants that (i) except as identified in Exhibit N, any judgment liens against Seller which may appear of record as a lien against all or part of the Premises shall be settled and satisfied by Seller on or before Closing and Seller shall indemnify the Buyer for all Losses arising out of Seller's failure to have a judgment lien so settled and satisfied after such final judicial determination; and (ii) all pending litigation that may result in a judgment lien against all or part of the Premises is listed in Exhibit N.

Section 12.4 **No New Encumbrances.** During the period from the date of this Agreement to the Closing, Seller will not enter into any new leases or other agreements affecting the Premises, or renew any terms of such agreements (other than on a month-to-month basis), or modify or terminate any such agreement, or encumber the Premises or otherwise grant to any third party any rights affecting the Premises, without the written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

ARTICLE XIII
ASSIGNMENT

Prior to the Closing, Buyer shall not assign this Agreement, in whole or in part, to any Person other than a wholly owned subsidiary of Buyer without the advance written consent of Seller, which consent may be withheld in its sole, absolute, and unreasonable discretion.

ARTICLE XIV
[RESERVED]

ARTICLE XV
MISCELLANEOUS

Section 15.1 Notices, etc. All communications provided for in this Agreement shall be in writing and shall become effective when delivered by hand or by a nationally recognized overnight courier service or received by telex, telecopy, or other wire transmission (with request for assurance of receipt in a manner customary for communications of such respective type), to the respective party at such address as such party may from time to time designate by notice duly given in accordance with the provisions of this Section 15.1 to the other party. Until further notice, the following addresses and telephone numbers shall be used for all such notices:

To Seller:

BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131
Attn: AVP Joint Facilities
AVP Short Line Development
Telecopy No.: (817) 352-7154
Confirm No.: (817) 352-6434

To Buyer:

Canadian Pacific Railway
501 Marquette Avenue South
Suite 800
Minneapolis, MN 55402
Attn: Judy Mitchell, Director - Business Development
Telecopy No.: (612) 904-5962
Confirm No.: (612) 904-5919

Either party hereto may change its address or addressee to which notices are to be given by providing written notice of the change to the other party.

Section 15.2 Choice of Law; Venue. This Agreement shall be governed by the laws of the State of North Dakota without regard to any conflicts of law provisions of any jurisdiction.

Section 15.3 Severability. In the event that any of the provisions of this Agreement, or portions or applications hereof, are held to be unenforceable or invalid by a court of competent jurisdiction, Seller and Buyer shall negotiate an equitable adjustment to the provisions of this Agreement with a view toward effecting to the extent possible the original purpose of this

Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

Section 15.4 Amendment. This Agreement may not be modified or amended except by an instrument in writing signed by both Seller and Buyer.

Section 15.5 Execution. This Agreement (or any amendments hereto) may be executed in any number of counterparts and by Seller and Buyer in separate counterparts, each of which shall be deemed an original. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

Section 15.6 Binding Effect; Captions. Subject to the provisions of Article 15.4, this Agreement shall be binding upon each of the parties and their respective successors, legal representatives and permitted assigns, and shall inure to the benefit of each of the parties, and their respective successors, legal representatives and permitted assigns. The article and paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

Section 15.7 No Waiver. Except as may be expressly provided otherwise in this Agreement, no failure on the part of either party or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder or thereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party or any of its agents of any right, power or remedy hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 15.8 No Third Party Beneficiaries. This Agreement is made and intended for the benefit of the parties hereto and their respective successors and permitted assigns and for no other parties.

Section 15.9 Integration. The Exhibits referenced in this Agreement and attached hereto are specifically made a part of this Agreement by reference. This Agreement together with its Exhibits embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings and agreements (whether oral or written) concerning the subject matter hereof. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein. The headings and titles to provisions in this Agreement are for convenience only and shall not be deemed to modify or affect the rights or duties of the parties. All rights and obligations of the parties set forth in this Agreement are integral parts of this Agreement. The consideration inducing the parties to enter into this Agreement includes all of the commitments by Seller to Buyer, and by Buyer to Seller, as set forth in this Agreement. The terms of this Agreement have been arrived at after considerable arm's length negotiation and mutual review of the parties, and the parties agree that none of the provisions herein shall be deemed or

presumed to be construed against either party, regardless of which party drafted all or part of the terms of this Agreement.

Section 15.10 Dispute Resolution.

- (a) Except for Environmental Claims, questions or controversies pertaining to the construction, application, rights, obligations, remedies, or performance of this Agreement shall be resolved by neutral binding arbitration under the rules and regulations (but not the administration unless otherwise agreed) of the American Arbitration Association ("AAA").
- (b) Subject to written agreement to the contrary, arbitration shall be held in accordance with the Commercial Rules of the AAA in effect at the time of the arbitration; provided, however, that except to the extent that the AAA Rules are inconsistent with the terms of this Agreement or the terms of this Agreement are more specific than the AAA Rules, the terms of this Agreement will govern.
- (c) Unless otherwise agreed in writing, discovery and motion practice shall be permitted, and the Federal Rules of Civil Procedure and Federal Rules of Evidence shall govern all such motion practice and discovery, the exchange of exhibits, witness lists and work papers, and the presentation of evidence by expert witnesses.
- (d) The question or controversy shall be submitted for arbitration to a single competent, disinterested arbitrator, if the parties are able to agree upon such single arbitrator within thirty (30) days after the party requesting arbitration notifies the other party of such request. The party initiating the arbitration shall state in writing the question(s) to be submitted for decision in a written notice of arbitration served upon the other party. Within thirty (30) days thereafter, the receiving party shall serve a like notice on the initiating party stating the Claims or defenses it wishes to be adjudicated. If a single arbitrator cannot be agreed upon within such thirty (30) day period, a board of three (3) arbitrators shall be used, and the parties within ten (10) days thereafter shall each nominate a person to act as its party-appointed arbitrator. Thereafter, the first and second arbitrators shall select a third arbitrator, but if the arbitrators shall be unable to agree upon such a third arbitrator within a period of thirty (30) days from the day of appointment of the second arbitrator, the third arbitrator shall be appointed by the AAA or other neutral entity or process if mutually agreed upon in writing. Unless mutually agreed otherwise in writing, any arbitrator selected must have a minimum of ten (10) years' experience working in the railroad industry with railroad agreements and contracts.
- (e) Upon selection of the board or appointment of the single arbitrator, the arbitrator or board shall proceed with diligence to inquire into the questions or controversies. A hearing shall be held within one hundred eighty (180) days of appointment of the board or single arbitrator, and the arbitrator or board shall state

its decision and award, in writing, within thirty (30) days of the final submission by the parties, which decision and award, when delivered to both parties, shall be final and binding. Judgment may be entered upon such decision and award in any court of competent jurisdiction.

- (f) Each party shall bear its own expenses incurred in connection with arbitration under this Section, including any expenses associated with its appointed arbitrator in the case of arbitration before a three-member panel. The parties shall share equally the expenses associated with the services of the single, disinterested arbitrator in the case of a one-member panel and/or the third neutral member of the three-member panel, as the case may be.
- (g) In the event of any controversy, Claim or dispute between either party affecting or relating to the performance of the rights and obligations under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of the prevailing party's reasonable expenses, including, without limitation, attorneys fees, accountants' fees, consultants' fees, court costs, arbitration costs, and interest.
- (h) Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points (or the maximum interest allowed by applicable law if lower), shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the *Wall Street Journal*.

Section 15.11 Confidentiality. Except to the extent that the terms of this Agreement are required to be disclosed by applicable Legal Requirements or by any Governmental Bodies, no party to this Agreement shall disclose the contents of this Agreement or any information produced in any arbitration proceedings to any other Person, without the prior written consent of the other parties to this Agreement. Independent consultants, attorneys and auditors may be provided certain terms of this Agreement as may be necessary in the ordinary course of business; provided, however, any such Person who is lawfully permitted access to any of the terms of this Agreement shall be required by the party to this Agreement who is disclosing the information not to disclose those terms to any other party without the prior written consent of both parties to this Agreement. It is understood and agreed that the terms of this Agreement shall not be placed of public record except to the limited extent as may be required by applicable Legal Requirements or Order or any Governmental Body.

Notwithstanding anything herein to the contrary, any party subject to confidentiality obligations hereunder or under any other related document (and any employee, representative or other agent of such party) may disclose to any and all Persons, without limitation of any kind, such party's U.S. federal income tax treatment and the U.S. federal income tax structure of the transactions contemplated by this Agreement and any other agreement related thereto and all

materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure.

Section 15.12 Survival of Rights and Obligations. The parties agree that terms of this Agreement, including without limitation all representations and warranties made by parties herein, shall survive Closing and shall not be deemed to have merged into any of the closing documents.

ARTICLE XVI LABOR MATTERS

Section 16.1 Seller's Employees. Although Buyer does not expect to hire any employees as a result of this Agreement, Buyer shall consider for employment those of Seller's employees who want to work for Buyer on the terms and conditions of employment that are offered by Buyer, at Buyer's sole discretion. Buyer shall give priority-hiring consideration to employees of Seller who work on the Premises and are represented by the Brotherhood of Maintenance of Way Employees (or successor organization). Any such individual who Buyer, in its sole discretion, determines to be qualified for a job that Buyer has available, shall be offered such job by Buyer on the terms and conditions that Buyer establishes, in Buyer's sole discretion. Buyer promptly shall notify Seller of the name of each of Seller's current employees who Buyer offers to hire and also the name of each of these employees who Buyer actually hires. Buyer shall assume a neutral stance in any Brotherhood of Maintenance of Way Employees (or successor organization) organizing effort.

Section 16.2 Labor Protection. Each party to this Agreement shall be responsible for all costs of protection of its respective employees arising out of STB approval of this transaction under 49 U.S.C. § 11323, or exemption from approval under 49 U.S.C. § 10502, and the implementation of the transaction. Each party shall be responsible for such costs as may arise from application of collective bargaining agreements or other sources to which it may be subject.

Section 16.3 Indemnity for Labor Protection and Claims. Buyer shall assume and bear (and indemnify, defend and hold harmless Seller against) all costs, liability, Losses or expenses resulting from any Claims made by any employees of Buyer at any time for work related to the performance of any rail operations on the Premises or any labor protection arising or resulting from the parties' implementation of or the termination or expiration of the terms of this Agreement (including, without limitation, any labor protection Claims of Buyer's employees imposed by any Governmental Body as a result of Buyer's operation on the Premises or cessation of operations over the Premises). Seller shall assume and bear (and indemnify, defend and hold harmless Buyer against) all costs, liability, Losses or expenses resulting from any Claims made by any employees of Seller for work related to the performance of any rail operations on the Premises prior to Commencement Date or any labor protection Claims of Seller's employees arising or resulting from the parties' implementation of the terms of this Agreement. Liability and indemnity for labor Claims and labor protection under this Section is intended to cover liability for Claims related to right to work, work rules and/or compensation rights covered under a collective bargaining agreement or any other rights covered under the Railway Labor Act (as it may be amended from time to time) and federal laws, regulations, and orders of any Governmental Body with jurisdiction over such matters. In no event shall liability

and indemnity under this Section apply to Claims for personal injury or death of persons (including without limitation, FELA Claims) or property damage, whether or not such Claims are work related.

ARTICLE XVII TERMINATION PRIOR TO CLOSING

In addition to the conditions to Closing in Section 4.1, this Agreement may be terminated by either party, without liability to the other party, in the event:

- (a) that Closing does not occur within one year of the effective date of the Final Decision;
- (b) of adverse environmental, title or other findings by Buyer during its pre-Closing due diligence which the parties cannot resolve, it being acknowledged by the parties that Buyer has not had an adequate opportunity to conduct its due diligence prior to executing this Agreement, including without limitation reviewing the Assumed Contracts, other Records and updated exhibits to this Agreement to be provided by Seller;
- (c) the Premises are not operable at Closing;
- (d) either party breaches the Representations, Warranties or Covenants contained in this Agreement;
- (e) the parties are unable to agree on the sharing of the cost of the Phase I Assessment, if the cost exceeds ;
- (f) the parties are unable to determine whether a Phase II Assessment is warranted or are unable to agree on the cost sharing for the Phase II Assessment; or
- (g) the parties are unable to agree on an Action Plan under Section 8.1.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Agreement as of the date first above written.

BNSF RAILWAY COMPANY

By: 
Print: Peter J. Rickershauser
Title: VP Network Development

SOO LINE RAILROAD COMPANY doing business as CANADIAN PACIFIC RAILWAY

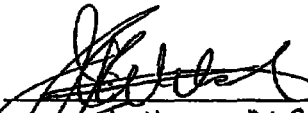
By: 
Print: JOHN WALSH
Title: VP REAL ESTATE

EXHIBIT A

Purchase and Sale Definitions

"1959 Agreement" shall mean the Agreement dated September 18, 1959, Between GREAT NORTHERN RAILWAY COMPANY ("BNSF") and MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILROAD COMPANY ("CPR"), as amended by Supplemental Agreement dated October 17, 1960, Letter Agreement dated October 13, 1969 between CPR and BNSF, Supplemental Agreement dated February 27, 1970, Supplemental Agreement dated November 18, 1970, Supplemental Agreement dated March 11, 1975, Amendment among Dakota, Missouri Valley and Western Railroad, Inc. ("DMVW"), BNSF and CPR dated August 30, 1990, Letter Agreement between BNSF and DMVW dated November 15, 1990, and Agreement among Rutland Line, Inc., BNSF and CPR dated October 31, 1997.

"AAA" shall mean American Arbitration Association.

"Action Plan" shall have the meaning set forth in Section 8.1.

"Affiliate" shall mean, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. The term "control" as used in the preceding sentence means, with respect to a corporation, the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation and, with respect to any Person other than a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person.

"Agreement" shall mean this Purchase and Sale Agreement for Rail Operations and Real and Personal Property Between Crosby and a Point East of Lignite in Divide and Burke Counties, North Dakota By and Between BNSF RAILWAY COMPANY, Seller, and CANADIAN PACIFIC RAILWAY LIMITED, Buyer, dated as of the Effective Date, as the same may be amended or supplemented in accordance with the terms hereof.

"Assignment and Assumption Agreement" shall mean the agreement to be executed by the parties at Closing pursuant to which the Assumed Contracts will be assigned to and assumed by Buyer.

"Assumed Contracts" shall have the meaning set forth in Section 2.7.

"Bill of Sale" shall mean the bill of sale to be delivered by Seller to Buyer at Closing substantially in the form attached as Exhibit C.

"BNSF" shall mean BNSF Railway Company, its affiliated railway companies, successors and assigns.

"BNSF Line" shall have the meaning set forth in Section 2.1.

✓ **"Buyer"** shall have the meaning set forth in the preamble.

"Claim(s)" shall mean demands, claims or threatened claims, actions or causes of action, suits, proceedings, liens, investigations, or acts or threatened acts of enforcement, of any kind or nature, asserted against Seller, Buyer or their respective Affiliates, or against the Premises.

"Closing" shall have the meaning set forth in Section 4.2.

"Closing Date" shall have the meaning set forth in Section 4.2.

"Commencement Date" shall mean the date of transfer of possession of the Premises to Buyer. Said date and time shall occur at 12:01 a.m. Central Time, on the day after Closing as defined in Section 4.2 of this Agreement or such alternative date and time as may be mutually agreed upon in writing by the parties.

"CPR" shall have the meaning set forth in the preamble.

"Effective Date" shall have the meaning set forth in the preamble.

"Encumbrance" shall mean any encumbrance, charge, Claim, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, license, lease, right of reverter, right of entry, right of first option, right of first refusal or similar restriction, and any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

"Environment" shall mean soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental Claims" shall mean any Claims arising under any Environmental Law.

"Environmental Defect" means a condition in, on or under the Premises that could give rise to any Environmental Claim or Environmental Liability, including without limitation the presence of Hazardous Materials and uncured violations of Environmental Laws.

"Environmental Law" shall mean any Legal Requirement, or guidance document of any Governmental Body with jurisdiction over Releases of Hazardous Substances, that requires or relates to: (i) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or Hazardous Materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment; (ii) preventing or reducing to acceptable levels the Release of pollutants or Hazardous Materials into the Environment; (iii) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated; (iv) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of; (v) protecting resources, species or ecological amenities; (vi) reducing to acceptable levels the

risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances; (vii) cleaning up Hazardous Materials, contaminants and pollutants that have been Released, preventing the threat of Release or paying the costs of such cleanup or prevention; (viii) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets; or (ix) protection of public health and safety and worker health and safety, all as may hereafter be enacted or amended. The term shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.*; Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; Hazardous Materials Transportation Authorization Act, 49 U.S.C. §§ 5101 *et seq.*; Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 *et seq.*; and regulations promulgated thereunder.

“Environmental Liability” means Environmental Claims and Losses arising out of Environmental Claims.

“FELA” means the Federal Employers Liability Act of 1908, as amended, 45 U.S.C. §§ 52 *et seq.*

“Final Decision” shall have the meaning set forth in Section 4.2.

“Governmental Approval” shall mean any consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

“Governmental Body” shall mean: (i) any state, county, city, town, borough, village, district or other jurisdiction; (ii) any federal, state, local, municipal or other government; (iii) any governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers); (iv) any body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; (v) the STB; or (vi) any official of any of the foregoing.

“Haulage Agreement” shall mean the agreement to be executed by the parties at Closing substantially in the form attached as Exhibit G.

“Hazardous Material” shall mean any substance, material or waste which is regulated by any Governmental Body under any Environmental Law, including any material, substance or waste which is defined or listed as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant,” “contaminant,” “toxic waste” or “toxic substance” under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

“Joint Line” shall have the meaning set forth in Section 2.1.

"Legal Requirement" shall mean any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute, treaty, Governmental Approval, Order or other requirement of any Governmental Body.

"Losses" shall have the meaning set forth in Section 9.2.

"Order" shall mean any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

"Quitclaim Deeds" shall mean the quitclaim deeds to be delivered by Seller to Buyer at Closing substantially in the form attached as Exhibit B.

"Person" shall mean an individual, corporation, limited liability company, joint stock company, trust, partnership, unincorporated association, Governmental Body or any other legal entity.

"Personal Property" shall mean the personal property to be conveyed by Seller to Buyer at Closing through the Bill of Sale.

"Phase I Assessment" shall have the meaning set forth in Section 2.13.

"Phase II Assessment" shall have the meaning set forth in Section 8.1.

"Premises" shall have the meaning set forth in Section 2.1.

"Prime Rate" shall have the meaning set forth in Section 15.10(h).

"Real Property" shall have the meaning set forth in Section 2.1 and shall include, without limitation, all buildings and improvements constructed or located on the land and all easements and rights benefiting or appurtenant to the land, including any right, title or interest in the bed of any street, road, highway or alley adjoining the land.

"Records" shall have the meaning set forth in Section 2.8 and shall include, without limitation, all documents constituting Encumbrances, the Assumed Contracts and Seller's Environmental Reports.

"Release" shall mean any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

"Seller" shall have the meaning set forth in the preamble.

"Seller's Environmental Reports" shall have the meaning set forth in Section 2.8.

"Seller's Lines" shall have the meaning set forth in Section 2.7(a).

"STB" shall mean the U.S. Department of Transportation, Surface Transportation Board and its successor agency(ies).

"Third Party Claims" means Claims asserted by any Person other than Seller or Buyer or their respective corporate successors, parent corporations, subsidiaries and Affiliates.



EXHIBIT B

QUITCLAIM DEED
Burke County

THIS QUITCLAIM DEED, made this _____ day of _____, 2007, by and between BNSF RAILWAY COMPANY, formerly THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY and successor by merger to Great Northern Railway Company, a Delaware corporation ("BNSF"), and SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as Canadian Pacific Railway, with its principal office at 501 Marquette Ave., Minneapolis, Minnesota 55402 ("Grantee").

WITNESSETH: That BNSF, for: _____ and other good and valuable consideration, to it in hand paid, the receipt of which is hereby acknowledged, does hereby REMISE, RELEASE and FOREVER QUITCLAIM unto Grantee, its successors and assigns, all of its right, title and interest, if any, in real estate located in the County of Burke, State of North Dakota, more particularly described on the attached **Exhibit A** which is fully incorporated herein by reference together with all hereditaments and appurtenances belonging thereto (the "Property").

RESERVING, unto BNSF, its successors and assigns:

- (a) access rights across and to the entire Property for the exercise of rights related to retained interests in the Property under (b) below, as reasonably deemed necessary or advisable by BNSF, without charge, provided that (i) BNSF's access shall not in any way interfere with or impede railroad operations, or materially interfere with other uses of the Property by Grantee, its successors or assigns, and their respective lessees, licensees and agents, (ii) such access rights shall be exercised to the least extent required for enjoyment of the retained interests, (iii) such rights shall not include use of the Property for a roadway or use of the railroad tracks for any purpose, and (iv) prior to exercising any such right of access, BNSF, its successor or assign, and their contractors and agents shall execute in each instance the right of entry agreement customarily used by Grantee, its successor or assign for such purpose at that time, or such other agreement as is mutually acceptable to the parties.
- (b) the rights to all iron, natural gas, coal, oil and minerals of any nature whatsoever upon or in the Property, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of said minerals by any means or methods suitable to BSNF, its successors and assigns, but in such manner as not to damage the surface of said Property or to interfere with the use thereof by Grantee, its successors or assigns.

Except for the representations, warranties and covenants expressly made by BNSF in the Purchase and Sale Agreement for Rail Operations and Real and Personal Property between Crosby and a

Point East of Lignite in Divide and Burke Counties, North Dakota, between BNSF and Grantee dated _____, 2007 (the "Purchase Agreement"), and as otherwise expressly stated in the Purchase Agreement, **GRANTEE SPECIFICALLY ACKNOWLEDGES THAT THE PROPERTY IS BEING QUITCLAIMED ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND GRANTEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF AS TO ANY MATTERS CONCERNING THE PROPERTY,** including, without limitation, the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property; and any leases, easements, reservations, permits, orders, licenses, or other rights or agreements affecting the Property. Except for the warranties expressly made by BNSF in the Purchase Agreement, **BNSF EXPRESSLY DISCLAIMS ANY WARRANTIES FOR THE PROPERTY OR APPURTENANCES THERETO, INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO TITLE, MERCHANTABILITY, HABITABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR CONFORMITY OF THE PROPERTY TO ITS INTENDED USE.**

As used herein, the term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. As used herein, the term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material, contaminant or waste as defined, listed or regulated under any Environmental Law, and includes without limitation, petroleum oil and any of its fractions.

Grantee acknowledges that, according to BNSF's records, BNSF's interest in the Property may be subject to reversion upon abandonment of use for railroad purposes or cessation of interim trail use, and that this quitclaim deed releases and conveys only BNSF's interest, if any it may have, in the Property.

Grantor, Federal ID No. 41-603-4000, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee. A Certification prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached as Exhibit B.

TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the said BNSF has caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto on the day and year first above written.

BNSF:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
David P. Schneider
General Director – Land Revenue Management

ATTEST:

By: _____
Patricia Zbichorski
Assistant Secretary

Accepted:

GRANTEE:

**SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as
CANADIAN PACIFIC RAILWAY**

By: _____
Print Name: _____
Title: _____

I certify that the requirement for a report or statement of full consideration paid does not apply because this deed is for one of the transactions exempted by subdivision i as it relates to quitclaim deeds of the subsection 6 of N.D. Cent. Code, § 11-18-02.2 (1999).

Signed: _____
Grantee or Agent

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2007, before me appeared _____, to me personally known, who being by me duly sworn, did say that he or she is _____ of SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as CANADIAN PACIFIC RAILWAY, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors or other applicable governing body and said _____ acknowledged said instrument to be the duly authorized free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

My Commission Expires: _____

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

On this _____ day of _____, 2007, before me appeared David P. Schneider and Patricia Zbichorski, to me known to be the General Director-Land Revenue Management and Assistant Secretary, respectively, of BNSF RAILWAY COMPANY, a Delaware corporation, the corporation that is described in and that executed the foregoing instrument and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

My Commission Expires: _____

**THE LEGAL DESCRIPTION WAS PREPARED BY STAUBACH GLOBAL SERVICES-
RR, INC., 3017 LOU MENK DIRVE, SUITE 100, FORT WORTH, TEXAS 76131-2800**

Exhibit A

All that portion of BNSF Railway Company's (formerly Great Northern Railway Company) Woburn to Lignite Junction, Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across Burke County, North Dakota, more particularly described as follows, to-wit:

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE1/4SE1/4 of Section 25, Township 162 North, Range 91 West, 5th P.M., bounded Southeasterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 38.0 feet Northwesterly of the East line of said SE1/4SE1/4 of Section 25, as measured along said Main Track centerline, and bounded Northerly by the North Line of said SE1/4SE1/4 of Section 25; also,

That portion of said Railway Company's 300.0 foot wide Station Ground property at Woburn, North Dakota, being 100.0 feet wide on the Northeasterly side and 200.0 foot wide on the Southwesterly side of said Main Track centerline, as originally located and constructed, upon, over and across the N1/2SE1/4 and the SW1/4NE1/4 of Section 25, Township 162 North, Range 91 West, 5th P.M., bounded Southerly by the South line of said N1/2SE1/4 of Section 25, and bounded Westerly by the West line of said SW1/4NE1/4 of Section 25; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW1/4 of Section 25, Township 162 North, Range 91 West, 5th P.M., bounded Easterly by the East Line of said NW1/4 of Section 25, and bounded Northwesterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed, at a point distant 394 feet Southeasterly of the North line of said section 25, as measured along said Main Track centerline; also,

That portion of said Railway Company's 300.0 foot wide Branch Line right of way, being 150.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the N1/2NW1/4 of Section 25, and the SW1/4SW1/4 of Section 24, all in Township 162 North, Range 91 West, 5th P.M., bounded Southeasterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed, at a point distant 394 feet Southeasterly of the North line of said section 25, as measured along said Main Track centerline, and bounded Westerly by the West line of said Section 24. **EXCEPTING THEREFROM**, the Southwesterly 50.0 feet of said 300.0 foot wide right of way lying Northwesterly of a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 88 feet Southeasterly of said West line of Section 24, as measured along said Main Track centerline; also,

Those certain tracts of land described in deed dated July 19, 1926 from Nels Johan Myren and Inga Myren to Great Northern Railway Company recorded September 13, 1926 in Book 35, Page 452, records of Burke County, North Dakota, said tracts being described in said deed for reference as follows:

"All that part of the Southeast quarter (SE1/4) of the Southeast quarter (SE1/4) of Section Twenty-three (23) Township One hundred sixty-two (162) North, Range Ninety-one (91) West of the 5th Principal Meridian, lying within two lines parallel to and distant respectively One hundred (100) feet and One hundred fifty (150) feet northeasterly from the center line of the railway of said Railway Company, as now located and constructed and lying southeast of a line intersecting said center line, at right angles thereto, at a point therein distant Three hundred twelve (312) feet northwesterly, measured along said center line, from the east line of said Section Twenty-three (23), also

"All that part of the Southeast quarter (SE1/4) of the Southeast quarter (SE1/4) of Section Twenty-three (23) lying within two lines parallel to and distant respectively One hundred (100) feet and One hundred fifty (150) feet southwesterly from said center line, and lying southeast of a line intersecting said center line, at right angles thereto, at a point therein distant Two hundred twelve (212) feet northwesterly, measured along said center line, from the east line of said Section Twenty-three (23), also

"All that part of the Northwest quarter (NW1/4) of the Southeast quarter (SE1/4) of Section Twenty-three (23) lying within two lines parallel to and distant respectively Fifty (50) feet and One hundred fifty (150) feet northeasterly from said center line of railway, and lying northwest of a line intersecting said center line, at right angles thereto, at a point therein distant Nineteen hundred twelve (1912) feet northwesterly, measured along said center line, from the east line of said Section Twenty-three (23), containing in all, Three and thirty hundredths (3.30) acres, more or less."; also,

That portion of said Railway Company's 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE1/4 of Section 23, Township 162 North, Range 91 West, 5th P.M., bounded Easterly by the East Line of said SE1/4 of Section 23, and bounded Northwesterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed, at a point distant 1912 feet Northwesterly of the East line of said section 23, as measured along said Main Track centerline; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW1/4SE1/4, NE1/4SW1/4 and the NW1/4 of Section 23, Township 162 North, Range 91 West, 5th P.M., bounded Southeasterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed, at a point distant 1912 feet Northwesterly of the East line of said section 23, as measured along said Main Track centerline, and bounded Northwesterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 500 feet Southeasterly of the West line of said NW1/4 of Section 23, as measured along said Main Track centerline; also,

That portion of said Railway Company's 150.0 foot wide Branch Line right of way, being 75.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW1/4 of Section 23 and the E1/2NE1/4 of Section 22, all in Township 162

North, Range 91 West, 5th P.M., bounded Southeasterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 500 feet Southeasterly of the West line of said NW1/4 of Section 23, as measured along said Main Track centerline, and bounded Northwesterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 450 feet Northwesterly of the East line of said E1/2NE1/4 of Section 22, as measured along said Main Track centerline; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NE1/4 of Section 22, the SW1/4SE1/4 and the SW1/4 of Section 15, all in Township 162 North, Range 91 West, 5th P.M., bounded Southeasterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 450 feet Northwesterly of said NE1/4 of Section 22, as measured along said Main Track centerline, and bounded Northwesterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 1100 feet Southeasterly of the West line of said SW1/4 of Section 15, as measured along said Main Track centerline; also,

That portion of said Railway Company's 150.0 foot wide Branch Line right of way, being 75.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W1/2SW1/4 Section 15, and the NE1/4SE1/4 Section 16, all in Township 162 North, Range 91 West, 5th P.M., bounded Southeasterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 1100 feet Southeasterly of the West line of said W1/2SW1/4 of Section 15, as measured along said Main Track centerline, and bounded Northwesterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 200 feet Northwesterly of the East line of said NE1/4SE1/4 Section 16, as measured along said Main Track centerline; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E1/2 and the SE1/4NW1/4 of Section 16, Township 162 North, Range 91 West, 5th P.M., bounded Southeasterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 200 feet Northwesterly of the East line of said E1/2 of Section 16, as measured along said Main Track centerline, and bounded Northerly by the North line of said SE1/4NW1/4 of Section 16; also,

That portion of said Railway Company's 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the N1/2NW1/4 of Section 16, Township 162 North, Range 91 West, 5th P.M., bounded Southerly and Westerly by the South and West lines of said N1/2NW1/4 of Section 16; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over

and across the NE1/4NE1/4 of Section 17, Township 162 North, Range 91 West, 5th P.M., bounded Easterly by the East line of said NE1/4NE1/4 of Section 17, and bounded Northwesterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 473 feet Southeasterly of the North line of said NE1/4NE1/4 of Section 17, as measured along said Main Track centerline; also,

That portion of said Railway Company's 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NE1/4NE1/4 of Section 17 and the S1/2SE1/4 of Section 8, Township 162 North, Range 91 West, 5th P.M., bounded Southeasterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 473 feet Southeasterly of the North line of said NE1/4NE1/4 of Section 17, as measured along said Main Track centerline, and bounded Northwesterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 1027 feet Northwesterly of the South line of said S1/2SE1/4 of Section 8, as measured along said Main Track centerline; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW1/4SE1/4, and the E1/2SW1/4 of Section 8, Township 162 North, Range 91 West, 5th P.M., bounded Southeasterly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 1027 feet Northwesterly of the South line of said Section 8, as measured along said Main Track centerline; and bounded Westerly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 1638 feet Easterly of the West line of said Section 8, as measured along said Main Track centerline; also,

That:portion of said Railway Company's 150.0 foot wide Branch Line right of way, being 75.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the N1/2SW1/4 of Section 8, in Township 162 North, Range 91 West, 5th P.M., bounded Easterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 1638 feet Easterly of the West line of said Section 8, as measured along said Main Track centerline, and bounded westerly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 538 feet Easterly of the West line of said Section 8, as measured along said Main Track centerline; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW1/4SW1/4 of Section 8, the N1/2SE1/4, SW1/4NE1/4, SE1/4NW1/4 of Section 7, all in Township 162 North, Range 91 West, 5th P.M., bounded Easterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 538 feet Easterly of the West line of said Section 8, as measured along said Main Track centerline, and bounded westerly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 2478 feet Easterly of the West line of said Section 7, as measured along said Main Track centerline; also,

That portion of said Railway Company's 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE1/4NW1/4 of Section 7, in Township 162 North, Range 91 West, 5th P.M., bounded Easterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 2478 feet Easterly of West line of said Section 7, as measured along said Main Track centerline, and bounded Westerly by the West line of said SE1/4NW1/4 of Section 7; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW1/4NW1/4 of Section 7, Township 162 North, Range 91 West, 5th P.M., and the SE1/4NE1/4 of Section 12, Township 162 North, Range 92 West, 5th P.M., bounded Easterly by the East line of said SW1/4NW1/4 of Section 7, and bounded Westerly a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 135 feet Westerly of the East line of said SE1/4NE1/4 of Section 12, as measured along said Main Track centerline; also,

That portion of said Railway Company's 300.0 foot wide Branch Line right of way, being 150.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E1/2NE1/4 of Section 12, Township 162 North, Range 92 West, 5th P.M., bounded Easterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 135 feet Westerly of the East line of said E1/2NE1/4 of Section 12, as measured along said Main Track centerline, and bounded Westerly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 605 feet Westerly of the East line of said E1/2NE1/4 of Section 12, as measured along said Main Track centerline; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NE1/4 of Section 12, Township 162 North, Range 92 West, 5th P.M., bounded Easterly by a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 605 feet Westerly of the East line of said NE1/4 of Section 12, as measured along said Main Track centerline, and bounded Westerly by the West line of said NE1/4 of Section 12, as measured along said Main Track centerline; also,

That portion of said Railway Company's 300.0 foot wide Station Ground Property at Lignite, North Dakota, being 200.0 feet wide on the Northeasterly side and 100.0 feet on the Southwesterly side of said Main Track centerline, as originally located and constructed, upon, over and across the NW1/4 of Section 12, Township 162 North, Range 92 West, 5th P.M., bounded Easterly by the East line of said NW1/4 of Section 12, and bounded Westerly by the North and West lines of said NW1/4 of Section 12; **EXCEPTING THEREFROM**, that certain tract of land described as follows: Beginning at a point on the East line of the NE1/4NW1/4 of said Section 12, distant 52.0 feet Northerly, as measured at right angles from said Main Track centerline; thence Westerly parallel with said Main Track centerline 850.0 feet; thence Northerly at right angles to said main Track centerline 54.0 feet; thence Easterly parallel with said Main

Track centerline 300.0 feet; thence Northerly at right angles to said Main Track centerline 94.0 feet to the Northerly line of said 300.0 foot wide Station Ground property; thence Easterly along said Northerly line to the East line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence South along said East line to the Point of Beginning. **ALSO EXCEPTING THEREFROM**, the Northeasterly 148.0 feet of said 300.0 foot wide Station Ground property situated in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 12, lying between two lines drawn parallel with and distant, respectively, 52.0 feet and 200.0 feet Northeasterly, as measured at right angles from said Main Track centerline, bounded by two lines drawn at right angles to said Main Track centerline distant, respectively, 1,690.0 feet and 1,990.0 feet Northwesterly from the East line of said N $\frac{1}{2}$ NW $\frac{1}{4}$, as measured along said Main Track centerline. **ALSO EXCEPTING THEREFROM**, the Northeasterly 148.0 feet of said 300.0 foot wide Station Ground property situated in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 12, lying between two lines drawn parallel with and distant, respectively, 52.0 feet and 200.0 feet Northeasterly, as measured at right angles from said Main Track centerline, bounded by two lines drawn at right angles to said Main Track centerline distant, respectively, 1,040.0 feet and 1,390.0 feet Northwesterly from the East line of said N $\frac{1}{2}$ NW $\frac{1}{4}$, as measured along said Main Track centerline; also,

That portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, the S $\frac{1}{2}$ of Section 2 and S $\frac{1}{2}$ Section 3, all in Township 162 North, Range 92 West, 5th P.M., bounded Easterly by the East lines of said Sections 11 and 2, and bounded Westerly by a line a line perpendicular to said Railway Company's Main Track centerline, as now located and constructed at a point distant 1880 feet Southeasterly of the West line of said Section 3, as measured along said Main Track centerline, said point being designated as survey station 2996+50.

ALSO, that undivided one half interest in all that part of the BNSF Railway Company's (formerly Great Northern Railway Company) right of way situated in Burke County, North Dakota, being a 100 foot strip of land, 50 feet on each side of the center line of the main track of said Railway Company, beginning at a line drawn at right angles to said center line, from a point therein 1880 feet southeasterly as measured along said center line, from the west line of Section 3, Township 162 N., Range 92 W., said point being designated as survey station 2996+50, and extending westerly through Sections 3, 4, 5, and 6, Township 162 N., Range 92 W., Sections 1, 2, 3, 4, 5, and 6, Township 162 N., Range 93 W., Sections 1, 2, 3, 4, 5, and 6, Township 162 N., Range 94 W., and Section 31, Township 163 N., Range 94 W., all in the Fifth Principal Meridian, to the west line of Burke County.

Additional strip or tract of land in Township 162 N., Range 92 W. and Township 163 N., Range 92 W described as follows:

That portion of BNSF Railway Company's (formerly Great Northern Railway Company) 100.0 foot wide Connecting Track right of way, being 50.0 feet on each side of said Connecting Track centerline, as originally located and constructed, upon, over and across Section 3, Township 162 North, Range 92 West, 5th P.M., and the SE $\frac{1}{4}$ of Section 34, Township 163 North, Range 92 West, 5th P.M., Burke County, North Dakota, bounded Northerly by the Southerly line of the Soo Line Railroad Company's 100 foot wide right of way, said Southerly right of way line being

parallel with and distant 50.0 feet Southerly from, measured at right angles to said Soo Line Railroad Company's Main Track centerline as originally located and constructed, and bounded Southerly by the Northerly right of way line of the BNSF Railway Company (formerly Great Northern Railway Company), said Northerly right of way line being parallel with and distant 50.0 feet Northerly from, measured at right angles to said BNSF Railway Company's Main Track centerline as originally located and constructed.

Additional strips or tracts of land in Township 162 N., Range 92 W. described as follows:

Two (2) strips of land over and across the SW¼ of NE¼ of Section 4, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the above described 100 foot strip.

Also a strip of land over and across the E½ of E½ of Section 5, 150 feet in width, lying southerly and immediately adjacent to the first above described 100 foot strip.

Also 2 strips of land, in the W½ of E½ of Section 5, each 125 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending westerly from the east line of the said W½ of E½ Section 5 to a line drawn at right angles to the said center line at survey station 3091+95.

Also 2 strips of land, in the SW¼ of NE¼ and SE¼ of NW¼ of Section 5, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending between two lines drawn at right angles to said centerline at survey stations 3091+95 and 3104+50.

Also 2 strips of land over and across the SW¼ of NE¼ of Section 6, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip.

Also a strip of land in the N½ of SE¼ of Section 6, lying north of a line parallel to and distant southerly 150 feet, as measured at right angles to the center line of the railway, and extending between 2 lines drawn at right angles to said center line, at survey stations 3129+50 and 3136+00.

Also 2 strips of land in the S½ of NW¼ of Section 6, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending westerly from a line drawn at right angles to said center line at survey station 3158+94 to the west line of Section 6.

Also a strip of land in the SE¼ NW¼ of Section 6 lying between two lines parallel with and distant 50 feet and 150 feet northerly as measured at right angles from the said center line, and extending between two lines drawn at right angles to said center line at survey stations 3154+00 and 3158+94.

Also a strip of land in the S½ NW¼ of Section 6 lying between two lines parallel with and distant 75 feet and 150 feet northerly as measured at right angles from the said center line, and extending between two lines drawn at right angles to said center line at survey stations 3158+94 and 3162+00.

Also a strip of land in the N½ SW¼ of Section 6, lying north of a line parallel to and distant southerly 150 feet, as measured at right angles from the said center line and lying between 2 lines drawn at right angles to said center line at survey stations 3154+00 and 3161+00.

Additional strips or tracts of land in Township 162 N., Range 93 W., described as follows:

A strip of land in the E½ of E½ of Section 1, 100 feet in width, lying southerly of and immediately adjacent to the first above described 100 foot strip, and extending between two lines drawn at right angles to said center line at survey stations 3176+29 and 3180+99.

Also two strips of land in the SE¼ NW¼ of Section 1, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending from the west line of said SE¼ NW¼ to a line drawn at right angles to said center line at a point therein distant 500 feet easterly, as measured along said center line.

Also a strip of land in the E½ of E½ of Section 2, 100 feet in width, lying southerly of and immediately adjacent to the first above described 100 foot strip and extending between two lines drawn at right angles to said center line at survey stations 3230+45 and 3235+45.

Also 2 strips of land over and across the SW¼ NE¼ and the S½ of NW¼ of Section 2, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip.

Also 2 strips of land in the E½ of E½ of Section 3, each 100 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending from the east line of Section 3 to a line drawn at right angles to said center line at survey station 3287+80.

Also 2 strips of land over and across the W½ of Section 3, one strip 50 feet in width lying northerly and one strip 150 feet in width lying southerly, and immediately adjacent to the first above described 100 foot strip, **EXCEPTING THEREFROM**, the Southerly 148.0 feet of said 150 foot wide strip, lying between two lines drawn parallel with and distant, respectively, 52.0 feet and 200.0 feet Southerly, as measured at right angles from said Main Track centerline, bounded by two lines drawn at right angles to said Main Track centerline distant, respectively, 1,540.0 feet and 1,750.0 feet Easterly of the West line of said Section 3, as measured along said Main Track centerline.

Also a strip of land over and across Section 4, 5, and 6, lying immediately adjacent to and southerly of the first above described 100 foot strip and lying north of the east and west ¼ section lines and extending from the east line of Section 4 to the west line of section 6.

Also a strip of land in the N½ of section 4, 50 feet in width, lying northerly of and immediately adjacent to the first above described 100 foot strip and extending between two lines drawn at right angles to said center line at survey stations 3337+85 and 3361+90.

Also a strip of land in the S½ of NW¼ of Section 4, 100 feet in width, lying northerly of and immediately adjacent to the first above described 100 foot strip and extending between two lines drawn at right angles to said center line at survey stations 3366+00 and 3370+50.

Also all that part of the N½ of SW¼ of Section 4, lying north of a line parallel to and distant southerly 150 feet as measured at right angles from the said center line and extending between 2 lines drawn at right angles to said center line at survey stations 3365+00 and 3371+00.

Also that certain parcel of land described in deed dated May 20, 1960 from Rex L. Powell and Mary Ann Powell to Minneapolis, St. Paul & Sault Ste. Marie Railroad Company and Great Northern Railway Company, recorded June 2, 1960, in Book 69, Page 281, records of Burke County, North Dakota, said parcel being described in said deed for reference as follows:

“A parcel of land comprising in all that part of the West Half of the Northwest Quarter (W1/2 NW1/4) of Section Five (5), Township One Hundred Sixty-two (162) North, Range Ninety-three (93) West, which lies Northerly of the present Northerly right of way line of the Great Northern Railway Company and Westerly of a line running parallel with and fifty (50) feet distant Easterly (measured at right angles) from the center line of the proposed track connecting said Railroads as the same is now located, surveyed and staked out over and across said Section 5;”

Also all that part of the NW¼ of SE¼ of section 5, described as follows: Beginning at a point in the west line of said NW¼ of SE¼, distant 99 feet southerly from the northwest corner thereof; thence southerly along said west line 600 feet to a point; thence northerly parallel to said west line 25 feet to a point. Thence northerly and easterly along a curved line parallel to and distant 25 feet from the center line of the spur or connecting track of the railway, to a point distant 139 feet southerly from, as measured at right angles from the north line of said NW¼ of SE¼; thence easterly parallel to said north line and distant 139 feet therefrom a distance of 400 feet, more or less to a point 356 feet distant westerly, measured at right angles, from the east line of said NW¼ of SE¼; thence northerly parallel to said east line and distant 356 feet therefrom 40 feet to a point distant 99 feet southerly from said north line of the NW¼ of SE¼; thence westerly parallel to said north line and distant 99 feet therefrom, 964 feet more or less to the point of beginning.

Also all that part of the NE¼ of SW¼ of Section 5, described as follows: Beginning at the northwest corner of said NE¼ of SW¼, thence easterly along the north line thereof 477.3 feet more or less to a point therein 842.7 feet distant westerly from the northeast corner of said NE¼ of SW¼; thence due south 68.3 feet to a point; thence easterly parallel with the north line of said NE¼ of SW¼, 303 feet more or less to a line drawn at right angles to the said center line at a point therein 780 feet distant easterly, measured along said center line, from its intersection with west line of the SE¼ of NW¼ of Section 5; thence southerly at right angles to said center line, to a point 200 feet distant therefrom; thence westerly parallel with said center line and 200 feet distant therefrom 780 feet more or less to the west line of said NE¼ of SW¼ of Section 5; thence northerly along said west line to the point of beginning.

Also a strip of land over and across the NW¼ of SW¼ of Section 5, lying northerly of a line parallel with and distant 150 feet southerly as measured at right angles from said center line.

Also a strip of land in the SE¼ of NE¼ of Section 6, 100 feet in width, lying northerly and immediately adjacent to the first above described 100 foot strip and extending between two lines drawn at right angles to said center line at survey stations 3441+00 and 3446+20.

Also a strip of land over and across the NE¼ of SE¼ of Section 6, lying north of a line parallel to and distant 100 feet southerly as measured at right angles from the said center line.

Also a strip of land in the NE¼ of SE¼ of Section 6, 50 feet in width, lying southerly and immediately adjacent to the next above described strip, and extending between two lines drawn at right angles to said center line at survey stations 3441+00 and 3446+20.

Additional strips or tracts of land in Township 163 N., Range 93 W., described as follows:

That certain parcel of land described in deed dated April 19, 1960 from Norris Loney and Lois M. Loney to Minneapolis, St. Paul & Sault Ste. Marie Railroad Company and Great Northern Railway Company, recorded April 28, 1960, in Book 89, Page 160, records of Burke County, North Dakota, said parcel being described in said deed for reference as follows:

"A parcel of land comprising in all that part of the West Half of the Southwest Quarter (W1/2 SW1/4) of Section Thirty-two (32), Township One Hundred Sixty-three (163) North, Range Ninety-three (93) West, which lies Southerly of the present Southerly right of way line of the Minneapolis, St. Paul & Sault Ste. Marie Railroad Company and Westerly of a line running parallel with and fifty (50) feet distant Easterly (measured at right angles) from the center line of the proposed track connecting said Railroads, as the same is now located, surveyed and staked out over and across said Section 32;"

Additional strips or tracts of land in Township 162 N., Range 94 W., described as follows:

All that part of the S½ of NE¼ of Section 1, lying southerly of a line parallel with and distant northerly 100 feet as measured at right angles from the said center line, excluding the first above described 100 foot strip.

Also a strip of land over and across the N¼ of SE¼ of Section 1, described as follows: Beginning at the northeast corner of said SE¼; thence west on the north line of said SE¼, to the northwest corner of said SE¼; thence south on the west line of said SE¼, a distance of 44 feet to a point; thence east in a straight line to a point on the east line of said SE¼, 42.5 feet south of the point of beginning; thence north on said east line 42.5 feet to the point of beginning.

Also a strip pf land in the W½ of W½ of Section 1, 100 feet in width, lying southerly of and immediately adjacent to the first above described 100 foot strip, and extending between a line drawn at right angles at survey station 3534+17 and the west line of said Section 1.

Also 2 strips of land over and across the SW¼ of NE¼ and SE¼ of NW¼ in Section 2, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip.

Also 2 strips of land over and across the S½ of NE¼ of Section 3, one strip of 50 feet in width lying northerly and one strip 150 feet in width lying southerly and immediately adjacent to the first above described 100 foot strip, **EXCEPTING THEREFROM**, that portion lying within two lines parallel to and distant respectively, 167 feet and 200 feet Southwesterly from the centerline of said Railway Company's Main Track centerline, as now located and constructed, bounded on the East and West by the East and lines of said S1/2 of NE1/4 of Section 3.

Also 2 strips of land in the N½ of Section 4 and NE¼ of NE¼ of Section 5, each 25 feet on width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 strip, and extending between two lines drawn at right angles to said center line at survey stations 3670+00 and 3709+85.

Also 2 strips of land in the N½ of Section 5 and N½ of NE¼ of Section 6, each 50 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip, and extending between two lines drawn at right angles to said center line at survey stations 3719+90 and 3770+00.

Also a strip of land in the NW¼ of NE¼ and NE¼ of NW¼ of Section 5, 50 feet in width, lying northerly and immediately adjacent to next above described strip and extending between two lines drawn at right angles to said center line at survey stations 3724+50 and 3730+00.

Also a strip of land in the NW¼ NE¼ and NE¼ NW¼ of Section 5, lying between two lines parallel with and distant 100 feet and 150 feet southerly, as measured at right angles from said center line, extending between two lines drawn at right angles to said center line at survey stations 3723+00 and 3730+00.

Also a strip of land in the N½ NW¼ of Section 5, lying between two lines parallel with and distant 100 feet and 150 feet northerly, as measured at right angles from said center line, and extending between two lines drawn at right angles to said center line at survey stations 3739+50 and 3750+00.

Also a strip of land in the N½ NW¼ of Section 5, lying between two lines parallel with distant 100 feet and 150 feet southerly as measured at right angles from said center line, and extending between two lines drawn at right angles to said center line at survey stations 3737+50 and 3750+00.

QUITCLAIM DEED

Divide County

THIS QUITCLAIM DEED, made this _____ day of _____, 2007, by and between BNSF RAILWAY COMPANY, formerly THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY and successor by merger to Great Northern Railway Company, a Delaware corporation ("BNSF"), and SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as Canadian Pacific Railway, with its principal office at 501 Marquette Ave., Minneapolis, Minnesota 55402 ("Grantee").

WITNESSETH: That BNSF, for _____ and other good and valuable consideration, to it in hand paid, the receipt of which is hereby acknowledged, does hereby REMISE, RELEASE and FOREVER QUITCLAIM unto Grantee, its successors and assigns, all of its right, title and interest, if any, in real estate located in the County of Divide, State of North Dakota, more particularly described on the attached **Exhibit A** which is fully incorporated herein by reference together with all hereditaments and appurtenances belonging thereto (the "Property").

RESERVING, unto BNSF, its successors and assigns:

- (b) access rights across and to the entire Property for the exercise of rights related to retained interests in the Property under (b) below, as reasonably deemed necessary or advisable by BNSF, without charge, provided that (i) BNSF's access shall not in any way interfere with or impede railroad operations, or materially interfere with other uses of the Property by Grantee, its successors or assigns, and their respective lessees, licensees and agents, (ii) such access rights shall be exercised to the least extent required for enjoyment of the retained interests, (iii) such rights shall not include use of the Property for a roadway or use of the railroad tracks for any purpose, and (iv) prior to exercising any such right of access, BNSF, its successor or assign, and their contractors and agents shall execute in each instance the right of entry agreement customarily used by Grantee, its successor or assign for such purpose at that time, or such other agreement as is mutually acceptable to the parties.
- (b) the rights to all iron, natural gas, coal, oil and minerals of any nature whatsoever upon or in the Property, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of said minerals by any means or methods suitable to BSNF, its successors and assigns, but in such manner as not to damage the surface of said Property or to interfere with the use thereof by Grantee, its successors or assigns.

Except for the representations, warranties and covenants expressly made by BNSF in the Purchase and Sale Agreement for Rail Operations and Real and Personal Property between Crosby and a

Point East of Lignite in Divide and Burke Counties, North Dakota, between BNSF and Grantee dated _____, 2007 (the "Purchase Agreement"), and as otherwise expressly stated in the Purchase Agreement, **GRANTEE SPECIFICALLY ACKNOWLEDGES THAT THE PROPERTY IS BEING QUITCLAIMED ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND GRANTEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF AS TO ANY MATTERS CONCERNING THE PROPERTY**, including, without limitation, the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property; and any leases, easements, reservations, permits, orders, licenses, or other rights or agreements affecting the Property. Except for the warranties expressly made by BNSF in the Purchase Agreement, **BNSF EXPRESSLY DISCLAIMS ANY WARRANTIES FOR THE PROPERTY OR APPURTENANCES THERETO, INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO TITLE, MERCHANTABILITY, HABITABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR CONFORMITY OF THE PROPERTY TO ITS INTENDED USE.**

As used herein, the term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. As used herein, the term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material, contaminant or waste as defined, listed or regulated under any Environmental Law, and includes without limitation, petroleum oil and any of its fractions.

Grantee acknowledges that, according to BNSF's records, BNSF's interest in the Property may be subject to reversion upon abandonment of use for railroad purposes or cessation of interim trail use, and that this quitclaim deed releases and conveys only BNSF's interest, if any it may have, in the Property.

Grantor, Federal ID No. 41-603-4000, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee. A Certification prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached as Exhibit B.

TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the said BNSF has caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto on the day and year first above written.

BNSF:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
David P. Schneider
General Director – Land Revenue Management

ATTEST:

By: _____
Patricia Zbichorski
Assistant Secretary

Accepted:

GRANTEE:

SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as
CANADIAN PACIFIC RAILWAY

By: _____
Print Name: _____
Title: _____

I certify that the requirement for a report or statement of full consideration paid does not apply because this deed is for one of the transactions exempted by subdivision i as it relates to quitclaim deeds of the subsection 6 of N.D. Cent. Code, § 11-18-02.2 (1999).

Signed: _____
Grantee or Agent

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2007, before me appeared _____, to me personally known, who being by me duly sworn, did say that he or she is _____ of SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as CANADIAN PACIFIC RAILWAY, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors or other applicable governing body and said _____ acknowledged said instrument to be the duly authorized free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

My Commission Expires: _____

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

On this _____ day of _____, 2007, before me appeared David P. Schneider and Patricia Zbichorski, to me known to be the General Director-Land Revenue Management and Assistant Secretary, respectively, of BNSF RAILWAY COMPANY, a Delaware corporation, the corporation that is described in and that executed the foregoing instrument and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

My Commission Expires: _____

**THE LEGAL DESCRIPTION WAS PREPARED BY STAUBACH GLOBAL SERVICES-
RR, INC., 3017 LOU MENK DIRVE, SUITE 100, FORT WORTH, TEXAS 76131-2800**

Exhibit A

All that part of the BNSF Railway Company's (formerly Great Northern Railway Company) right of way situated in Divide County, North Dakota, being a 100 foot strip of land, 50 feet on each side of the center line of the main track of said Railway Company, beginning at the East Line of Divide County and extending westerly through Sections 36 and 35, Township 163 N., Range 95 W., Sections 1, 2, 3, 4, 5, and 6, Township 162 N., Range 95 W., Section 1, Township 162 N., Range 96 W., Sections 36, 35, 34, 33, 32, and 31, Township 163 N., Range 96 W., Sections 36, 35, 34, 33, 28, Township 163 N., Range 97 W., the S1/2, and the SW1/4NW1/4 of Section 29, Township 163 N., Range 97 W., all in the Fifth Principal Meridian, **EXCEPTING THEREFROM**, the West 216.42 feet of said Section 29, which lies southerly of the Southerly line of the Soo Line Railroad Company's 100 foot wide right of way, said Southerly right of way line being parallel with and distant 50.0 feet Southerly from, measured at right angles to said Soo Line Railroad Company's Main Track centerline as originally located and constructed.

Additional strips or tracts of land in Township 162 N., Range 95 W., described as follows:

Two strips of land in the NW¼ NW¼ of Section 2, each 50 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip, and extending westerly from the east line of the said NW¼ NW¼ to a line drawn at right angles to said center line at a point therein distant 800 feet as measured along said center line, **EXCEPTING THEREFROM**, that portion lying in Government 4, Section 2, Township 162, Range 95 West of the 5th P. M., Divide County, North Dakota, lying Northerly of a line parallel to and 33 feet Southerly from the North line of said Government Lot 4.

Also, two strips of land in the N½ NE¼ of Section 3, each 50 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip, and extending between two lines drawn at right angles to said center line at survey stations 3921+00 and 3925+00.

Also, two strips of land in the N½ N½ of Section 3, each 100 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip, and extending between two lines drawn at right angles to said center line at survey stations 3927+00 and 3938+50.

Also, two strips of land over and across the NE¼ of Section 4, one strip 150 feet in width lying northerly and one strip 50 feet in width lying southerly and immediately adjacent to the first above described 100 foot strip.

Also a strip of land in the SW¼ NE¼ Section 4, lying between two lines parallel with and distant 100 feet and 150 feet southerly as measured at right angles to said center line and extending easterly from the west line of the said SW¼ NE¼ Section 4 to the west line of lot One (1) of Block Three (3) Southwest Addition to Noonan.

Also, all of Lot One (1) of Block Three (3) in said Southwest Addition to Noonan.

Also, two strips of land in the NW¼ of Section 4 and SE¼ NE¼ of Section 5, each 50 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip, extending westerly from the east line of the NW¼ of Section 4, to a line drawn at right angles to said center line at survey station 4024+11.5.

Also, two strips of land in the S½ NE¼ Section 5, each 100 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending between two lines drawn at right angles to said center line at survey stations 4025+00 and 4032+00.

Also, two strips of land extending over and across the SE¼ NW¼ of Section 5, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip.

Additional strips or tracts of land in Township 162 N., Range 96 W., described as follows:

A strip of land in the N½ N½ Section 1, 100 feet in width, lying northerly and immediately adjacent to the first above described 100 foot strip, extending westerly from a line drawn at right angles to said center line at survey station 4140+00 to the north line of said Section 1.

Also, a strip of land in the N½ N½ Section 1, 100 feet in width, lying southerly and immediately adjacent to the first above described 100 foot strip, extending between two lines drawn at right angles to said center line at survey stations 4140+00 and 4152+50.

Also a strip of land in the NE¼ NW¼ Section 1, 25 feet in width, lying southerly and immediately adjacent to the first above described 100 foot strip, extending westerly from a line drawn at right angles to said center line at survey station 4152+50 to the west line of said NE¼ NW¼ Section 1.

Additional strips or tracts of land in Township 163 N., Range 96 W., described as follows:

A strip of land extending over and across the SE¼ SW¼ of Section 36, 25 feet in width, lying northerly of and immediately adjacent to the first above described 100 foot strip.

Also, two strips of land in the SW¼ SE¼ and the S½ SW¼ of Section 35, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip, and extending from the east line of said SW¼ SE¼ to a line drawn at right angles to said center line at survey station 4223+50.

Also, two strips of land in the SW¼ SW¼ of Section 35 and the SE¼ SE¼ of Section 34, each 100 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending between two lines drawn at right angles to the said center line at survey stations 4223+50 and 4234+00.

Also, two strips of land over and across the S½ SW¼ of Section 34, one strip 50 feet in width lying northerly and one strip 150 feet in width lying southerly and immediately adjacent to the first above described 100 foot strip.

Also, two strips of land over and across the SE¼ of Section 33, one strip 50 feet in width lying northerly and one strip 100 feet in width lying southerly and immediately adjacent to the first above described 100 foot strip.

Also, two strips of land, each 25 feet in width, in the SW¼ SW¼ of Section 33, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending between two lines drawn at right angles to said center line at survey station 4326+00 and 4329+00.

Also, two strips of land in the SW¼SE¼ and the S½SW¼ of Section 32, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending between two lines drawn at right angles to said center line at survey stations 4354+35 and 4382+95.

Also, two strips of land in the SW¼ SE¼ of Section 32, each 100 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the next above described 25 foot strips, and extending between two lines drawn at right angles to said center line at survey stations 4355+00 and 4360+00.

Also, two strips of land over and across the SW¼ of Section 31, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip.

Additional strips or tracts of land in Township 163 N., Range 97 W., described as follows:

A strip of land over and across the NE¼ SE¼ of Section 36, 150 feet in width, lying southerly and immediately adjacent to the first above described 100 foot strip.

Also, two strips of land in the E½ NE¼ of Section 34, each 100 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip, and extending between two lines drawn at right angles to said center line at survey stations 4554+00 and 4562+85.

Also, two strips of land in the NW¼ NE¼ and NE¼ NW¼ of Section 34, each 25 feet in width, one strip lying northerly and one strip lying southerly and immediately adjacent to the first above described 100 foot strip and extending from a line drawn at right angles to said center line at survey station 4566+95, to the west line of the NE¼ NW¼ of Section 34.

Also a tract of land in the W½ of the SW¼ of Section 28, described as follows: Beginning at a point on the west line of said Section 28, 50 feet north as measured at right angles to said center line; thence running north on said west line, a distance of 1165 feet to a point; thence east at right angles to said section line a distance of 183 feet to a point; thence southerly parallel with said

section line and distant 183 feet east therefrom a distance of 775 feet to a point; thence running southeasterly in a curved line turning to the left, being parallel with and distant 50 feet northeasterly from the center line of the easterly leg of the wye track of said Railway Company's railway as the same is now located and established, to an intersection with the northerly line of first above described 100 foot strip, thence westerly along said northerly line of right of way to the place of beginning.

Also a strip of land over and across the SE¼ of Section 29, 150 feet in width lying immediately adjacent to and southerly of the first above described 100 foot strip, **EXCEPTING THEREFROM**, that portion of the southerly 148.0 feet of said 150 foot wide strip, described as follows, to-wit: Beginning at a point on the Southerly line of said 150.0 foot wide strip at the intersection of the Northerly line of Second Avenue South with the Northerly extension of the Westerly line of Main Street in the City of Crosby; thence Westerly along said Southerly line 115.0 feet; thence Northerly at right angles to said Southerly line 148.0 feet; thence Easterly parallel with said Southerly line to the intersection with the Northerly extension of the Westerly line of Main Street; thence Southerly 148.0 feet, along said Northerly extension, to the Point of Beginning.

Also a strip of land over and across the SE¼ Section 29, 50 feet in width lying immediately adjacent to and northerly of the first above described 100 foot strip.

Also an additional tract of land in the SE¼ of SE¼ of Section 29 lying between a line parallel with and distant 50 feet northwesterly as measured at right angles to the center line of the west leg of wye track of the said Railway Company and the northerly line of the next above described 50 foot strip.

Also a strip or tract of land, in the E½ of SW¼ of Section 29 described as follow: Beginning at a point in the southerly line of the first above described 100 foot strip, opposite survey station 4686+00; thence southerly at right angles to said south line of the first above described 100 foot strip 25 feet; thence westerly at right angles to a point 200 feet westerly, as measured at right angles from the east line of the SW¼ of Section 29; thence north parallel to the said east line of said SW¼ to a point in the south line of the first above described 100 foot strip, thence easterly along said south line to the point of beginning.

Also, that certain tract of land described in Easement Deed from City of Crosby to Burlington Northern Inc. recorded June 16, 1970 in Book 80 of Deeds, Page 407, as document number 138097, records of Divide County, North Dakota, said tract of land being described in said deed for reference as follows:

"The West 100 feet of the east 964 feet of the SE¼ SW¼ of Section 29, Township 163 North, Range 97 West of the Fifth Principal Meridian, lying within the following described tract of land:

"Commencing at the southeast corner of the SW¼ of Section 29, Township 163 North, Range 97 West, thence running due west along the center of the section line a distance of 1019 feet, 5 inches, thence running northeasterly and parallel to and 50 feet northwesterly of a sewer now

established by first party a distance of approximately 948 feet to a point 50 feet north of said sewer as now established; thence southeasterly and parallel with and 50 feet north of said established sewer to a point 50 feet north of said established sewer and on the quarter section line in said Section 29; thence due south along said quarter section line a distance of about 600 feet to the place of beginning."

Also, all that part of the west 764 feet of the east 964 feet of the E $\frac{1}{2}$ of SW $\frac{1}{4}$ Section 29, described as follows: Commencing at the southeast corner of the SW $\frac{1}{4}$ Section 29; thence running due west along the south line of Section 29 a distance of 1019 feet 5 inches; thence running northeasterly parallel with and distant 50 feet northwesterly of a sewer now established by the City of Crosby to a point 964 feet from and as measured at right angles to the east line of the SW $\frac{1}{4}$ Section 29, being the true point of beginning for this description; thence running northeasterly parallel with and 50 feet northwesterly of said city sewer to a point 632 feet westerly as measured at right angles from the east line of the said SW $\frac{1}{4}$ Section 29; thence southerly parallel with said east line of the SW $\frac{1}{4}$ to a point on the south line of said Section 29; thence easterly along said south line of Section 29, 100 feet; thence northerly parallel to said east line of the SW $\frac{1}{4}$ and 532 feet therefrom, to a point 50 feet northwesterly as measured at right angles to said city sewer; thence northeasterly parallel with said city sewer and distant 50 feet northwesterly therefrom to a point 300 feet westerly as measured at right angles from the said east line of the SW $\frac{1}{4}$ Section 29; thence southerly parallel with the said east line of SW $\frac{1}{4}$ Section 29 and 300 feet therefrom to a point in the south line of said Section 29; thence easterly along the said south line of Section 29, 100 feet; thence northerly parallel with the said east line of the said SW $\frac{1}{4}$ Section 29 and 200 feet therefrom to a point 50 feet southerly as measured at right angles from said Railway Company's Main Track center line; thence northwesterly parallel with and 50 feet southerly of said center line to a point 964 feet westerly as measured at right angles to the said east line of the SW $\frac{1}{4}$ Section 29; thence southerly and parallel with the said east line of the SW $\frac{1}{4}$ Section 29 to the true point of beginning of this description, **EXCEPTING THEREFROM**, a tract of land described as follows: Beginning at a point on the south line of the first above described 100 foot strip, 1568.3 feet north and 745 feet west of the southeast corner of said SW $\frac{1}{4}$ of Section 29, thence south 118.8 feet; thence west 320 feet; thence northerly 200 feet to a point in the south line of the first above described 100 foot strip; thence easterly along said south line of the first above described 100 foot strip, 299.8 feet to the place of beginning, **ALSO EXCEPTING THEREFROM**, That certain tract of land described in deed dated December 20, 1988 from Burlington Northern Railroad Company to Glacier Park Company recorded June 16, 1989 in Book 104 of Deeds, Page 236, records of Divide County, Washington, said tract being described in said deed for reference as follows:

"That portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 29, T163N, R97W, 5th P.M., Divide County, North Dakota, described as follows, to-wit:

"The West 764.0 feet of the East 964.0 feet of said E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 29, T163N, R97W, 5th P.M., lying Southwesterly of the existing Southwesterly right-of-way line of the Burlington Northern Railroad Company, said right-of-way line lying parallel with and distant 50.0 feet Southwesterly of, as measured at right angles to, Burlington Northern Railroad Company's Main Track centerline, as now located and constructed;

"EXCEPTING THEREFROM, a tract of land described as follows:

"Beginning at the Southeast corner of the SW1/4 of said Section 29; thence Westerly along the South line of said SW1/4 a distance of 1019.416 feet; thence Northeasterly along a line drawn parallel with and distant 50.0 feet Northwesterly of, as measured at right angles to, a sewer now established a distance of 948.0 feet, more or less, to a point distant 50.0 feet North of said sewer, as now established; thence Southeasterly along a line drawn parallel with and distant 50.0 feet North of, as measured at right angle to, said established sewer to the point of intersection with the East line of said SW1/4; thence Southerly along said East line a distance of 600.0 feet, more or less, to the Point of Beginning;

"ALSO EXCEPTING THEREFROM, that certain tract of land conveyed by Quitclaim Deed from the State of North Dakota and the Board of University and School Lands of the State of North Dakota to Marian Points on December 31, 1938, and recorded in Book 46 of Deeds, Page 323, on March 29, 1946, in the records of Divide County, North Dakota."

ALSO EXCEPTING THEREFROM, that certain tract of land in the County of Divide, State of North Dakota, described in deed dated December 23, 1969 from Great Northern Railway and Soo Line Railroad Company to City of Crosby, said tract being described in said deed for reference as follows:

"The west 25 feet of the east 300 feet and the west 100 feet of the east 632 feet of the SE¼ SW¼ of Section 29, Township 163 North, Range 97 West of the Fifth Principal Meridian, lying within the following described tract of land:

"Commencing at the southeast corner of the SW¼ of Section 29, Township 163 North, Range 97 West; thence running due west along the center of the section line a distance of 1019 feet, 5 inches; thence running northeasterly and parallel to and 50 feet northwesterly of a sewer established by The City of Crosby on July 5, 1955, a distance of approximately 948 feet to a point 50 feet north of said sewer as now established; thence southeasterly and parallel with and 50 feet north of said established sewer to a point 50 feet north of said established sewer on the quarter section line in said Section 29; thence due south along said quarter section line a distance of about 660 feet to the place of beginning; Subject to State Road No. 5."

EXHIBIT B

NONFOREIGN CERTIFICATE

Exemption from Withholding of Tax
for
Dispositions of U.S. Real Property Interests

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by **BNSF RAILWAY COMPANY** ("Transferor"), the undersigned hereby certifies the following:

1. Transferor is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, or foreign estate for purposes of U.S. income taxation. (If the transferor is a foreign corporation that has made a valid election under Section 897 (I) of the Internal Revenue Code to be treated as a domestic corporation, a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service, is attached hereto);

2. Transferor's taxpayer identifying number (Social Security or U.S. employer number) is 41-603-4000; and

3. Transferor's executive offices and central place of business are located at 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare I have authority to sign this document in the capacity indicated.

TRANSFEROR:

BNSF RAILWAY COMPANY

By: _____
David P. Schneider

Its: General Director-Land Revenue Management

Date: _____

EXHIBIT C

BILL OF SALE

BNSF RAILWAY COMPANY, formerly THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY and successor by merger to Great Northern Railway Company, a Delaware corporation ("**BNSF**"), with an address of 2500 Lou Menk Drive, AOB-3, Fort Worth, Texas 76131, in consideration; _____ and other good and valuable consideration to it paid by SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as CANADIAN PACIFIC RAILWAY ("**Grantee**"), with an address of 501 Marquette Avenue South, Suite 800, Minneapolis, Minnesota 55402, receipt whereof is hereby acknowledged, has assigned, transferred and delivered and by these presents does hereby sell, assign, transfer and deliver unto the Grantee, all of its right, title and interest, if any, in and to all rail, ties, spikes, tie plates, rail anchors, bridges, trestles, culverts, signaling equipment, and other supporting structures, ballast, track materials, supplies and other personal property (including, without limitation, the communications tower at Crosby, North Dakota, but excluding any vehicles, maintenance equipment on wheels, radios, computer equipment, or office furnishings or supplies) ("**Personal Property**") presently used in the ownership and operation of the rail line located on or along the premises between MP 89.5± at Crosby and MP 47.0± near Lignite, in Divide and Burke Counties, State of North Dakota, which premises are more particularly described in Exhibit A attached hereto ("**Real Property**"). Any Personal Property remaining on the Real Property after the date of this Bill of Sale shall be deemed abandoned and relinquished unto Grantee; **provided however**, to the extent any such Personal Property remaining are owned by any third party (e.g., crossing equipment owned in whole or in part by a governmental authority), said interests shall not be conveyed unto Grantee.

EXCEPT FOR THOSE REPRESENTATIONS, WARRANTIES AND COVENANTS IN THE PURCHASE AND SALE AGREEMENT FOR RAIL OPERATIONS AND REAL AND PERSONAL PROPERTY BETWEEN CROSBY AND A POINT EAST OF LIGNITE IN DIVIDE AND BURKE COUNTIES, NORTH DAKOTA, DATED _____, 2007, **BNSF HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE PERSONAL PROPERTY, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PERSONAL PROPERTY, THE CONFORMITY OF THE PERSONAL PROPERTY TO ITS INTENDED USES OR THE QUALITY OF THE TITLE TO THE PERSONAL PROPERTY, AND GRANTEE ACCEPTS THE PERSONAL PROPERTY IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON BNSF'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE PERSONAL PROPERTY.**

TO HAVE AND TO HOLD, together with all appurtenances thereunto belonging to the Grantee, its successors and assigns, forever.

[Signature page follows]

IN WITNESS WHEREOF, BNSF has caused this Bill of Sale to be signed by its duly authorized officers this _____ day of _____, 2007.

BNSF:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Print Name: _____
Title: _____

Accepted:

GRANTEE:

**SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as
CANADIAN PACIFIC RAILWAY**

By: _____
Print Name: _____
Title: _____

[Exhibit A to be attached at time of signing]

EXHIBIT D

List of Assigned Agreements

TYPE Contract No. Contractor(s)

Description

Location

Date

REDACTED

Type

Contract No. Contractor(s)

Description

Location

Date

REDACTED

Type Contract No. Contractor(s)

Description

Location

Date

REDACTED

Type

Contract No. Contractor(s)

Description

Location

Date

REDACTED

EXHIBIT E

DISPOSITION OF TELECOMMUNICATIONS EQUIPMENT

CROSBY, ND

EQUIPMENT TO BE REMOVED AND RETAINED BY BNSF:

Kenwood TK790 Dispatcher radio

RTI Field Interface Unit

Three phone leases to remove:

BNSF Circuit ID M 00 25 83

BNSF Circuit ID M 00 29 09

BNSF Circuit ID M 01 61 74

EQUIPMENT TO BE LEFT IN PLACE:

One 60 ft self supporting communications tower

ENTRY AND CONFIDENTIALITY AGREEMENT

THIS ENTRY AND CONFIDENTIALITY AGREEMENT ("Agreement") is made as of the Effective Date (defined below) by BNSF RAILWAY COMPANY, a Delaware corporation ("Railroad") and SOO LINE RAILROAD COMPANY, dba CANADIAN PACIFIC RAILWAY ("Permittee").

WHEREAS, Permittee as Buyer and Railroad as Seller expect to enter into that certain Purchase and Sale Agreement for Rail Operations and Real and Personal Property (the "Sale Contract") on or about June 1, 2007, concerning the property wholly owned by Railroad along the rail line between Milepost 56.96±, at Lignite Junction, North Dakota, and Milepost 47.0±, east of Lignite, North Dakota (the "Property"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Sale Contract.

WHEREAS, in order to evaluate the acquisition of the Property, Permittee has requested access to the Property to inspect the condition of the Property.

WHEREAS, Railroad is willing to permit such access only on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

1. **RIGHT OF ENTRY.** In accordance with the provisions of this Agreement, Railroad hereby grants Permittee a non-exclusive, revocable license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, licenses, easements, liens, or other encumbrances, to enter the Property for the purpose of inspecting the Property for said potential acquisition and for no other purpose or use. It is understood and agreed that this Agreement does not apply to the jointly owned property of Railroad and Permittee along the Joint Line, as defined in the Sale Contract.

2. **RESTRICTIONS CONCERNING ENTRY.**

(a) Permittee shall enter the Property only during normal business hours and may inspect the condition thereof and conduct such surveys and to make such engineering and other inspections, tests and studies as Permittee shall determine to be reasonably necessary, all at Permittee's sole cost and expense. Notwithstanding the foregoing, except for activities expressly permitted pursuant to the Sale Contract or in any subsequent amendments thereto, Permittee shall not conduct or allow any physically intrusive testing of, on or under the Property, and under no circumstances shall Permittee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five feet (25') of the centerline of any railroad track on the Property unless Permittee has obtained prior written approval from Railroad, which approval may be withheld in Railroad's sole discretion.

(b) Permittee agrees to give Railroad notice at least two (2) business days prior to any such entry, examinations or surveys and Railroad has the right to be present during any such entry, examination or survey. Such notice shall be made to Railroad's Roadmaster: Richard Harman, at 235 Main Street, Havre, Montana, 59501, telephone no. (406) 265-0425. Permittee agrees to conduct all examinations and surveys of the Property in a manner that will not interfere with the operations or improvements of Railroad or other lessees, Permittees or license holders and in such a manner and not

at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Railroad, or the safe operation and activities of Railroad.

(c) Permittee shall comply with, and cause its agents to comply with, any and all laws, statutes, regulations, ordinances, rules, orders, common law, covenants or restrictions ("Legal Requirements") applicable to the Property and their activities thereon and any and all safety requirements of Railroad, and if ordered to cease any activities upon the Property by Railroad's personnel, Permittee shall immediately do so. Notwithstanding the foregoing right of Railroad, the parties agree that Railroad has no duty or obligation to monitor Permittee's activities on the Property to determine the safe nature thereof, it being solely the Permittee's responsibility to ensure that Permittee's activities on the Property are safe. Neither the exercise nor failure by Railroad to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

(d) Permittee shall not harm or damage the Property or cause any claim adverse to Railroad.

(e) Permittee shall promptly reimburse Railroad for any additional costs/expenses incurred by Railroad in connection with such safety requirements (including, but not limited to, furnishing a flagman if Railroad determines that furnishing a flagman is necessary during any such examinations or surveys).

(f) Permittee will not have more than five (5) persons present on any individual Property at one time. Any officer, employee, agent, contractor, consultant, lender, surveyor or attorney entering the Property on behalf of or at the direction of Permittee shall be deemed agents of Permittee for purposes of this Agreement.

3. TERM. This Agreement shall commence on the date Railroad executes this Agreement (the "Effective Date") and shall be in effect until the Commencement Date of the Sale Contract. No expiration or termination of this Agreement shall release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events occurring prior to the date of termination or expiration.

4. [Not applicable]

5. COMPLETION OF INSPECTION. Upon completion of any inspection by Permittee or its agents on the Property or upon the expiration or termination of this Agreement, whichever shall occur first, Permittee shall, at its sole cost and expense:

- (a) remove all of its equipment from the Property;
- (b) report any damage to the Property arising from, growing out of, or connected with Permittee's entry upon the Property and restore the Property to their condition immediately prior to such entry by Permittee or its agents; and
- (c) remedy any unsafe conditions on the Property created by Permittee or its agents.

6. INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, PERMITTEE SHALL INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL

CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (a) ANY BREACH OF THIS AGREEMENT BY PERMITTEE INCLUDING, BUT NOT LIMITED TO, PERMITTEE'S OBLIGATION TO COMPLY AND CAUSE ITS AGENTS TO COMPLY WITH LEGAL REQUIREMENTS INCLUDING, BUT NOT LIMITED TO, WORKERS' COMPENSATION AND CERCLA,**
- (b) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,**
- (c) PERMITTEE'S OR ITS AGENT'S ACTIVITIES UPON OR USE OF ANY OF THE PROPERTY, OR**
- (d) ANY ACT OR OMISSION OF PERMITTEE OR PERMITTEE'S AGENTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,**

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH PERMITTEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

Notwithstanding the foregoing, Permittee shall not be liable for any existing contamination at the Property except to the extent that such contamination is exacerbated by the negligent acts or omissions of Permittee or its agents.

7. **CONFIDENTIALITY.** Prior to the Commencement Date, except to the extent otherwise required by Legal Requirements, Permittee shall not disclose to any third parties any information Permittee discovers or obtains concerning the Property as a result of any inspections, surveys, tests or other activities conducted with respect to the Property, including, but not limited to, any oral, electronic or written information provided by Railroad or on Railroad's behalf, the disclosure of which could reasonably be expected to have adverse consequences for Railroad ("Confidential Information"). Notwithstanding the foregoing, Buyer may disclose Confidential Information to those of Buyer's agents directly involved with Permittee with respect to the acquisition of the Property, provided such individuals and firms have agreed to maintain the confidentiality of Confidential Information pursuant to this Agreement and provided further that Permittee shall be liable hereunder for any breach by such parties of such obligation. Confidential Information shall not include information that is or becomes in the public domain other than as a result of a breach by Permittee or its agents. If Permittee or any of its agents receive a request to disclose any part of the Confidential Information, Permittee shall (a) notify Railroad immediately of the existence, terms and circumstances of such request, (b) consult with Railroad on the advisability of taking legally available steps to resist or narrow such requests, and (c) if disclosure of such Confidential Information is required to prevent Permittee being held in contempt or subject to other penalty, shall (i) furnish only such information as is legally required to be so disclosed, and (ii) use its best efforts to obtain an order or other reliable assurance that confidential treatment will be afforded to the disclosed Confidential Information. If the transaction contemplated in the Sale Contract does not close for any reason then Permittee shall, promptly upon Railroad's request, forward to Railroad all Confidential Information without keeping any copies thereof.

8. DEFAULT. Permittee acknowledges and agrees that in the event of a breach of this Agreement, Railroad would be irreparably harmed and could not be made whole by monetary damages. Accordingly, in addition to any other remedy to which it may be entitled at law, in equity or under this Agreement, Railroad shall be entitled to injunctive relief (without the posting of any bond and without proof of actual damages) to prevent such breach and/or to compel specific performance. Permittee and its agents shall not oppose the granting of such relief. In the event of any breach by Permittee or its agents under this Agreement, Railroad may terminate this Agreement and shall be entitled to any other remedy available at law, in equity or under this Agreement. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement.

9. GOVERNING LAW, JURY WAIVER. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of North Dakota without regard to principles of conflicts of law. PERMITTEE AND RAILROAD IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

10. SALE CONTRACT. The provisions of this Agreement shall be deemed incorporated into the Sale Contract, shall survive the closing thereunder and shall not be merged into the deed conveying the Property or any other closing document; provided, however that nothing in the Sale Contract shall limit or modify any remedy available to Railroad under this Agreement for a breach by Permittee of its obligations under this Agreement. All notices hereunder shall be delivered in the manner set forth in the Sale Contract.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the Effective Date.

PERMITTEE:

SOO LINE RAILROAD COMPANY,
dba CANADIAN PACIFIC RAILWAY

By: Judith A. Mitchell
Print Name: Judith A. Mitchell
Title: Director - Business Development

RAILROAD:

BNSF RAILWAY COMPANY

By: Jerome M. Johnson
Print Name: Jerome M. Johnson
Title: Asst VP

5/21/07

Date of Execution by Railroad (Effective Date)

EXHIBIT G

**NORTH DAKOTA HAULAGE
SERVICE AGREEMENT**

THIS AGREEMENT (the "North Dakota Haulage Service Agreement" or "Agreement") is entered into as of this ____ day of _____, 2007, by and between SOO LINE RAILROAD COMPANY, d/b/a Canadian Pacific Railway ("CPR") and BNSF Railway Company ("BNSF"), sometimes collectively referred to as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, the Parties interchange rail freight cars in Minot, ND under the terms and conditions of an agreement dated March 15, 1988 as supplemented September 16, 1993 hereinafter referred to as the "Interchange Agreement"; and

WHEREAS, CPR and BNSF are parties to a Purchase and Sale Agreement dated (date) for Rail Operations and Real and Personal Property between Crosby and a Point East of Lignite in Divide and Burke Counties, North Dakota ("Conveyed Lines"); and

WHEREAS, to affect the Purchase Agreement and continue to serve customers, ("Conveyed Line Industries") located on the Conveyed Lines, BNSF desires to purchase haulage services from CPR to move loaded and empty freight cars in BNSF's account in either direction between Minot, ND and Conveyed Line Industries; and

WHEREAS, CPR has agreed to provide or cause to provide to BNSF, and BNSF has agreed to purchase from CPR, haulage services; and

WHEREAS, the Parties desire to set forth the terms and conditions upon which CPR shall provide or cause to provide such haulage services to BNSF.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, Agree As Follows:

Section 1 - BNSF HAULAGE CARS

1.01 "BNSF Haulage Cars" shall include Railcars (as defined in Section 1.02) tendered by BNSF in the revenue waybill and car hire account of BNSF for handling on lines of railway owned or controlled by CPR (referred to hereinafter as the "Haulage Route") between the Parties exchange location in Minot, North Dakota and the Conveyed Line Industries.

1.02 "Railcars" shall include the loaded and empty freight rail cars to be moved in existing CPR train service under the provisions of this Agreement, and will be limited to those rail cars that are both (i) in the waybill and car hire accounts of BNSF (as determined under the Association of American Railroad Car Hire and Car Service Rules), and (ii) for BNSF destined to or originating from Conveyed Line Industries over lines owned or operated by CPR or its agent for exchange between CPR and BNSF at Minot, ND. The aforesaid Railcars to be handled by CPR under the provisions of this Agreement are hereinafter referred to as "BNSF Haulage Cars".

1.03 Subject to the clearance file maintained by CPR and prior to any dimensional load or excess clearance Railcar(s) being tendered by BNSF for movement under this North Dakota Haulage Service Agreement, BNSF shall first notify CPR in writing, giving all pertinent physical facts, and requesting verification. CPR shall respond promptly either confirming the physical facts related to the proposed dimensional load or excess clearance Railcar(s) or specifically identifying the physical facts which would interfere with a planned move. In no event shall CPR deny to BNSF the ability to tender a specific Railcar for movement over the Haulage Route and then subsequently grant approval for the same or similar movement over the same portion of

the Haulage Route in a CPR train unless BNSF receives timely notice that the limiting clearance or other reason for denial has been removed. The Parties shall cooperate to accommodate all dimensional loads and excess clearance Railcars, subject to compensation to CPR for any special services necessary or advisable for the movement thereof at the charge to be assessed by CPR to BNSF from time to time to recover all costs incurred by CPR associated with the movement of such dimensional load and/or excess clearance Railcars.

Section 2 - HAULAGE SERVICES

2.01 CPR hereby agrees to handle in existing train service ("Haulage Services"), BNSF Haulage Cars, pursuant to the terms and subject to the conditions set forth in this Agreement, with CPR and/or its designated agent's crews, locomotive power, end-of-train device ("EOT") and fuel. Such "Haulage Services" shall include, as applicable, (i) the transportation of Railcars between the points specified in Section 1.01; (ii) movement of bad order equipment to or from repair tracks, provided, that BNSF will be billed separately for repairs to such equipment performed by CPR pursuant to Section 3.06 of this Agreement; (iii) such mechanical or other inspection of BNSF Haulage Cars as may be prescribed by regulation or CPR's operating practices; and (iv) provision of supervision as required.

2.02 CPR shall afford BNSF Haulage Cars substantially the same type and levels of service for the protection of freight (such as inspections, load shifting and security) as CPR does for its own traffic.

2.03 The BNSF Haulage Cars tendered by BNSF at the Minot exchange tracks for handling by CPR under this Agreement shall be subject to compliance with operating practices applied to CPR's own trains.

2.04 BNSF's purchase of Haulage Services pursuant to this Agreement shall be subject to CPR's existing available train capacity.

2.05 If BNSF develops further business for the Conveyed Line Industries, such that additional volume exceeds available capacity on CPR's existing train service which necessitate the operation of additional CPR trains to accommodate the increase in BNSF Haulage Cars, BNSF may request that CPR permit the operation of an additional train start. CPR shall consider such a request in good faith and may at its discretion permit the operation of BNSF Haulage Cars in excess of the existing train service capacity as specified by CPR. If CPR determines, in its sole judgment reasonably exercised (having regard to CPR's own present and future requirements and CPR's required reserve capacity), that facility changes, additions and betterments to the Haulage Route are necessary to accommodate the operation of additional trains to solely handle BNSF Haulage Cars ("Capacity Improvements"), CPR shall advise BNSF of the required Capacity Improvements and the number of Additional Trains that would be permitted if the Capacity Improvements were constructed. If BNSF is in agreement with the Capacity Improvements to be made then it shall request in writing that the Capacity Improvements be made by CPR at the sole cost and expense of BNSF. CPR shall construct the Capacity Improvements and upon completion of the construction of the Capacity Improvements payment therefore will be made by BNSF.

2.06 Unless otherwise agreed in writing, the transition of rail operations on the Commencement Date specified in the Purchase and Sale Agreement will be in accordance with Appendix I attached hereto.

Section 3 – MANAGEMENT AND OPERATION

3.01 BNSF shall physically deliver westbound BNSF Haulage Cars to CPR at Minot, ND on such track(s) as shall be designated from time to time by CPR's local transportation officer or other designated representative in charge of such exchange tracks at Minot, ND. In the event CPR's operation over BNSF's tracks and yard

facilities in connection with the receipt of BNSF Haulage Cars is required, it shall at all times be subject to the direction and control of the BNSF local operating officer in charge of such tracks and yard facilities and to applicable provisions of BNSF's safety and operating rules. The operation of BNSF Railcars over CPR lines of railroad shall at all times be subject to the exclusive direction and control of CPR, and to applicable provisions of CPR's safety and operating rules. In the event the Haulage Route includes lines of railroad of another track owner over which CPR may perform haulage, those safety and operating rules provided by the track owner shall be of the same force and affect to BNSF Haulage Cars as they apply to CPR train movements.

3.02 BNSF shall provide, or cause to have provided via EDI 417 and 418 transmissions (or by such other means as may be mutually agreed by the Parties), information necessary for the further handling and movement of BNSF Haulage Cars. Such information shall include, for each car:

- (1) Car initial and number;
- (2) Loaded or empty;
- (3) Such other information as the Parties may agree to be necessary or convenient for the safe and efficient exchange and further movement of such cars;

3.03 BNSF Haulage Cars shall be considered physically delivered from one Party to the other Party upon the Minot exchange tracks when the train containing such BNSF Haulage Cars has been placed by the delivering Party on the designated track(s) and locomotive of the delivering Party has uncoupled from such train. BNSF Haulage Cars shall be preceded by the delivery of the car movement information specified in Section 3.02 of this Agreement.

3.04 CPR shall have exclusive management and control over the movement of trains containing BNSF Haulage Cars while on CPR's lines. CPR shall have the right to

transport rail cars or equipment in the revenue waybill or car hire account of any party other than BNSF in trains transporting BNSF Haulage Cars so long as it does not unreasonably adversely affect the BNSF traffic.

3.05 BNSF shall deliver, or cause to be so delivered, to CPR the Advance 418 train consist together with such other data to include, but not limited to, haulage waybills, concerning such BNSF Haulage Cars therein as CPR may reasonably require for the safe and efficient operation of such Railcars. BNSF shall deliver, or cause to be so delivered, to CPR, in the manner herein specified, upon exchange tracks at Minot, ND, all BNSF Haulage Cars to be moved by CPR to Conveyed Line Industries under the provisions of this Agreement. All such BNSF Railcars shall be pre-blocked by a carrier other than CPR to the extent and in such manner as desired by BNSF, and CPR shall assemble into its train on the Minot, ND exchange tracks blocked BNSF Railcars. Upon completion of assembling the train CPR shall perform the mechanical and air brake test and deliver, or cause to be so inspected and delivered, all such BNSF Railcars in train consists which may include BNSF Haulage Cars, CPR Railcars, CPR locomotives and CPR EOT. BNSF shall furnish CPR, at no cost or expense to CPR, such access to trackage as may be necessary for CPR to perform service to BNSF Haulage Cars contemplated by this Agreement.

3.06 CPR shall use its reasonably best efforts to deliver, or cause to be so delivered, to BNSF the Advance 418 train consist together with such other data concerning such BNSF Haulage Cars therein as BNSF may reasonably require for the safe and efficient operation of such Railcars. CPR shall deliver, or cause to be so delivered, to BNSF, in the manner herein specified, upon exchange tracks at Minot, ND, all BNSF Haulage Cars to be moved by CPR from Conveyed Line Industries under the provisions of this Agreement.

3.07 CPR may arrange for such repairs to BNSF Haulage Cars and perform adjustments to or transfers of lading from bad ordered, defective or overloaded BNSF Haulage Cars, as in CPR's judgment may be necessary to move such BNSF Haulage

Cars safely. BNSF shall reimburse CPR for the cost of such work at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the Association of American Railroads ("AAR").

Section 4 - SERVICE STANDARDS

4.01 It is the intent of CPR that it shall generally accord BNSF Haulage Cars the same level of service as CPR's own traffic of the same type; provided, however, that the foregoing shall not constitute a service guarantee.

4.02 CPR and BNSF, as the case may be, in delivering or picking up of loaded and/or empty freight cars hereunder, shall do so in such a manner so as to not obstruct or interfere unreasonably with the operation or use of any other trackage.

Section 5 - CAR ACCOUNTING AND CAR HIRE

5.01 BNSF Haulage Cars shall at all times remain in the revenue waybill and car hire accounts of BNSF while moving in haulage service on CPR's lines. CPR shall not be entitled to any line haul revenue for the handling of BNSF Haulage Cars, nor shall CPR participate in the routing of, nor appear in tariffs, waybills or other shipping documents as a participating carrier in connection with the movement of BNSF Haulage Cars. As between CPR and BNSF, BNSF shall be responsible for all mileage and car hire charges accruing on Railcars moving in haulage service, and BNSF shall report and pay, or arrange to have reported and paid, all appropriate allowances and charges directly to the owner(s) of such Railcars.

Section 6 – COMPENSATION

6.01 In consideration of the haulage service being performed herein, BNSF agrees to pay CPR the compensation prescribed in Schedule A attached hereto.

6.02 BNSF shall prepare and deliver to CPR monthly on or about the fifteenth day of each calendar month during the term of this Agreement a statement of the number of cars delivered to and hauled by CPR in accordance with Section 1 hereof during the immediate preceding calendar month. The statement shall contain a detailed list in chronological order of the Railcars which shall include but not be limited to, car initial and number, and type. CPR will submit an invoice on a monthly basis. All payments called for under this Section shall be made by BNSF within thirty (30) calendar days after invoice date.

6.03 The amounts specified in this Section 6 shall be in addition to any and all other costs, expenses and charges that BNSF is required to bear and pay under the provisions of this Agreement.

6.04 The payment of bills shall not be delayed or payment refused or shorted on the face amount of bill rendered because of errors in supporting details which are not serious and important, but bill shall be paid as rendered and exception taken in writing addressed to the officer of CPR responsible for the issuance of the bill.

6.05 The records of each Party pertaining to this Agreement shall be open to inspection by representatives of the other Party upon reasonable notice, during regular office hours. No bill shall be rendered nor exception honored for charges incurred one (1) year after the service month in which the expense was incurred.

6.06 Waiver of a default in any given instance or many similar instances shall not be construed as a waiver in any other instance. Failure of a Party to enforce its remedies in any one instance or many similar instances shall not constitute a waiver of the right to enforce its remedies in any other instance.

6.07 It is expressly understood and agreed that the payments described in this Section 6 to be paid by BNSF do not in any case include any cost or expense which may be incurred by CPR on account of loss of or damage to property, or injury to or

death of any person or persons arising out of or in connection with the operation by CPR of its locomotives, trains, or cars, upon or over the CPR trackage on the route used to transport the BNSF Haulage Cars. It is agreed by and between the Parties that such items of cost or expense shall be borne and paid by the Parties according to the provision of Section 7 hereof.

Section 7 - LIABILITY

As between the Parties hereto, responsibility for any loss or destruction of, or damage to, any property whatsoever, and any injury to or death of any person or persons whomever (including employees of BNSF and CPR), resulting from, arising out of, incidental to or occurring in connection with this Agreement ("Loss or Damage"), shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise provided in Sections 7.08 hereof):

7.01 For purposes of this Section 7, the following words shall have the meanings set forth in this Section:

(a) "Cars" shall mean loaded and empty freight cars, trailers, containers, and Railcars (including lading). "CPR Cars" shall mean Cars in the revenue and/or car hire account of CPR. "BNSF Cars" shall mean Cars in the revenue and/or car hire account of BNSF.

(b) "Equipment" shall mean and be confined to locomotives, cabooses, hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon. "CPR Equipment" shall mean Equipment operated by or in the

account of CPR and "BNSF Equipment" shall mean Equipment in the account of BNSF. For clarity all locomotive units regardless of ownership while operating in Haulage Services shall be considered in the account of CPR.

(c) CPR Cars and CPR Equipment shall be referred to collectively as "CPR Traffic". BNSF Cars and BNSF Equipment shall be referred to collectively as "BNSF Traffic". CPR Traffic and BNSF Traffic shall be referred to collectively as "Traffic".

(d) "Foreign Railroad" shall mean a railroad that is not a party to this Agreement.

7.02 Whenever Loss or Damage occurs with only one CPR train being involved, and that CPR train is handling BNSF Traffic, then BNSF shall assume and bear all liability for Loss or Damage to BNSF Traffic moving in such CPR train, and CPR shall assume and bear all liability for CPR Traffic moving in such CPR train. In such event, any other Loss or Damage, including without limitation Loss or Damage to employees of the Parties and any Loss or Damage to third party Cars and Equipment not otherwise allocated pursuant to Section 7.06, to the Haulage Route or to property, and any injury to or death of any other person or persons, so occurring shall be borne by each of CPR and BNSF in proportion to the amount of traffic tendered by each Party relative to the total Traffic in such CPR train that is moving in that Party's revenue waybill or car hire account for said train.

7.03 Whenever Loss or Damage occurs with more than one train, and one or more of such trains is handling BNSF Traffic, then BNSF shall assume and bear all liability for Loss or Damage to BNSF Traffic moving in such CPR train(s) moving over the Haulage Route, and CPR shall assume all liability for CPR Traffic moving in such CPR train(s). In such event, any other Loss or Damage, including without limitation Loss or Damage to employees of the Parties and any Loss or Damage to third party Cars and Equipment not otherwise allocated pursuant to Section 7.06, to the Haulage

Route or to property, and any injury to or death of any other person or persons, so occurring shall be allocated between the Parties in the following manner: (i) all such Loss or Damage arising from or caused by any train(s) which is (are) handling only CPR Traffic shall be borne solely by CPR, (ii) all such Loss or Damage arising from or caused by any train(s) which is (are) handling only BNSF Traffic shall be borne solely by BNSF, and (iii) all such Loss or Damage which arises from or is caused by any train(s) handling both BNSF Traffic and CPR Traffic shall be shared and borne by each of BNSF and CPR in proportion to the amount of traffic tendered by each Party relative to the total Traffic in such train that is moving in that Party's revenue waybill or car hire account for said train. The Parties shall share recovery or indemnification from any Foreign Railroad or third party who is at fault in proportion to that Party's respective Loss or Damage as set forth above.

7.04 Except as otherwise provided in Section 7.03, for the purposes of assigning responsibility for Loss and Damage under this Section 7 as between the Parties hereto, the trains of a Foreign Railroad shall be considered to be the trains of CPR handling only CPR Traffic.

7.05 Notwithstanding anything to the contrary in Sections 7.02 through 7.04 above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, occurs with one or more CPR trains handling BNSF Traffic being involved, then, as between themselves, (i) CPR shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in CPR Traffic and/or a CPR locomotive from which there was a release, (ii) BNSF shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in BNSF Traffic from which there was a release, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in Cars, Equipment or locomotives in the revenue waybill and car hire accounts of both BNSF and CPR from which there was a release shall be shared by the Parties in proportion to

the total number of such Cars, Equipment or locomotives in the revenue waybill and car hire account of each Party from which there was such a release.

7.06 For purposes of determining responsibility for Loss and Damage as between the Parties hereto pursuant to this Section 7, any Cars, Equipment or locomotives of any railroad not a party to this Agreement moving in a CPR train shall be deemed to be Cars, Equipment or locomotives in the revenue waybill or car hire account of CPR.

7.07 Whenever circumstances require wrecking service or wrecking train service in connection with the subject of this Agreement, CPR shall arrange for such services to be performed as promptly as reasonably possible, and the cost thereof shall be allocated as between the Parties in accordance with the terms of this Section 7.

7.08 If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Section 7.

7.09 In every case of death or injury suffered by an employee of BNSF or CPR, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the expiration or other termination of this North Dakota Haulage Service Agreement prior to any of the respective date(s) upon which any such future installments are to be paid.

7.10 Whenever any liability, cost or expense is assumed by or allocated to a Party under this Section 7, that Party shall (i) forever protect, defend, indemnify and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitees or their directors, officers, agents or employees, and (ii) defend such indemnitees against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

7.11 Each Party shall investigate, adjust and defend all cargo related claims filed with it in accordance with applicable statutes and regulations in Canada and the US.

7.12 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this North Dakota Haulage Service Agreement shall be included as costs and expenses in applying the liability provisions of this Section 7; provided, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party.

7.13 No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with applicable statutes and regulations in the United States of America and for which the other Party has any liability under this North Dakota Haulage Service Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds _____). The foregoing amount of _____ shall be adjusted annually in accordance with the provisions of Schedule A.

Section 8 – COMPLIANCE WITH LAW

8.01 Each Party hereto shall comply with all applicable federal, state and local laws, rules, regulations and orders promulgated by any government or governmental agency that relate to the provision of haulage services or the movement of BNSF Haulage Cars hereunder. If any fine, penalty, cost or charge is imposed or assessed on or against either Party hereto by reason of the other Party's non-compliance with any such laws, rules, regulations or orders, such non-complying Party shall reimburse and indemnify the other Party for or on account of any such fine, penalty, cost, or charge, and all expenses and attorney's fees incurred in connection therewith, and, to the extent feasible, such non-complying Party shall defend the interests of that other Party in any related legal proceeding free of cost, charge or expense to that other Party.

Section 9 - TERM

9.01 This North Dakota Haulage Agreement shall become effective ("Effective Date") as of the first date written above and shall remain in effect until January 1, 2017 ("Initial Term") and thereafter as mutually agreed between the Parties.

9.02 Either Party shall have the right to terminate this Agreement at any time after the Initial Term, upon giving the other Party at least twelve (12) months prior written notice of such termination; provided however, that in the event that CPR seeks approval or exemption for abandonment or discontinuance of service of any portion of the Conveyed Line from the federal Surface Transportation Board (STB) prior to January 1, 2010 (which BNSF will not to oppose or frustrate pursuant to Section 3.2(b) of the Purchase and Sale Agreement) this Agreement may be terminated by CPR upon ten (10) business days' notice; and provided further, that after January 1, 2010, this Agreement may be terminated by either party upon thirty (30) calendar days' notice in

the event the STB approves or exempts abandonment or discontinuance of service of any portion of the Covered Lines.

9.03 Termination of this North Dakota Haulage Services Agreement shall not relieve or release either Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination hereof.

9.04 In the event of any substantial failure on the part of either Party to perform its obligations under this North Dakota Haulage Agreement, and its continuance in such default for a period of thirty (30) calendar days after written notice thereof by certified mail from the other Party, the non-defaulting Party shall have the right at its option, after first giving fifteen (15) days' written notice thereof by certified mail, and notwithstanding any waiver by such Party of any prior breach thereof, to refer such matter to arbitration pursuant to Section 12 and seek damages and/or specific performance of this Agreement from the defaulting Party. In the case of a substantial default by BNSF which continues after adjudication of such default through arbitration, CPR may terminate this North Dakota Haulage Service Agreement if BNSF fails to cure such substantial default within: (i) seven (7) business days of the receipt of notice of continued default in the case of such a default by BNSF in an obligation to pay CPR, and (ii) fifteen (15) days of the receipt of notice of continued default in the case of any other such default under this North Dakota Haulage Service Agreement.

Section 10 - FORCE MAJEURE

10.01 The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including strikes, riots, floods, accidents, Acts of God, acts of terrorism, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent

performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures (including rerouting BNSF Haulage Cars over alternate rail lines to the extent practicable) to restore performance of its obligations in a timely manner; provided, that if a detour is over CPR's line, BNSF shall compensate CPR for the provision of service over such detour route at the rate prescribed by Section 6.01, and if such detour is over the lines of a carrier (or carriers) other than CPR, BNSF shall compensate CPR for its pro-rata share of the additional costs incurred by CPR in providing service via such detour routes.

10.2 The Party invoking force majeure shall immediately notify the other Party by telephone followed by written notice no later than five (5) days thereafter giving details of the force majeure event. Upon cessation of the force majeure event, the invoking Party shall immediately notify the other Party of its cessation as provided in the preceding sentence. Any dispute respecting the occurrence or cessation of the force majeure event shall be subject to arbitration pursuant to Section 12 of this Agreement."

Section 11 - SUCCESSORS AND ASSIGNS

11.01 This North Dakota Haulage Service Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns.

11.02 BNSF may, with the prior written consent of CPR, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of BNSF, or merging or consolidating with BNSF; provided, however, that such assignment shall not transfer or extinguish any liability or obligation of BNSF under this Agreement that existed prior to such assignment.

11.03 CPR may assign this Agreement to any person or corporation; provided, however, that such assignment shall not transfer or extinguish any liability or obligation of CPR under this Agreement that existed prior to such assignment.

Section 12 - ARBITRATION

12.01 Any dispute arising between the Parties with respect to this North Dakota Haulage Service Agreement shall be referred to the respective senior operating officers for resolution. In the event such officers are unable to resolve the dispute, either Party may submit the dispute for binding arbitration by a single arbitrator before the American Arbitration Association under the Commercial Arbitration Rules. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne by CPR and BNSF, with each paying 50 percent of such compensation, costs and expenses. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator.

Section 13 - NOTICE

13.01 Any notice required or permitted to be given by one Party to the other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

(a) If to BNSF:

**Vice President – Network Development
BNSF Railway
2500 Lou Menk Drive
P.O. Box 961039
Ft Worth, TX 76131-2828
U.S.A.**

with a copy to:

**AVP Contracts & Joint Facilities
BNSF Railway
2600 Lou Menk Drive
P.O. Box 961034
Ft Worth, TX 76161-0034
U.S.A.**

(b) If to CPR:

**General Manager – Interline Management
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4**

with a copy to:

**Manager Interline Agreement Management
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4**

13.02 Either Party may provide notice of changes in the above addressees to the other Party by personal service or certified mail.

Section 14 - CONFIDENTIALITY

14.01 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the Initial Term and any Additional Term(s), the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by either Party to any person other than officers, employees, and attorneys, without the prior written approval of the other Party.

Section 15 - INDEMNITY COVERAGE

15.01 As a part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Party hereto shall extend to and indemnify the parent corporation, subsidiaries and affiliates of such other Party, and all of their respective directors, officers, agents and employees.

Section 16 - GENERAL PROVISIONS

16.01 This North Dakota Haulage Service Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the Parties hereto.

16.02 This North Dakota Haulage Service Agreement contains the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes any and all oral understandings between the Parties.

16.03 No term or provision of this North Dakota Haulage Service Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all Parties.

16.04 Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neutral gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

16.05 All words, terms and phrases used in this North Dakota Haulage Service Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

16.06 The division of this Agreement into sections and subsections and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to sections are to sections of this Agreement.

16.07 As used in this North Dakota Haulage Service Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by such Party and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such Party.

16.08 This North Dakota Haulage Service Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

16.09 No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

16.10 If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

16.11 Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between CPR and BNSF. BNSF and CPR each shall indemnify and hold harmless the other against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made, or lawsuits brought, by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency or pursuant to a collective bargaining agreement. It is the Parties' intention that BNSF and CPR each shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and grievances filed by its own employees arising under its collective bargaining agreement with its employees.

16.12 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

Section 17 – GOVERNING LAW

17.01 It is the intention of the parties hereto that the laws of the State of North Dakota, except for its conflict of laws rules, shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties' hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this North Dakota Haulage Service Agreement to be duly executed as of the date first above written.

SOO LINE RAILROAD COMPANY
d/b/a Canadian Pacific Railway

BNSF RAILWAY COMPANY

By _____

By _____

Its _____

Its _____

Date _____

Date _____

APPENDIX I
TO
NORTH DAKOTA HAULAGE SERVICE AGREEMENT
TRANSITION OF RAIL OPERATIONS

Section 1 *Transition of Operations.* Unless otherwise agreed in writing, the transition of rail freight operations on the Commencement Date specified in the Purchase and Sale Agreement shall be governed by the terms of this Appendix I.

Section 2 *Inventory of Cars.* BNSF will make an inventory of all BNSF cars on the Conveyed Lines as of 12:01 am Central Time on the Commencement Date and provide instructions to CPR for the subsequent movement of the BNSF cars under the terms of this North Dakota Haulage Service Agreement. The inventory will show separately (a) loaded cars at Conveyed Lines Industries; (b) empty cars at Conveyed Lines Industries; (c) loaded cars en route (in a train consist or at an intermediate siding or yard) on the Conveyed Lines; and (d) empty cars en route (in a train consist or at an intermediate siding or yard) on the Conveyed Lines.

Section 3 *Haulage Fees.* Haulage fees in Schedule A attached to this agreement shall apply for the subsequent movement in CPR Haulage Services of BNSF cars located on the Conveyed Lines as of the Commencement Date.

**SCHEDULE A
TO
NORTH DAKOTA HAULAGE SERVICE AGREEMENT:
HAULAGE FEES**

HAULAGE FEES FOR SERVICES PERFORMED BY CPR

Haulage Fee _____ per loaded or empty car

REDACTED

REDACTED

EXHIBIT H

LIST OF PHYSICAL AND ENVIRONMENTAL DEFECTS

None known

EXHIBIT I

SECOND AMENDMENT TO 1959 JOINT USE AGREEMENT AS AMENDED

THIS SECOND AMENDMENT TO AGREEMENT ("*Second Amendment*"), made this _____ day of _____, 2006, among SOO LINE RAILROAD COMPANY, a Minnesota corporation, doing business as CANADIAN PACIFIC RAILWAY, as successor to MINNEAPOLIS ST. PAUL & SAULT STE. MARIE RAILROAD COMPANY ("*CPR*"), BNSF RAILWAY COMPANY, a Delaware corporation, as successor to GREAT NORTHERN RAILWAY COMPANY ("*BNSF*"), and the DAKOTA, MISSOURI VALLEY AND WESTERN RAILROAD, INC., a North Dakota corporation ("*DMVW*").

RECITALS:

A. CPR and BNSF are parties to a *Joint Use Agreement* dated September 18, 1959, as amended and supplemented from time to time relating to the joint use by BNSF and CPR of their respective properties between Lignite Junction, North Dakota and Crosby, North Dakota (the "Crosby Joint Section") and between Hankinson, North Dakota and Geneseo, North Dakota (the "Geneseo Joint Section").

B. DMVW was made a party to the Joint Use Agreement as it pertains to the Crosby Joint Section in an amendment dated August 30, 1990 (the "*DMVW Amendment*"). This Joint Use Agreement as it has been amended by the DMVW Amendment by and among the parties hereto; and by Supplemental Agreements dated October 17, 1960, February 27, 1970, November 18, 1970, March 11, 1975, and letter agreement dated October 13, 1969 by and between CPR and BNSF; letter agreement by and between BNSF and DMVW dated November 15, 1990; Agreement by and among Rutland Line, Inc., BNSF and CPR, dated October 31, 1997; and otherwise informally amended from time to time by the parties hereto, is collectively referred to herein as the "*Agreement*").

C. By separate Purchase and Sale Agreement dated _____, 2007 CPR has acquired BNSF's property interests in the Crosby Joint Section.

D. CPR, DMVW and BNSF wish to remove the Crosby Joint Section from the terms and governance of the Agreement, all in accordance with the terms and conditions set forth below in this Second Amendment.

AGREEMENT:

ACCORDINGLY, in consideration of the foregoing, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereby agree as follows:

1. The parties hereby acknowledge and agree that DMVW's rights, interests and obligations under the Agreement shall terminate effective as of the date of this Second Amendment. From and after the date of this Second Amendment, all of the terms of the DMVW

Amendment shall be deemed terminated and extinguished, and DMVW shall not be considered a party to the Agreement.

2. Redefined Terms.

2.1. All references to the term "the joint sections" in the Agreement are hereby deleted and/or replaced with the term "the joint section," as the context dictates. All references to "a joint section" within the Agreement are hereby amended to read "the joint section." The joint section shall mean that line of railroad 15.08 miles in length and its appurtenances (the "Geneseo Joint Section") between Point "F" west of Hankinson and Point "F" at Genesco as shown in Exhibit A to the September 18, 1959 Joint Use Agreement.

2.2. All references to "Great Northern" in the Agreement are hereby deleted and replaced with "BNSF."

2.3 All references to "Soo Line" in the Agreement are hereby deleted and replaced with "CPR."

3. Conveyance of Crosby Joint Section Property Interest. By separate Purchase and Sale Agreement dated _____, 2007 BNSF conveyed its undivided one-half interest in the property described in Article II, Section 5 of the Agreement specifically defined as the Crosby Joint Section.

4. Description of Crosby Joint Section. Section 7(b) of Article II of the Agreement is hereby deleted in its entirety.

5. Relinquishment of BNSF's rights and obligations. The parties hereby acknowledge and agree that BNSF rights, interests and obligations under the Agreement in respect to the Crosby Joint Section, shall terminate effective as of the date of this Second Amendment. All references to BNSF rights, interest and obligations under the Agreement in respect to the Crosby Joint Section, are hereby eliminated effective as of the date of this Second Amendment.

6. Definition of Operating and Using Company. Section 8 of Article II of the Agreement, as amended, is hereby further amended as follows:

The term "*Operating Company*" as used in the Agreement shall be understood to refer to CPR. The term "*Using Company*" as used in this Agreement shall be understood to refer to BNSF.

7. Connecting Tracks and Track Changes.

7.1. The first sentence of Section 10 of Article II of the Agreement is hereby amended to delete the phrase "plats Nos. 1, 2, 3, and 4 of Exhibit 'B' and" therefrom.

7.2. Sections 10(a), (b), (c) and (d) of Article II of the Agreement are hereby deleted in their entirety.

8. Industries and Industry Tracks. Section 13 of Article II of the Agreement is hereby amended by deleting the phrase "including the elevator now served by Soo Line at Kermit which is to be relocated at Noonan as hereinabove provided".

9. Communication Facilities. Section 15(b) of Article II of the Agreement is hereby deleted in its entirety.

10. Division of Costs. Section 16 of Article II of the Agreement is hereby deleted in its entirety.

11. Payments. Sections 1 and 2 of Article III of the Agreement as amended and/or supplemented are deleted and amended in their entirety as follows:

REDACTED

REDACTED

12. Miscellaneous. Sections 3 and 4 of Article III are amended as follows:

Section 3. Reference to Crosby, Noonan and Kincaid are hereby deleted.

Section 4. The last sentence of Section 4 reading "With respect to the Soo Line's exclusive elevator site at Noonan, the Soo Line shall negotiate leases and permits and collect and retain the rents and the Operating Company shall join in such leases or permits" is hereby deleted.

13. Abandonment of Tracks. Section 12 of Article III is hereby amended to add to the end thereof the following provision:

CPR and DMVW shall not oppose or otherwise frustrate any efforts BNSF may undertake between the date of the Second Amendment and January 1, 2017 to relinquish its rights, obligations and undivided one-half interest over any portion of the tracks described in the Agreement, provided, however, that the common carrier rights of any and all of BNSF's assignees over such tracks or of others operating under such rights are also relinquished.

14. Exhibit B. Plat Nos. 1-4 of Exhibit B (depicting connecting tracks relating to the Crosby Joint Section) are hereby deleted.

15. Exhibit D. Exhibit D to the Agreement is hereby deleted in its entirety.

16. Exhibit E. Exhibit E to the Agreement is hereby deleted in its entirety.

17. Exhibit F. Exhibit F to the Agreement is hereby deleted in its entirety.

18. Conflicts; Ratification. If there is any conflict between the provisions of the Agreement and this Second Amendment, the provisions of this Second Amendment shall govern. Except as amended by this Second Amendment, the Agreement is ratified by the parties hereto and remains in full force and effect.

19. Binding Effect. This Second Amendment shall bind and be available for the benefit of the CPR, BNSF and DMVW and their respective agents, heirs, partners, representatives, successors and assigns.

20. Counterparts. This Second Amendment may be executed in counterparts or with counterpart signature pages, which upon execution by all parties, shall constitute one integrated agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by their proper officers thereunto duly authorized the day and year first hereinabove written.

**SOO LINE RAILROAD COMPANY, dba
CANADIAN PACIFIC RAILWAY**

By: _____
Its: _____

BNSF RAILWAY COMPANY

By: _____
Its: _____

**DAKOTA, MISSOURI VALLEY AND
WESTERN RAILROAD, INC.**

By: _____
Its: _____

EXHIBIT J

[Intentionally Omitted]

EXHIBIT K

LIST OF CLAIMS

None known

EXHIBIT L

[Intentionally Omitted]

EXHIBIT M

**ENCUMBRANCES, EASEMENTS, LICENSES, PERMITS, LIENS, AND
AGREEMENTS AFFECTING THE PREMISES**

REDACTED

12-11-60

EXHIBIT N

JUDGMENT LIENS; PENDING LITIGATION

Judgment Liens

There are no known judgment liens attached to the subject property.

Pending Litigation

REDACTED

EXHIBIT O

PUBLIC WORKS PROJECTS

As of the effective date of this Agreement, there are no pending government-funded public works projects on the Premises.

EXHIBIT P

CLOSING STATEMENT

Closing Date		Tax Year End Date:		December 31, 2006	
1. PROPERTY					
Date of Purch Agr	City	County	State	Sq Ft	Acres
	Various	Burke and Divide	ND	36,674,906	841.94
2. Parties					
Seller or "Railroad"			Buyer		
Name	BNSF Railway Company		Soo Line Railroad Company		
Address	Real Estate Department 2500 Lou Menk Drive AOB-3 Fort Worth, TX 76131				
Fed Tax ID					
Contact	Jerry Johnson				
Phone No	817-352-6434				
Fax No	817-352-7154				
e-mail	jerome.johnson@bnsf.com				
				CREDITS	
3. Consideration				Railroad	Buyer
Sales Price		Net		\$ -	\$ -
Deposit					
4. Proration of Rents					
Billing Period		Divisions			
Ag. No.	From To	Amt	Amt-Ro'd	Railroad	Buyer
	01/01/03			\$ - \$ -	\$ - \$ -
	01/01/03			\$ - \$ -	\$ - \$ -
	01/01/03			\$ - \$ -	\$ - \$ -
	01/01/03			\$ - \$ -	\$ - \$ -
	01/01/03			\$ - \$ -	\$ - \$ -
5. Proration of Taxes					
Tax Parcel/Tax ID		Amt	Amt Paid	Divisions	
				Railroad	Buyer
				\$ - \$ -	\$ - \$ -
				\$ - \$ -	\$ - \$ -
				\$ - \$ -	\$ - \$ -
				\$ - \$ -	\$ - \$ -
				\$ - \$ -	\$ - \$ -
6. Other					
Due Seller at Closing				\$ -	\$ -
7. Signatures					
The undersigned representatives of Seller and Buyer agree to the above settlement statement and also agree that all terms and conditions contained in the purchase and sale agreement shall survive delivery of the deed notwithstanding any lapse of time between the date hereof and the date stipulated in the purchase and sale agreement for closing the transaction.					

BNSF Railway Company

Soo Line Railroad Company

By _____

By _____

Its _____

Its _____

Date _____

Date _____



5500 Cenex Drive
Inver Grove Heights, MN
55077

651-355-6000
chsmc.com

June 15, 2007

Hon. Charles Nottingham
Chairman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Nottingham:

My company, CHS Inc., supports the proposed sale of BNSF Railway Company's ("BNSF") interest in the jointly owned line between Crosby and Lignite Junction, ND and the BNSF-owned line between Lignite Junction and Milepost 47.0+/- to the Soo Line Railroad Company ("Soo Line").

CHS is a diversified cooperative primarily serving farmers in the western United States. As Vice President of Transportation, I am responsible for tens of thousands of cars of rail shipments each year to and from a large network of grain elevators and other facilities on BNSF, CPR, DMVW and other carriers in North Dakota. For the past several years, CHS has shipped an average of 300-400 cars of grain a year with BNSF from Lignite to a number of destinations.

It is my understanding that following the sale, the Dakota Missouri Valley & Western Railroad ("DMVW") will maintain and operate the line for Soo Line pursuant to lease and operating agreements with Soo Line and will continue BNSF traffic on the line through a haulage agreement. This is an excellent arrangement for CHS. CHS will have the option to ship via either BNSF or CPR out of Lignite and we will have the benefit of DMVW for our local service. DMVW provides very good service for CHS at other locations and I have no doubt the Lignite service will be of the same caliber.

CHS urges the Surface Transportation Board to approve the proposed transaction as soon as possible. Please do not hesitate to contact me if you wish to discuss this matter further.

Sincerely,

Dan Mack
Vice President - Transportation



216 Sixteenth Street, Suite 1000
Denver, CO 80202-5115
Phone: (303) 626-8252
Fax: (303) 626-8251

June 18, 2007

Hon. Charles Nottingham
Chairman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Nottingham:

I write to express my support for the proposed sale of BNSF Railway Company's ("BNSF") interest in the jointly owned line between Crosby and Lignite Junction, ND and the BNSF-owned line between Lignite Junction and Milepost 47.0+/- to the Soo Line Railroad Company ("Soo Line").

Lodgepole Energy Marketing, LLC ("Lodgepole") is the exclusive marketer of Natural Gas Liquids (NGLs) production from the Bear Paw Energy plant in Lignite, ND. Lodgepole ships approximately 8 rail cars per week from the Bear Paw facility to a variety of destinations in the US and Canada.

It is my understanding that following the sale, the Dakota Missouri Valley & Western Railroad ("DMVW") will maintain and operate the line for Soo Line pursuant to lease and operating agreements with Soo Line and will continue BNSF traffic on the line through a haulage agreement. DMVW has an excellent reputation for service and I look forward to using them for our rail traffic. Lodgepole also markets another plant in Montana where rail operations were recently transferred to a short line railroad. This was a positive experience and local switching has improved. We are anticipating a similar benefit from the changes proposed by BNSF, CPR and DMVW.

Lodgepole urges the Surface Transportation Board to approve the proposed transaction as soon as possible. Please do not hesitate to contact me if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Chip Duval".

Chip Duval
President
Lodgepole Energy Marketing, LLC
216 16th Street
Suite 1000
Denver, CO 80202



100 North Main • P.O. Box 125 • Fortuna, North Dakota 58844-0125
Phone (701) 834-2311 • Fax (701) 834-2355
Ambrose (701) 982-3391 • Westby, MT (406) 385-2472
Crosby (701) 965-6371 • Crosby Oil Station (701) 965-6326
Noonan (701) 925-5783

Richard Larsen
General Manager

June 20, 2007

Hon. Charles Nottingham
Chairman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Nottingham:

I write to express my support for the proposed sale to the Soo Line Railroad Company ("Soo Line") of BNSF Railway Company's ("BNSF") interest in the jointly-owned line between Crosby and Lignite Junction, ND and the BNSF-owned line between Lignite Junction and Milepost 47.

New Century Ag is a co-operative formed earlier this year in a merger between Farmers Elevator of Fortuna and Golden Plains Ag. Golden Plains Ag has facilities at Noonan and Crosby, ND which are joint BNSF and CPR stations. BNSF provides its own service and DMVW provides the local service for CPR. In aggregate, these facilities ship 16,000,000 to 22,000,000 bushels of rail car shipments of grain annually. Farmers Elevator of Fortuna has elevators located at Westby, MT, Fortuna, ND and Ambrose, ND. All three of these facilities are west of Crosby and are served by DMVW on behalf of CPR.

It is my understanding that following the sale, DMVW will maintain and operate the entire line pursuant to its lease and operating agreement with Soo Line and will handle existing BNSF traffic through a haulage agreement. Prior to the formation of New Century Ag, I managed Farmers Elevator of Fortuna. I found DMVW's service to be exemplary and I have no doubt that it will maintain this high level of customer service to their existing CPR customers and extend it to BNSF customers they will serve under the haulage agreement.

I strongly encourage the Surface Transportation Board to expedite its approval of the proposed transaction. Please contact me if you have any questions or require any additional information.

Sincerely,

Richard Larsen, General Manager

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition has been served on the following entities by first class mail this 16th day of July, 2007:

The Honorable John Hoeven
Governor
State Capitol
600 Boulevard Avenue
Department 101
Bismarck, ND 58505-0001

North Dakota Transportation Department
608 East Boulevard Avenue
Bismarck, ND 58505-0700

North Dakota Public Service Commission
State Capitol
600 East Boulevard Avenue
Department 408
Bismarck, ND 58505-0480

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

Mr. Chip Duval
President
Lodgepole Energy Marketing, LLC
216 Sixteenth Street
Suite 1000
Denver, CO 80202-5115

Mr. Richard Larsen
General Manager
New Century Ag
100 North Main
P.O. Box 125
Fortuna, North Dakota 58844-0125

Mr. Les Knudson
Superior Grains Inc.
P.O. Box 109
Crosby, ND 58730-0109

Mr. Jeff Wood
Executive Vice President
Dakota, Missouri Valley & Western Railroad
3501 E. Rosser Avenue
Bismarck, North Dakota 58501


Karl Morell