

232763

LAW OFFICES
FRITZ R. KAHN, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036

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August 15, 2012
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August 15, 2012

VIA ELECTRONIC FILING

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

Re: Docket No. FD, V and S Railway, LLC--Acquisition and Operation
Exemption--Colorado Department of Transportation

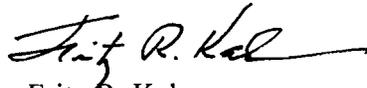
Dear Ms. Brown:

Attached for filing in the subject proceeding is the Verified Petition for
Exemption of V and S Railway, LLC.

Information about the credit card being used to pay the \$6,600.00 filing fee was
facsimile transmitted to the Board earlier this afternoon.

If you have any question concerning this filing or if I otherwise can be of
assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

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Docket No. FD 35664

V AND S RAILWAY, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
COLORADO DEPARTMENT OF TRANSPORTATION

VERIFIED PETITION FOR EXEMPTION
OF
V AND S RAILWAY, LLC

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Tel.: (202) 263-4152

Attorney for

V AND S RAILWAY, LLC

Dated: August 15, 2012

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Docket No. FD 35664

V AND S RAILWAY, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
COLORADO DEPARTMENT OF TRANSPORTATION

VERIFIED PETITION FOR EXEMPTION
OF
V AND S RAILWAY, LLC

V and S Railway, LLC ("V&S"), a Class III railroad subject to the jurisdiction of the Board, pursuant to 49 U.S.C. §10502(a) and 49 C.F.R. §1121.1, *et seq.*, seeks an exemption from 49 U.S.C. §10902 and 49 C.F.R. §1150.1, *et seq.*, to acquire and operate the Towner Line of the Colorado Department of Transportation ("CDOT"), and in support thereof V&S states, as follows:

I.

Background

The Towner Line, extending between Milepost 869.4 near NA Junction 81022 and Milepost 747.5 near Towner 81071, a distance of approximately 121.9 miles in Pueblo, Crowley and Kiowa Counties, Colorado, had been a line of the Missouri Pacific Railroad Company ("MPRR"), with overhead trackage rights on the line held by The Denver and Rio Grande Western Railroad Company ("DRGW"). In proceedings embraced in *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996), MPRR sought the Board's authorization to abandon the Towner Line, Docket No. AB-3 (Sub-No. 130), *Missouri Pacific Railroad Company--Abandonment--Towner-NA Junction Line In Kiowa,*

Crowley and Pueblo Counties, CO, and DRGW, to discontinue its overhead trackage rights, Docket No. AB-8 (Sub-No. 38), The Denver and Rio Grande Western Railroad Company--Discontinuance of Trackage Rights--Towner-NA Junction Line in Kiowa, Crowley and Pueblo Counties, CO. The abandonment and discontinuance proposals were vigorously opposed by shippers, individuals and communities, principally the City of Pueblo. The opponents argued that the proposals would have devastating effects based on lost railroad service and lost tax revenues. 1 S.T.B. at 340, 496.

The Board noted that there were only five shippers on the 121.9-mile railroad line, and they shipped but 164 carloads of grain in 1993, 142 carloads in 1994 and 30 carloads in the first six months of 1995. For the forecast year the applicants anticipated they would handle 238 carloads of grain, generating \$237,676 of revenue, but they estimated that they would sustain avoidable costs of \$1,049,080. The lost opportunity costs would be an additional \$1,867,795. 1 S.T.B. at 495.

Citing a CDOT study, protestants alleged that the applicants' projected 238 cars for the forecast year was too low, contending that the potential traffic on the line could exceed 4,000 cars per year. In the absence of specific commitments from other shippers for traffic over the line, however, the Board termed the higher 4,000 car estimate to be speculative. 1 S.T.B. at 496. The Board concluded:

The line is incurring substantial losses and opportunity costs. We conclude that the burden on shippers and communities from the abandonment is outweighed by the burden imposed on MPRR and DRGW and on interstate commerce by the financial losses what would result if the carriers were required to continue to operate this line. Given the magnitude of these losses, we conclude that the line is a burden on interstate commerce, and we will grant the abandonment [1 S.T.B. at 497].

The Union Pacific Railroad Company ("UP") had agreed that, if the Board were to authorize the Towner Line's abandonment, UP would negotiate its sale to the State for its net liquidation value. 1 S.T.B. at 340. The Colorado General Assembly on April 22, 1998, approved the State's acquisition of the Towner Line for \$10,400,000. The legislation approving the line's acquisition directed CDOT to use its best efforts to sell or lease the Towner Line on or before June 30, 2000, to a responsible operator who would resume operating the line. The winning bidder was Colorado, Kansas & Pacific Railway Company ("CKPR"), which won the Board's approval to lease and operate the Towner Line in STB Finance Docket No. 33857, *Colorado, Kansas & Pacific Railway Company--Lease, Operation, and Future Purchase Exemption--Colorado Department of Transportation*, served April 7, 2000.

CDOT became dissatisfied with the lease of the Towner Line to CKPR, and late in 2004 V&S learned that CDOT was prepared to terminate the lease. CDOT could replace CKPR as the operator of the Towner Line if a successor were found, and that turned out to be V&S. CDOT arranged for the assignment of the CKPR lease to V&S, and V&S, by its Verified Notice of Exemption in STB Finance Docket No. 34779, *V & S Railway, Inc.--Acquisition and Operation Exemption--Colorado, Kansas & Pacific Railway Company*, filed December 2, 2005, sought the Board's authorization to acquire by assignment of the lease from the CKPR and to operate the Towner Line. The Board granted the requested authority by its Decision, served December 30, 2005. 70 *Fed. Reg.* 77451, December 30, 2005.

II.

Incomplete filing

Only recently, V&S sought the Board's authorization to discontinue service on the western portion of the Towner Line, between NA Junction and Haswell, by filing its verified two-year out-of-service class exemption notice in Docket No. AB-603 (Sub-No. 2X), *V & S Railway, LLC--Discontinuance of Service Exemption--in Pueblo, Crowley and Kiowa Counties, Colo.*, filed June 8, 2012. The Board authorized V&S' discontinuance of service by its Decision, served June 28, 2012. 77 Fed. Reg. 38713, June 28, 2012. Offers of financial assistance were to be filed on or before July 9, 2012; however, none was filed. It was while preparing its discontinuance of service filing that V&S come to the realization that it had made a terrible mistake in its December 2, 2005, acquisition and operation filing.

To be sure, V&S was the assignee of the CKPR's lease of the Towner Line, but V&S in fact at the time bought the Towner Line from CDOT. Attached as Exhibit 1 is a copy of the Purchase Agreement, dated as of December 1, 2005. Attached as Exhibit 2 are the quitclaim deeds conveying the Towner Line from CDOT to V&S as filed with the recorder of deeds for Pueblo, Crowley and Kiowa Counties.¹

III.

Corrected information

A. Identification of the parties

V&S is a rail carrier authorized to operate a 22-mile line of railroad between Medicine Lodge and Attica, Kansas, a five-mile line of railroad in Hutchinson, Kansas,

¹ The legal name of V&S at the time of the purchase was V and S Railway, Inc., a Nevada corporation. In June 2009, the corporation was converted to a Nevada limited liability company the legal name of which is V and S Railway, LLC.

and the 121.9-mile Towner Line between NA Junction and Towner in Colorado. Its correct name and address is:

V and S Railway, LLC
P. O. Box 26421
Salt Lake City, UT 84126
Tel.: (801) 977- 6377

The seller of the Towner Line is the Colorado Department of Transportation ("CDOT"). Its correct name and address is:

Colorado Department of Transportation
4201 E. Arkansas Avenue
Denver, CO 80222
Tel.: (303) 757-9011

B. The subject railroad line

The Towner Line extends between Milepost 869.4 near NA Junction 81022 and Milepost 747.5 near Towner 81071, a distance of approximately 121.9 route miles in Pueblo, Crowley and Kiowa Counties, Colorado. The line traverses USPS Zip Codes 81022, 81025, 81039, 81062, 81033, 81063, 81045 and 81071. Attached as Exhibit 3 is a map of the Towner Line.

Within the past three years V&S served two shippers on the Towner Line: Temple Grain Company at Haswell, a facility which the Company ceased using in December 2010, and Bartlett Grain Company at Eads, and their shipments consisted primarily of outbound shipments of wheat and barley. There were no inbound shipments. The grain movements were largely seasonal, and service was rendered by V&S predominantly on as needed basis. In 2010 Temple Grain Company and Bartlett Grain Company together shipped 478 carloads of grain, in 2011 Bartlett shipped 27 carloads of grain, and in the first six months of 2012 Bartlett shipped 51 carloads of grain.

V&S is able to interchange with the BNSF Railway at NA Junction and with the Kansas and Oklahoma Railroad at Towner.

C. The proposed transaction

V&S, a Class III rail carrier subject to the Board's jurisdiction, entered into a Purchase Agreement with CDOT, dated as of December 1, 2005, pursuant to which V&S acquired CDOT's Towner Line, extending between Milepost 869.4 near NA Junction 81022 and Milepost 747.5 near Towner 81071, a distance of approximately 121.9 miles in Pueblo, Crowley and Kiowa Counties, Colorado, and became the assignee of the CKPR's lease to operate the line.

V&S by the instant filing seeks to be recognized as the owner of the Towner Line, as well as the successor to CKPR as the lessee of the line, which V&S has operated since December 29, 2005.

V&S as the owner and successor lessee of the Towner Line has not had annual revenues in excess of \$5 million and has not become a Class II or Class I railroad.

The Purchase Agreement contains no interchange commitment, and no solid waste transfer facility is located on the Towner Line.

D. Jurisdiction and statutory standards

Pursuant to 49 U.S.C. §10902, the Board may authorize a Class III or Class II railroad to acquire and operate an additional railroad line unless it finds that the proposed transaction is inconsistent with the public convenience and necessity. Under 49 U.S.C. §10502(a), however, the Board deems that it must exempt a transaction or service from regulation upon finding 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 or service is

of limited scope or (b) regulation is not needed to protect shippers from the abuse of market power. Docket No. FD 35562, *Iowa Interstate Railroad, Ltd.--Lease Exemption--Line of Cedar Rapids and Iowa City Railway Company*, served January 25, 2012; STB Finance Docket No. 34481, *Horsehead Corporation--Petition for Acquisition and Operation Exemption--Chestnut Ridge Railway Company*, served March 12, 2004; STB Finance Docket No. 34341, *Wheeling & Lake Erie Railway Company--Acquisition and Operation Exemption--CSX Transportation, Inc.* served October 30, 2003.

Regulation is not necessary to carry out the Rail Transportation Policy. V&S' ownership of the Towner Line and its succeeding to CKPR's lease of the line are wholly consistent with the policy provisions outlined in 49 U.S.C. §10101, Indeed, the grant of the requested exemption will minimize the need for Federal regulatory controls, 49 U.S.C. §10101(2), foster sound economic conditions in transportation, 49 U.S.C. §10101(5), reduce regulatory barriers to entry into and exit from the rail industry, 49 U.S.C. §10101(7), and provide for the expeditious handling and resolution of proceedings required or permitted to be brought before the Board, 49 U.S.C. §10101(15). Other aspect of the Rail Transportation Policy will not be adversely affected. *Id.*

Regulation is not necessary to protect shippers from an abuse of market power. The shippers on the Towner Line suffered no adverse consequences as a result of V&S' ownership of the Towner Line and its succeeding to CKPR's lease of the line. There was no loss of rail competition and no adverse change in the competitive balance in the transportation market. Nor was there a change in the level of service to any of the shippers because they continued to receive the same service as had been rendered by CKPR. Alternative railroad service is available via the BNSF Railway on the west and

the Kansas and Oklahoma Railroad on the east. Colorado Highway No. 96 parallels the Towner Line and permits the movement of grain by truck.

The transaction is of limited scope. Because regulation is not necessary to protect shippers from an abuse of market power, the Board need not determine whether the proposed transaction is of limited scope. Nevertheless, since V&S' ownership of the Towner Line and its succeeding to CKPR's lease will affect only a single shipper, one which tenders an average of approximately 75 carloads of grain annually, the acquisition and control of the Towner Line is of limited scope.

E. Labor protection

Since V&S is a Class III railroad, the imposition of labor protection is precluded.

F. Environmental assessment

V&S as the owner and successor lessee of the Towner Line effected no changes in the railroad operations on the line and disturbed no structure fifty years old or older. No Environmental or Historic Report, accordingly, is required, pursuant to 49 C.F.R. §§1105.6(c)(2) & 1105.8(b)(1).

IV.

Retroactive effective date

The seven years since V&S acquired and began operating the Towner Line have seen no improvement in the volume of traffic handled or the freight revenue earned on the line. To the contrary the shippers are fewer, and their shipments less frequent. The Board in its 1996 Decision correctly concluded that the line was a burden on the MPRR and DRGW, as well as on interstate commerce and that the line's abandonment should be approved. V&S expects in the near future to file with the Board its Verified Notice of

Abandonment Exemption to abandon the western segment of the Towner Line, between NA Junction and Haswell, on which there has been no traffic for more than two years' time.

V&S, however, does not want to be portrayed as acquiring the ownership of the Towner Line only to turn around and seek the Board's authorization to abandon the western half of it. Nevertheless that will be the inevitable conclusion if the effective date of the Board's approval of V&S's acquisition of the Towner Line were to be thirty days from the date of the instant filing, and V&S, therefore, asks that the effective date of its acquisition of the line be concurrent with the consummation date of its lease of the line, namely, December 29, 2005.

V&S made an inadvertent and inexcusable error in its December 2, 2005, filing with the Board in focusing only on the assignment to it of the CKPR lease and losing sight of the fact that at the same time it had purchased the line from CDOT. V&S' in-house and undersigned counsel accept full responsibility for the oversight and apologize for any inconvenience they may have occasioned. The incomplete filing, however, was an innocent mistake. No one was prejudiced as a result of it, and certainly it was committed without any intent to evade the Board's authority or to undermine the integrity of its processes. *See, Docket No. FD 35576, PL Susquehanna LLC and Allegheny Electric Cooperative, In.--Acquisition Exemption--Pennsylvania Department of Transportation, served December 7, 2011.*

Although the Board has declared the retroactive authority generally is to be avoided, it has granted it under appropriate circumstances when the failure to seek approval was unintentional. *Docket No. FD 35363, R. J. Corman Railroad Property,*

LLC--Acquisition Exemption--NC Railroad, Inc., served June 29 2011; STB Finance Docket No. 34481, *Horsehead Corporation--Petition for Acquisition and Operation Exemption--Chestnut Ridge Railway Company, supra*, served March 12, 2004; STB Finance Docket No. 32964 (Sub-No. 1X), *Wisconsin Central Ltd--Lease Exemption--Soo Line Railroad Company d/b/a CP Rail System*, served December 22, 1998;

V&S finds itself in much the same situation as did the applicant in Finance Docket No. 31734, *Green Bay Packaging Inc.--Control--KWT Railway, Inc. and Atlantic & Western Railway*, served November 6, 1990. Green Bay Packaging, Inc. mistakenly acquired control of the rail carriers without having secured the ICC's authorization. In its Decision in which the ICC nevertheless approved the control relationship, the ICC said:

Although retroactive requests are not favored, Finance Docket No. 30984 (Sub-No. 1), *CSX Transp., Inc. & So. Ry, Co. -- Cons. & Oper. Exemp. -- Atlanta, GA* (not printed), served August 14, 1987, the evidence demonstrates that Green Bay's non-compliance was inadvertent and its effort in notifying the Commission upon its discovery was expeditious and in good faith. We have given retroactive effect to exemptions in a number of instances when these circumstances were present. See, e.g., Finance Docket No. 31262, *Int'l Paper Co. -- Exemp. -- 49 U.S.C. 11343* (not printed), served June 8, 1988; and Finance Docket No. 31081, *KKK Associates--Control Exemp.* (not printed), served September 23, 1987. Accordingly, this decision will be given retroactive effect.²

Similarly, V&S's non-compliance was inadvertent, and its notification of the Board upon its discovery was expeditious and in good faith. Therefore, V&S respectfully asks the Board to authorize its acquisition of the Towner Line to be effective December 29, 2005, the date when it began operating the line pursuant to the assigned CKPR lease.

WHEREFORE, V and S Railway, LLC respectfully requests the Board to grant the *nunc pro tunc* exemption from the provisions of 49 U.S.C. §10902 and 49 C.F.R.

² Pursuant to Section 204(a) of the ICC Termination Act of 1995, decisions of the ICC continue to be valid precedents until overturned or set aside by the Board.

§1150.1, *et seq.* for it to acquire and operate the Towner Line by its purchase of the Towner Line from the Colorado Department of Transportation and by the assignment of lease of the line by the Colorado, Kansas and Pacific Railway Company.

Respectfully submitted,

V and S Railway, LLC

By its attorney,

A handwritten signature in black ink, appearing to read "Fritz R. Kahn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Fritz R. Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152

Dated: August 15, 2012

EXHIBIT 1

PURCHASE AGREEMENT

BETWEEN

THE STATE OF COLORADO
for the use and benefit of
THE DEPARTMENT OF TRANSPORTATION

AND

V AND S RAILWAY, INC.

FOR

THE TOWNER LINE

DECEMBER 1, 2005

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("the Agreement"), made as of the 1st day of December, 2005, by and between the STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "CDOT," and the V and S Railway, Inc., a Nevada corporation, hereinafter referred to as "Purchaser" or "V&S."

FACTUAL RECITALS

Required approval, clearance and coordination have been accomplished from and with the appropriate agencies; and

The Colorado State Legislature authorized the purchase by CDOT of the 122 mile Towner-NA Junction Railroad Line, from Milepost 747.5 near Towner to Milepost 869.4 near NA Junction, Colorado (the "Line" as defined in Section 2(b) below), and the sale or lease of the Line by CDOT to a financially responsible railroad operator, pursuant to Title 43, Article 1, Part 13 and more specifically pursuant to section 43-1-1305(4), C.R.S. as said Title and section are in force on the date of this Agreement (collectively, "the Statute"); and

The Statute requires CDOT to use its best efforts to sell or lease the Line to a financially responsible railroad operator that will use the Line to provide continued rail service and to receive for any sale of the Line at least the price paid by CDOT for the Line; and

The Statute further requires CDOT to retain a right of first refusal to purchase the Line in the event a railroad operator sells all or any part of the Line; and

The purpose of the Statute was to ensure the continued operation of rail service on the Line by a financially responsible railroad operator, subject to the conditions described therein; and

Pursuant to the Statute, CDOT executed a Line Sale Contract with the Union Pacific Railroad Company (UPRR) dated July 7, 1998 (the "Line Sale Contract") to purchase the Line for the sum of Ten Million Two Hundred and Seventeen Thousand Five Hundred and Twenty One Dollars (\$10, 217,521.00), and that Line Sale Contract imposed certain conditions on the "operator" of the Line that CDOT must pass on to any lessee/purchaser of the Line; and

CDOT previously executed a Lease Purchase Agreement with the Colorado Kansas & Pacific Railway Company dated December 9, 1999, for the operation of the Line which has now terminated; and

Following termination of the Lease Purchase Agreement with Colorado Kansas & Pacific Railway Company, CDOT issued a Request for Proposal # HAA 02-05/BL dated February 8,

2005 (the "RFP"), requesting proposals for the sale or lease of the Line and the commencement of operation of the Line; and

Pursuant to the RFP, CDOT selected V&S to negotiate an agreement for the sale and the continued operation of the Line, based on its proposal being the more advantageous to the State given the evaluation factors in the RFP; and

V&S represents that it is fully capable, qualified and financially responsible to operate the Line for the purpose described in the Statute, and V&S desires to do so expecting to make a profit thereby but nevertheless assuming the sole responsibility for the risk of a failure to make a profit, and V&S understands that CDOT has no obligation to subsidize in any way the operation or maintenance of the Line; and

V&S has signified its willingness to comply with the Statute's conditions, and with certain conditions imposed on V&S by the Line Sale Contract, and with all federal, state and local requirements applicable to the continued operation of a railroad; and

CDOT desires V&S to purchase and operate the Line and provide continued operation of the Line, on the terms and conditions described herein; and

V&S may assign this Agreement to an acceptable affiliate of V&S, as approved by CDOT; and

This Agreement is entered into pursuant to the Statute and to § 24-103-203, CRS, as amended.

NOW, THEREFORE, it is hereby agreed:

AGREEMENT

Section 1. ORDER OF PRECEDENCE. The following documents are incorporated herein by this reference. In the event of any conflict or inconsistency between them, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- (a) The Statute; then
- (b) This Agreement; then
- (c) Exhibits A-E in that order.

Section 2. SALE AND ASSIGNMENT.

(a) For and in consideration of the covenants and agreements hereinafter contained, and the other consideration described below, CDOT hereby agrees to sell the Line to V&S.

(b) For purposes of this Agreement, the "Line" shall mean all rights of way, roadbed and railroad track, buildings, structures and other real property associated therewith or used in connection therewith that were conveyed to CDOT under the Line Sale Contract with UPRR, to the extent of CDOT's interest therein and subject to any existing easements, licenses, liens, covenants and other claims to that property, as described in the Exhibits hereto: Exhibits A-1 through A-4 describe the real estate underlying the Line, Exhibit B describes the various agreements, licenses, leases and easements associated with the Line, and Exhibit C describes the personal property associated with or used in connection with the Line. The "Line" does not include, and CDOT shall have no obligation to provide or allow V&S to use, any real property or personal property not conveyed to CDOT by UPRR under the Line Sale Contract.

(c) The sale of the Line is on an "AS IS, WHERE IS" basis. CDOT makes, and shall make, no warranties, either expressed or implied, as to any matter whatsoever concerning the Line, including without limitation, the condition, merchantability, economic viability, the amount of or need for rail freight traffic, or the fitness for any particular purposes of the Line.

(d) CDOT shall assign to V&S and V&S shall accept the various agreements, licenses, leases and easements associated with the Line that are described in Exhibit "B." CDOT makes no warranties or representations regarding the viability or continued effectiveness of any of the rights, agreements, licenses, leases or easements described in Exhibit "B."

(e) As a condition precedent to the effectiveness of this Agreement, V&S shall have provided to CDOT at least two weeks prior to the date this Agreement is executed, and V&S shall have obtained CDOT's approval of sufficient information to establish the financial responsibility of V&S. Financial responsibility shall be established if V&S provides appropriate written documentation evidencing that V&S has currently available, for Line operation purposes, a minimum of Five Hundred Thousand Dollars (\$500,000.00) either in cash or as an irrevocable letter of credit with a major national bank callable by CDOT for unpaid obligations of V&S.

(f) As a condition precedent to the effectiveness of this Agreement, V&S shall immediately notify CDOT and obtain CDOT's approval, which approval shall not be unreasonably withheld, of any proposed changes: 1) in any investors, owners, or partners that hold or control 20% or more of the stock or value in V&S; and/or 2) in any key personnel that V&S had proposed for operation/maintenance of the Line; and/or 3) in the organization, officers/directors, and financial responsibility information described above. V&S shall also immediately notify CDOT of any merger or consolidation affecting V&S's status.

Section 3. PURCHASE PRICE. The consideration to be paid by the Purchaser to CDOT for the Line shall be the sum of Ten Million Three Hundred and Fifty Six Thousand (\$10,356,000.00) Dollars, payable as follows:

- (a) The sum of One Million Dollars (\$1,000,000.00) as an initial payment shall be paid at the time of Closing (as defined below).
- (b) The balance of the Purchase Price, namely: Nine Million Three Hundred and Fifty Six Thousand (\$9,356,000.00) Dollars, will be evidenced by:
 - (i) A non-interest bearing promissory note in the form attached hereto as Exhibit D, given by Purchaser in favor of CDOT in the amount of Nine Million Three Hundred and Fifty Six Thousand (\$9,356,000.00) Dollars, to be delivered to CDOT at Closing (the "Promissory Note"), payable six years after the Closing, with a right of pre-payment any time after three years after the Closing.
 - (ii) A Deed of Trust and Security Agreement on the Line securing payment of the Promissory Note in the form attached hereto as Exhibit E to be delivered to CDOT at Closing.
- (c) "Closing" shall occur at a mutually agreeable time and place. At Closing, (i) Purchaser shall deliver certified funds to CDOT for the initial payment, (ii) CDOT shall execute and deliver Exhibits A-1 through A-4, B and C to Purchaser, and (iii) Purchaser shall execute and deliver to CDOT Exhibits D and E.

Section 4. PURCHASER'S RESPONSIBILITIES DURING THE INITIAL OPERATING PERIOD. The Purchaser agrees to assume or perform the following responsibilities beginning at Closing and continuing for a period of three years thereafter (the "Initial Operating Period"):

(a) *Use of the Premises.* Purchaser shall operate the Line to provide continued rail service to existing and potential customers; and shall make repairs or maintenance or improvements to the Line as required or allowed by this Agreement. Purchaser shall have no right under this Agreement to use the Line, or to allow any third party to use the Line for any purpose that is inconsistent or conflicting with the continued provision of rail service on the Line.

(b) *Records/Accounting.* Purchaser shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the operation and maintenance of the Line under this Section, and shall maintain such records for a period of three (3) years after the Initial Operating Period, or for such further period as may be necessary to resolve any matters which may be pending. All such records, documents, communications and other materials shall be maintained by Purchaser in a central location and shall be made available for inspection and copying at CDOT's offices in Denver, Colorado upon advance written request.

(i) Purchaser shall follow generally accepted accounting procedures in establishing and billing for rail services and in general maintenance of books and records. Such accounting records and all supporting documents concerning operation/maintenance of the Line, including accurate receipts and other records necessary to verify the volume of freight hauled in each month, shall be made available for inspection by CDOT, during

regular business hours, upon reasonable notice, at CDOT's offices in Denver. Purchaser shall submit an operating summary report on a quarterly basis for the Line within twenty-five (25) days after the close of each quarter.

(ii) The Purchaser shall make available during regular business hours to CDOT, for copying by CDOT, upon reasonable written request, copies of all: traffic volumes by commodity and by shipper including contracts; gross ton miles; passenger operations; freight and passenger rates; income by source; cars interchanged (loads and empties) for traffic originating or terminating on the Line and for overhead traffic using the Line; operating timetable; employee certification and training; operating rule book; emergency response procedures; subcontracts and other agreements; fuel consumed; tax payments; operating expenses; capital improvements; fixed plant inspections and repairs; and all other typical shortline operating information.

(iii) Purchaser shall permit CDOT, or any other duly authorized agent of a State governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Purchaser's records pertaining to this Agreement, and for a period of three (3) years after the Initial Operating Period, to evaluate Purchaser's performance hereunder during the Initial Operating Period, including as necessary to verify gross ton miles hauled on the Line or amounts of revenue on the Line. Purchaser shall also permit these entities to monitor all activities conducted by Purchaser pursuant to the terms of this Agreement. As the monitoring agency may reasonably deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site check, or any other reasonable procedure.

(iv) Purchaser shall provide to CDOT, on a quarterly basis, unaudited financial statements, prepared by Purchaser's accountant, of the railroad operations on the Line. Purchaser shall also provide to CDOT an annual audited financial statement, prepared by an independent Certified Public Accountant, of the railroad operations on the Line.

(v) All records provided to CDOT are subject to the Colorado Open Records Act, C.R.S. 24-72-201, et seq. Any materials considered by Purchaser to be trade secrets, privileged information or confidential commercial or financial information shall be clearly marked as such in order to be exempt under the Colorado Open Records Act.

(c) *Operation Responsibility.*

(i) Purchaser shall be responsible to operate the Line at its sole cost. Purchaser may use subcontractors to operate/maintain the Line, provided that before entering into such subcontract, Purchaser shall first provide notification to CDOT, at least 10 days in advance, of all proposed subcontracts that exceed Twenty Five Thousand Dollars (\$25,000) and CDOT shall approve Purchaser's use of subcontractors, such approval not to be unreasonably withheld or delayed.

(ii) Purchaser shall be responsible to provide, at its cost (and without cost to CDOT), all personal property and equipment needed to operate/maintain the Line,

including locomotives and maintenance-of-way equipment, except to the extent (if any) that any such items were conveyed to CDOT by UPRR under the Line Sale Contract and are specifically described in Exhibit C.

(iii) Purchaser shall be responsible for compliance with all of the latest Federal Railroad Administration (FRA), Association of American Railroads (AAR), Surface Transportation Board (STB), and Colorado Public Utilities Commission (CPUC) regulations and standards for track, signaling (including deactivation), crossing protection and warning, interchange rules, employee certification, employee and equipment safety, Americans with Disabilities Act (ADA) (passengers), operating rules, environmental, hazardous materials, accident and data reporting, and all other applicable legal approvals, permits, requirements, and obligations. Purchaser shall be responsible for promptly applying for and obtaining the approval of the STB for operating authority for the Line. The Purchaser's filing with the STB must also expressly notify the STB that the operation by the Purchaser is subject to the conditions and requirements of this Agreement.

(iv) Purchaser shall be responsible to negotiate and obtain commercially reasonable interchange agreements and trackage rights with connecting railroads at either end of the Line. Purchaser shall commence negotiations within thirty (30) days after execution of the Agreement to secure such commercially reasonable interchange agreements and trackage rights and shall provide CDOT with copies of all such interchange agreements and trackage rights as soon as they are secured by Purchaser.

(v) Purchaser shall annually provide CDOT by January 2 a marketing plan outlining Purchaser's plans to develop business on the Line. Purchaser's marketing plan shall seek to transport thirty percent (30%) of the Kiowa County and Crowley County agricultural commodity market annually. The Purchaser shall establish tariffs for, or use its best efforts to secure contracts for, transportation of commodities over the Line. Purchaser covenants to provide weekly rail service on the Line provided it has sufficient freight traffic for movement of thirty (30) rail cars per trip. However, during the first year of operation the Purchaser shall provide for car movement blocks smaller than thirty (30) cars to help return customer service to the Line. Purchaser shall provide for the continued availability of service and of equipment to provide service, as needed.

(vi) Purchaser shall maintain full capability for being a financially responsible operator, as required by the Statute. Initially, Purchaser has demonstrated financial responsibility as stated in Sections 2(e) and 15(p). Thereafter, CDOT shall review Purchaser's quarterly and annual financial statements to ensure financial viability. V&S shall maintain the availability of the Five Hundred Thousand Dollars (\$500,000.00) either in cash or as the irrevocable letter of credit with a major national bank described in Section 4(f)(v) herein described in Section 2(e) as V&S determines necessary for Line operation purposes.

(vii) Purchaser shall be responsible for all damage to persons and property caused by or resulting from the acts or omissions of its employees, agents, or subcontractors in the performance of this Agreement.

(viii) CDOT assigns responsibility for compliance with the FRA Track Safety Standards pursuant to 49 CFR Par 213 Subpart 213.5c, to the Purchaser and its assigns and successors. CDOT shall provide written notice of such assignment to the FRA thirty (30) days in advance of the startup of operation. CDOT also assigns responsibility for compliance with the FRA Signal System and Grade Crossing Signal System Safety Standards, 49 CFR Parts 233, 234, 235, and 236 to the Purchaser and its assigns and successors.

(ix) Purchaser shall use reasonable efforts to prevent waste of the Line. Unless otherwise provided for in this Agreement, Purchaser assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, the Line upon its delivery to Purchaser. Purchaser is not responsible for reasonable wear and tear to the Line in performing this Agreement.

(x) Purchaser shall pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by Purchaser or any of Purchaser's subcontractors in the performance of the work or services described in this Agreement, and Purchaser shall pay any person who supplies rental machinery, tools or equipment all amounts due as the result of such machinery, tools or equipment in the prosecution of the work or services described in this Agreement.

(xi) Purchaser shall faithfully perform its obligations to provide rail service on the Line during the term of this Agreement. Specifically, Purchaser shall complete the performance of any rail service transportation and/or delivery obligation on the Line in accordance with the terms of this Agreement and regulations of the Surface Transportation Board.

(xii) Purchaser shall not permit or allow any claim to be reduced to judgment or any lien to be levied against or attach to the Line resulting from Purchaser's failure to promptly and properly perform any obligation under this Agreement, including those described in the preceding two subparagraphs. Purchaser shall promptly take action to resolve any such claims and to remove any such liens.

(xiii) Purchaser shall operate the Line in a manner that avoids unreasonable risk to public safety. If an unreasonable risk to public safety is created, and is not resolved to CDOT's satisfaction within thirty (30) days of CDOT's written notice thereof to Purchaser, CDOT may suspend Purchaser's operation of the Line until Purchaser satisfactorily completes necessary services, repairs or corrections.

(xiv) Purchaser's storage of rail cars on the Line shall be subordinate to its obligation to provide rail service on the Line.

(xv) Any proposed amendment to any of the agreements, licenses, leases or easements described in Exhibit "B" shall be subject to CDOT's approval before becoming effective, such approval not to be unreasonably withheld.

(d) *Maintenance Conditions.* Purchaser, at its own expense, shall keep and maintain the Line in a safe condition, in at least its condition on the effective date of this Agreement, and in good repair, and shall comply with the following conditions:

(i) Purchaser shall maintain the Line trackage to all applicable local, State and federal laws and regulations, including, without limitation and as a minimum, all FRA Safety Standards (Title 49, Part 213). Purchaser shall initially maintain the Line to FRA Class I Safety Standards (Title 49, Part 213) at a minimum. In year two of this Agreement, Purchaser shall upgrade the Line trackage to FRA Class II Safety Standards as a minimum and shall thereafter maintain the Line at FRA Class II Safety Standards.

(ii) Purchaser shall maintain the fixed plant other than trackage (e.g. bridges, culverts, crossing warning equipment, railroad signals, etc.) in accordance with FRA, CPUC, and other applicable regulatory, safety, and railroad industry standards at Purchaser's cost, however, CDOT shall be responsible for the cost of replacing the damaged crossing signal at MP 86 on Highway 96.

(iii) Purchaser shall, at its own expense, maintain buildings, water tanks, structures, track, locomotives, and rolling stock, and repaint such buildings and structures as often as the Purchaser deems necessary in order to keep said structures in safe condition, and in good repair. All locomotives and rolling stock shall comply with the latest FRA and AAR standards, and such compliance is prima facie evidence of proper maintenance of that equipment. The Line shall be maintained in accordance with the conditions in existence at the commencement of this Agreement (or if those conditions are subsequently improved by repair or renovation, then the Line shall thereafter be maintained in accordance with such improvements), normal wear and tear excepted.

(iv) Purchaser shall develop an annual track maintenance program ("the Program") for the Line and submit it to CDOT's project manager for review not later than January 2nd of the year to which the Program applies. The Program shall ensure that the Line is maintained in accordance with the provisions of this Agreement to preserve Line's condition without downgrading or making the Line less valuable, and to provide and improve service on the Line as contemplated herein. The Program may specify the number of new or relay railroad ties, treated with creosote or other approved preservative, that are to be installed in the Line, as well as the amount of new or relay rail to be installed. Any removal or replacement of continuous welded rail shall require CDOT's specific written concurrence.

(v) Purchaser shall be responsible to perform reasonable weed control services on the Line. Special effort will be made by Purchaser to provide weed mowing or control along the Line within town limits.

(vi) Notwithstanding any obligations undertaken by CDOT in the past towards the maintenance or repair of the Line, it is hereby agreed that CDOT has no duty to in any way maintain or repair the Line during the Initial Operating Period, other than to apply any insurance proceeds actually received by CDOT on account of damage done to the Line toward the repair or replacement of said damaged Line, when such repairs or replacement are deemed necessary by both parties.

(vii) In the event any buildings, signals or similar structures on the Line are abandoned, demolished or substantially destroyed after the effective date of this Agreement and no other improvement is constructed on the site, Purchaser shall remove all debris and trash from the site and eliminate any hazardous conditions.

(viii) If CDOT determines as a result of an inspection or is notified of an alleged material failure to comply with these minimum standards of maintenance, it shall provide written notice to Purchaser. Purchaser shall thereafter have ten (10) days to respond to CDOT disputing such allegation or to notify CDOT that Purchaser will commence actions to remedy such a failure within a commercially reasonable time. If Purchaser does not dispute such allegation but fails to commence such a remedy within ten (10) days after responding to CDOT, CDOT may, after providing notice to Purchaser of its intent to so do, arrange for correction of a material failure to comply with these minimum standards of maintenance at Purchaser's expense. Purchaser agrees to reimburse CDOT for its reasonable expenditures within thirty (30) days of being presented with a bill for CDOT's services.

(e) *Inspection.* CDOT reserves the right at its sole cost and liability to inspect the Line for the purpose of determining Purchaser's compliance with this Agreement. Rail inspection vehicles may be used to inspect the Line; provided, however, that any rail inspection vehicles under the control of Purchaser shall not be operated independently by CDOT or its representatives, but any of said vehicles shall be operated by duly appointed representatives of Purchaser. Upon reasonable request Purchaser agrees to provide a suitable rail inspection vehicle and a qualified driver to take CDOT or its authorized representatives on an inspection of the Line. The use of the driver and rail inspection vehicle shall not be unreasonably withheld by Purchaser. The inspection shall not interfere with the operation of the Line. CDOT shall provide a minimum of seventy-two (72) hours advance notice to Purchaser of such an inspection. Notwithstanding anything to the contrary contained in this Agreement, CDOT shall maintain the inspection rights reserved in this Section 4(e) until the Note is paid in full.

(f) *Insurance.* The Purchaser shall obtain insurance in the following kinds and amounts, and notwithstanding anything to the contrary contained in this Agreement, Purchaser shall maintain said insurance, and shall maintain the transferable standby letter of credit provided in Section 4(f)(v) in lieu of obtaining and maintaining Track or Line insurance, until the Note is paid in full:

(i) Workers' Compensation Insurance as required by Colorado state statute, and Employer's Liability Insurance covering all of Purchaser's employees acting within the course and scope of their employment.

(ii) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent purchasers, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a) Five Million Dollars (\$5,000,000) each occurrence;
- b) Five Million Dollars (\$5,000,000) general aggregate;
- c) Five Million Dollars (\$5,000,000) products and completed operations aggregate;
- d) One Million Dollars (\$1,000,000) any one fire.

If any aggregate limit is reduced below One Million Dollars (\$1,000,000) because of claims made or paid, the Purchaser shall immediately obtain additional insurance to restore the full aggregate limit and furnish to CDOT a certificate or other document satisfactory to CDOT showing compliance with this provision.

(iii) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: One Million Dollars (\$1,000,000) each accident combined single limit.

(iv) Umbrella or Excess Liability Insurance with minimum limits of Five Million Dollars (\$5,000,000). This policy shall become primary (drop down) in the event the primary Liability Policy limits are impaired or exhausted. The Policy shall be written on an Occurrence form and shall be following form of the primary. The following form Excess Liability shall include CDOT as an additional insured.

(v) In lieu of obtaining and maintaining Track or Line Insurance as security against casualties affecting the Line such as floods, earthquakes, or other natural disasters or catastrophic events which destroy the Line or portions of the Line, Purchaser shall provide an irrevocable, transferable standby letter of credit, in a stated amount equal to Five Hundred Thousand Dollars (\$500,000.00) which shall at a minimum (x) be issued by a major national bank on terms and conditions acceptable to such bank, and (y) permit CDOT to draw in one or more draw requests (up to a cumulative total equal to the full stated amount) the amount required to repair or replace the Line or portions of the Line destroyed by such casualty upon Purchaser's failure to do so.

(v) If the Purchaser utilizes self-insured retentions, large deductibles, or any other self-funding mechanism to provide coverage as required in this section, proof of financial capacity of such mechanism shall be provided and approved by CDOT. Proof

of financial capacity for self-funding shall include, but is not necessarily limited to an Irrevocable Letter of Credit or State approved self-insurance funding.

(vi) CDOT shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of this Agreement will be primary over any insurance or self-insurance program carried by the State of Colorado.

(vii) The Insurance shall include provisions preventing cancellation or non-renewal without at least thirty (30) days prior notice to CDOT by certified mail.

(viii) The Purchaser will require all insurance policies in any way related to the contract and secured and maintained by the Purchaser to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

(ix) All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies reasonably satisfactory to CDOT.

(x) Purchaser shall provide certificates showing insurance coverage required by this contract to CDOT prior to execution of the Agreement. No later than 15 days prior to the expiration date of any such coverage, the Purchaser shall deliver to CDOT certificates of insurance evidencing renewals thereof. CDOT may request in writing, and the Purchaser shall thereupon within ten (10) days supply to CDOT, evidence satisfactory to CDOT of compliance with the provisions of this section.

(xi) If Purchaser requires insurance from a Subcontractor acting independently from the Purchaser, that Subcontractor shall be required to provide an endorsement naming CDOT as an Additional Insured on their Commercial General Liability, Auto Liability and Umbrella or Excess Liability policies.

(g) *Independent Contractor.* Purchaser shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Purchaser nor any agent or employee of the Purchaser shall be or shall be deemed to be an agent or employee of CDOT. Purchaser shall pay when due all required employment taxes and income tax and local head tax on any monies paid by CDOT pursuant to this Agreement. Purchaser acknowledges that the Purchaser and its employees are not entitled to unemployment insurance benefits unless the Purchaser or third party provides such coverage and that CDOT does not pay for or otherwise provide such coverage. Purchaser shall have no authorization, express or implied, to bind CDOT to any agreements, liability, or understanding except as expressly set forth herein. Pursuant to State Fiscal Rules, Purchaser shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by CDOT) and unemployment compensation insurance in the amounts required by law, and shall solely be responsible for the acts of the Purchaser, its employees and agents.

(h) *Purchaser Liability/Indemnity/Hold Harmless.*

(i) Purchaser shall be solely responsible for the acts and omissions of Purchaser, its agents, employees, and subcontractors, in the operation and maintenance of the Line during the term of, and in the performance of, this Agreement.

(ii) Purchaser shall indemnify, save, and hold harmless the State of Colorado, and CDOT, from any and all claims, damages, liability, and mechanic's or materialmen's liens, including costs, expenses, and attorney fees arising out of or incurred as a result of any act or omission of Purchaser, or its agents, employees, subcontractors, assignees, or guests and invitees, and incident to Purchaser's use of or possession of the Line or its operation or maintenance of the Line under this Agreement. If any claim is made or proceedings commenced by any third person against the State of Colorado, or CDOT, on account of injuries to persons or damage to property arising out of Purchaser's operations under this Agreement, Purchaser agrees to pay the amount claimed or to assume the defense of such legal proceedings, pay the costs and expenses in connection therewith, and to satisfy any judgment that may be rendered. The State of Colorado and CDOT agree to notify Purchaser promptly of any such claim.

(i) *Taxes.* Purchaser shall pay all lawfully imposed property taxes on the Line as required by the Statute, provided, however, that nothing in this Agreement shall limit Purchaser's ability to challenge the amount or the imposition of such taxes. Purchaser shall pay all federal, state, or local income, gross receipts, franchise, license, and other taxes, levies or assessments imposed upon Purchaser's receipts, income, corporate stock or the like. Purchaser agrees that it shall promptly pay such taxes, levies and assessments, as may be lawfully imposed upon the Line, or upon the business conducted by Purchaser, or upon its possessory interest in the Line, by any state, county or other lawful authority. The State/CDOT shall not be responsible for the payment of any tax, including property tax that may result from its ownership of the Line.

(j) *Utilities.* It is agreed and understood that no electrical, water, gas or other utilities are furnished to Purchaser by virtue of this Agreement and Purchaser agrees to make arrangements and pay for all such utilities as may be required in connection with Purchaser's use and occupancy of the Line.

(k) *Quality of Service and Control of Rates.* Purchaser shall provide rail service to the public that is courteous and in line with good business practices. CDOT shall provide Purchaser a copy of any complaint received by CDOT regarding Purchaser's service, and Purchaser shall promptly respond to the complaining patron in writing, providing CDOT a copy of such reply, and take appropriate action to correct the complained of problem. Purchaser shall promptly make available to CDOT all written complaints and/or violations received by Purchaser. Purchaser shall annually attend an open public meeting of the Board of County Commissioners in Kiowa County and the Board of County Commissioners in Crowley County to discuss with the communities any issues related to operations or safety.

(l) *Compliance with Laws and Regulations.* Purchaser shall comply with, and shall require its subcontractors, agents and employees to comply with, all applicable state, federal, and local laws and ordinances. Purchaser agrees to bear the expense, if any, in connection with the compliance as may be required hereunder, except as otherwise specifically set forth in this agreement. Purchaser shall be cognizant of all Federal and State laws and local ordinances and regulations which in any manner affect those engaged or employed in the operation/maintenance of the Line or which in any way affect the conduct of the operation/maintenance of the Line, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees.

(m) *Non-Discrimination.*

(i) Purchaser and its employees shall not discriminate because of race, religion, color, sex, or national origin against any person or refuse to furnish such person any accommodation, facility, service, or privilege offered to, or enjoyed by, the general public. Nor shall Purchaser and its employees publicize the accommodations, facilities, services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religion, color, sex, or national origin.

- a. Purchaser shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Purchaser shall ensure that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeships.
- b. Purchaser shall, in all solicitations or advertisements for employees placed by or on behalf of Purchaser state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex or national origin.

(n) *Assignment, Transfer and Subletting.*

(i) Purchaser shall not assign, sell, convey, transfer, mortgage, or pledge this Agreement or any part thereof, without the prior written consent of CDOT, which shall not be unreasonably withheld or delayed. Any such assignment, sale, conveyance, transfer, mortgage, or pledge without such prior written consent of CDOT shall be void and of no effect.

(ii) Any of the following shall be an assignment for the purposes of this Section:

(a) the transfer, directly or indirectly, of a majority of any class of the issued and outstanding capital stock of any corporate Purchaser or the transfer of a majority of the total interest in any other entity (partnership or otherwise) which is a Purchaser, however accomplished, whether in a single transaction or in a series of related or unrelated transactions (including, without limitation, and, by way of example only, the transfer of a majority of the outstanding capital stock of a company which company owns One Hundred Percent (100%) of another company, which in turn owns Fifty One Percent (51%) of the outstanding capital stock of a corporate Purchaser hereunder) *provided*, however, that Purchaser's pledge of such a majority of stock or total interest for the sole purpose of securing the financing required to meet the conditions of this Agreement shall not be deemed to be an assignment or transfer of this Agreement;

(b) a so-called "takeover" agreement (that is, an agreement where another entity agrees to become responsible for all or a portion of Purchaser's obligations under this Agreement without actually entering into this Agreement) ; and

(c) a transfer of Purchaser's interest under this Agreement by operation of law, *provided* that any person or legal representative of Purchaser, to whom Purchaser's interest under this Agreement passes by operation of law, or otherwise, shall be bound by the provisions of this Section.

(iii) Purchaser agrees to furnish to CDOT upon demand and at any time and from time to time such information and assurances as CDOT may reasonably request that Purchaser is not in violation of the provisions of this Section.

(o) *Safety Requirement.* In the event the Line or any part thereof are found by state, local or federal government authorities to be unsafe or dangerous, then Purchaser shall immediately proceed to remedy such deficiencies, in order to conform with the appropriate safety or health requirements.

(p) *Improvements.* Substantial improvements to the Line, capital and non-capital, shall be first proposed by Purchaser to CDOT, including with such proposal detailed physical and financial plans. Any objections by CDOT shall be made in writing, shall be precise and detailed and shall suggest modifications which would eliminate the objections. CDOT shall respond to the proposal within forty-five (45) days of its receipt by CDOT. If objection is made, the parties shall in good faith attempt to resolve the matter by mutual agreement.

(q) *Corporate Changes.* Purchaser shall notify CDOT and obtain CDOT's approval (which shall not be unreasonably withheld or delayed) of any proposed changes : 1) in any investors, owners, or partners that hold or control Twenty Percent (20%) or more of the stock or value in Purchaser's organization; and/or 2) in the officers and directors of Purchaser. Purchaser shall also immediately notify CDOT of any merger or consolidation affecting Purchaser's status.

Section 5. CONDITIONS OF SALE.

(a) In the event Purchaser intends to dispose of the Line or associated right-of-way, Purchaser shall provide written notice to CDOT consistent with the provisions of section 43-1-1304 of the Statute.

(b) CDOT hereby retains, pursuant to section 43-1-1306 of the Statute, a right of first refusal to purchase the Line, the associated rights-of-way, or any right to use the Line or right-of-way. Purchaser may not sell the Line, the associated rights-of-way, or any right to use the Line or right-of-way, without first providing written notice to CDOT not less than thirty (30) days prior to the commencement of the next following session of the Colorado General Assembly, allowing one hundred twenty (120) days after commencement of said session for CDOT to purchase the Line for the lesser of: (i) the Purchase Price paid by Purchaser hereunder, plus documented capital improvements made by Purchaser to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. §5-12-102(2) or its replacement), calculated as of the date Purchaser expended such funds, or (ii) the net salvage value of the Line at the time Purchaser intends to sell all or any part of the Line.

(c) If CDOT exercises the right of first refusal set forth in the foregoing paragraph, Purchaser shall be deemed to have retained for a period of Ten (10) years following execution of this Agreement, a right of first refusal to purchase the Line or any portion thereof. CDOT or its successors-in-interest may not abandon or sell the Line or any portion thereof for salvage without first giving Purchaser written notice of its intent to do so, allowing one hundred twenty (120) days for Purchaser to purchase the Line for the lesser of: (i) the price paid by CDOT to Purchaser under Section 5(b), plus documented capital improvements made by CDOT to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. §5-12-102(2) or its replacement), calculated as of the date CDOT expended such funds, or (ii) the net salvage value of the Line at the time CDOT intends to sell all or any part of the Line. V&S's right of refusal to re-purchase the Line from CDOT shall automatically expire if, following CDOT's exercise of its right of refusal to purchase the Line pursuant to Section 5(b), CDOT secures a Line operator under either a lease or purchase agreement.

(d) For purposes of this Agreement, "net salvage value" shall be determined as follows: within 30 days of giving the notice required under Section 5(b) or Section 5(c) above, the party giving the notice shall obtain, at its sole expense, three competitive public bids for the railroad track materials, provided that none of the bidders shall be an affiliate of Purchaser or CDOT, and the highest bid received for the railroad track materials shall be the net salvage value.

(e) Purchaser shall not seek to abandon the Line during the Initial Operating Period or for three (3) years following the Initial Operating Period. Following Purchaser's payment in full of the Promissory Note and expiration of six (6) years from the date of this Agreement, CDOT shall be notified by Purchaser or Purchaser's successor in interest before any document seeking abandonment of the Line is filed with the Surface Transportation Board.

(f) CDOT hereby retains, consistent with the terms of section 43-1-1306(4), a possibility of reverter in the event that Purchaser abandons the Line or an associated right-of-way

or if the Line or an associated right-of-way is used or conveyed for any purpose other than the operation of railroad services, and, additionally, for any purpose that is inconsistent or in conflict with the continued provision of rail service on the Line. The possibility of reverter shall be included in all documents of conveyance of real property attached hereto and shall provide that upon the occurrence of the foregoing events CDOT shall reacquire title to the real estate underlying the Line, such reverter to be effective only as to the real estate underlying the Line conveyed pursuant to the quitclaim deeds attached as Exhibits A-1 thru A-4 hereto, and not as to any personal property conveyed from CDOT to Purchaser pursuant to the Bill of Sale attached as Exhibit C hereto nor as to any rail, ties, track materials or other railroad equipment or property conveyed from CDOT to Purchaser and affixed to the real estate underlying the Line.

(g) The sale to the Purchaser shall not impair or diminish the right of any ditch owner, or of any owner of real property along the right-of-way of the Line, as provided in §§43-1-1306(7) and 43-1-1310, C.R.S.

(h) The sale of the Line is on an "AS IS, WHERE IS" basis, and the conveyance shall be by the quitclaim deeds, the assignment, and the bill of sale in the forms that are attached as Exhibits hereto. CDOT makes no warranties, either expressed or implied, as to any matter whatsoever concerning the Line, including without limitation, the condition, merchantability, economic viability, the amount of or need for rail freight traffic, or the fitness for any particular purposes of the Line.

(i) Except as otherwise provided herein this Agreement shall be subject to the terms and conditions contained in the Line Sale Contract between CDOT and UPRR.

(j) The sale of the Line shall be subject to the right retained by the UPRR to a perpetual nonexclusive easement to locate any fiber optic facilities on the Line and to transfer that right to others, as provided under paragraph 2 (f) of the Line Sale Contract.

(k) Purchaser acknowledges that UPRR reserved all minerals and mineral rights in the land underlying the line, as described in paragraph 2(e) of the Line Sale Contract.

Section 6. OPERATION STARTUP. Purchaser shall use its best efforts to provide freight train operations on the Line not later than January 1, 2006. Prior to or concurrent with the startup of train operations on the Line (or as otherwise provided below), Purchaser shall have accomplished, at its sole cost, as required for operations, the following activities:

- (a) Obtained operating authority from the Surface Transportation Board (STB);
- (b) Obtained necessary approvals from the Federal Railroad Administration (FRA);
- (c) Made operational all active highway grade crossing equipment;
- (d) Provided appropriate locks for all track switches and signal cabinets; and

(e) Changed owner name and emergency phone numbers at highway grade crossings with active warning devices.

Section 7. OPERATION FOLLOWING INITIAL OPERATING PERIOD.

Purchaser agrees to use the Line for operation of railroad services and provide rail service for a period of three (3) additional years after the end of the Initial Operating Period, unless otherwise agreed to by the Parties in writing. The Parties agree that the requirements of Section 4 above shall not apply to the additional three (3) years of operation following the Initial Operating Period except to the extent required by Section 4(e) and 4(f). During this additional three (3) years of operation, Purchaser shall act as a financially responsible railroad operator and use the Line to provide rail service.

Section 8. NOTICES. All written communications shall be deemed to have been given when delivered personally to the respective representatives of CDOT and the Purchaser set forth below, or when deposited in the United States Mail, properly addressed and with first class postage fully prepaid. Electronic mail or fax communications are considered "written communications" for purposes of this paragraph, however e-mail or fax shall be confirmed in writing and deposited in the United States Mail with first class postage prepaid. Until changed by notice in writing, all such notices and communications shall be addressed as follows:

If to CDOT:

Mr. Tim Baker
Project Manager
Division of Transportation Development
Colorado Department of Transportation
4201 East Arkansas Ave.
Denver, Colorado 80222
(303) 757-9756
Email: tim.baker@dot.state.co.us

If to the PURCHASER:

Michael VanWagenen
V&S Railway, Inc.
P.O. Box 26421
Salt Lake City, UT 84126
Email: mvanwagenen@akrailroad.com

Section 9. DISPUTE RESOLUTION PROCEDURE. The parties agree to make good faith efforts to amicably resolve all controversies, claims and matters of difference arising under this Agreement. If they are unable to do so, either party may demand in writing that a specified dispute be submitted to a one-day, non-binding mediation to be conducted by the Judicial Arbiter Group (or similar commercial dispute resolution center) in Denver, Colorado, within thirty (30) days of such demand. If mediation does not result in settlement of the dispute, the dispute shall be submitted to CDOT's Director of Transportation Development and to

Purchaser's President within ten (10) days for resolution. If the dispute remains unresolved for more than ten (10) days after submission of the dispute to CDOT's Director of Transportation Development and Purchaser's President, either party may apply to Colorado State District Court seeking declaratory relief. Each party shall continue to perform its obligations under this Agreement, and this Agreement shall not be terminated, pending resolution of such disputes.

Section 10. BINDING ON SUCCESSORS. This Agreement shall bind and inure to the benefit of the parties and their successors.

Section 11. WAIVER. The failure of either party to insist upon a strict performance of any of the terms, conditions and covenants herein contained shall not be deemed a waiver of any rights or remedies that such party may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

Section 12. COVENANT AGAINST CONTINGENT FEES. Purchaser warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement or understanding from CDOT for a percentage, brokerage or contingent fee.

Section 13. APPROVAL AND EXECUTION. It is understood and agreed that this Agreement shall not become valid and binding until and unless it is duly executed by each party hereto.

Section 14. SEVERABILITY. To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of this Agreement, the terms of this Agreement are severable, and should any term or provision thereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 15. REPRESENTATIONS AND WARRANTIES.

CDOT undertakes, represents and warrants to Purchaser that:

- (a) CDOT has full power and authority to enter into and perform all of its obligations under this Agreement;
- (b) CDOT is a validly organized and existing agency of the State of Colorado, with full power and authority to enter into and perform all of its obligations under this Agreement;
- (c) On the Closing Date, CDOT will represent that CDOT has created no currently valid interest in the Line that is held by third parties by, through or under CDOT;
- (d) CDOT is the sole and beneficial owner of the Line;
- (e) To the best of CDOT's knowledge and information and after consultation with counsel, this Agreement fully complies with the Statute and completely fulfills CDOT's obligations under the Statute;

- (f) On the date of execution of this Agreement and as of the Closing Date, to the best of the knowledge of CDOT, there is no litigation pending or threatened with respect to the Line;
- (g) There will be no material adverse change in the physical condition of the Line between the date of this Agreement and the Closing, except for ordinary wear and tear;
- (h) As of the date of execution of this Agreement, to the best knowledge of CDOT, the only contract rights affecting the Line are those set forth in Exhibit B, and CDOT shall advise Purchaser of any change as of Closing, however, CDOT makes no representation as to the validity or enforceability of said contract rights;
- (i) CDOT has good right and lawful authority to assign the contract rights listed in Exhibit B to Purchaser;
- (j) CDOT shall not enter into any new agreements relating to the Line (except any renewals of subsisting agreements on subsisting terms and conditions), except upon such terms and conditions as may be approved by Purchaser in writing;
- (k) As of execution and as of the Closing Date, to the best knowledge of CDOT, neither CDOT nor any person for whom in law CDOT is responsible has caused or permitted any contaminant to be disposed of on or under the Premises, other than oil, grease and similar petroleum products inherent in a rail operation, and that there are no pending claims or proceedings arising out of alleged or actual violations of environmental laws or regulations on or relating to the Line;
- (l) As of execution of this Agreement and as of the Closing Date, to the best knowledge of CDOT, CDOT has not received any complaint, order or direction remaining unremedied from any competent authority concerning the use of the Line, or the non-compliance of the use of the Line with any applicable statute, law, bylaw, regulation or ordinance affecting the same;
- (m) As of Closing, all necessary governmental action will have been taken by CDOT to validly approve, ratify, confirm and adopt this Agreement;
- (n) CDOT has requested that Colorado Kansas & Pacific Railway Company file an assignment of its operating rights to V&S;
- (o) Neither this Agreement nor any document to be delivered by CDOT, nor any certificate, report, statement or other document furnished by CDOT in connection with the negotiation of this Agreement, contains any untrue statement of material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

- (p) As a condition precedent to the effectiveness of this Agreement, the Purchaser has provided all of the following to CDOT at least two (2) weeks prior to the date of this Agreement, and CDOT has approved:
- i) The facts and organizational documents relating to the Purchaser's legal status and formation;
 - ii) The names and addresses of all of Purchaser's officers and directors, and a statement indicating any present affiliation each may have with a rail carrier; and
 - iii) Sufficient information to establish the financial responsibility of the Purchaser. Financial responsibility has been established by Purchaser providing evidence to CDOT that Purchaser has currently available \$500,000 in cash or as an irrevocable letter of credit with a major national bank which shall be maintained during the Initial Operating Period and for operation as required by Section 2(e) above; and
 - (iv) A complete list of all investors, owners, partners in the Purchaser;

Purchaser undertakes, represents and warrants to CDOT that:

- (a) Purchaser is a validly organized and existing corporation, and in good standing under the laws of the State of Nevada and will be qualified as a foreign corporation in the State of Colorado at the time of Closing;
- (b) As of Closing, all necessary corporate action will have been taken by Purchaser to validly approve, ratify, confirm and adopt this Agreement and any agreement referred to or set forth in the Exhibits, and to authorize the execution and delivery of all documents contemplated or required herein and the performance of all acts and consummation of all transactions on the part of Purchaser to be done or performed hereunder;
- (c) Neither this Agreement nor any document to be delivered by Purchaser, nor any certificate, report, statement or other document furnished by Purchaser in connection with the negotiation of this Agreement, contains any untrue statement of material fact or omits to state a material fact necessary to make the statement contained herein or therein not misleading.

Section 16. FORCE MAJEURE. Delays or failures of either party in the performance of its required obligations shall be excused if caused by circumstances beyond the reasonable control of the party affected, including, but not limited to, acts of God, labor strikes, fire, flood, windstorm, explosion, riot, war, sabotage, action or request of governmental authority, or accident, provided that a prompt notice of delay is given orally as soon as possible and in writing within five (5) business days of occurrence of the force majeure event, and the parties shall be diligent in attempting to remove such causes(s). If a force majeure event occurs, the parties will work together to achieve a prompt disposition, acceptable to both parties, of the

portions of the Agreement, if any, not yet completed. If either party should elect to invoke this paragraph, it shall notify the other party of that election as provided for in the preceding paragraph and shall keep the other advised during the pendency of such force majeure and of the termination thereof.

Section 17. BREACH. Upon any material breach of any express or implied condition or requirement of this Agreement by Purchaser, and if said breach is the non-payment of sums due and is not cured within thirty (30) days, or if said breach is other than non-payment and a good-faith effort to cure is not begun within thirty (30) days, after written notice is sent to by CDOT to Purchaser, CDOT at its election, may declare this Agreement terminated and take possession of the Line, and Purchaser shall reconvey the Line to CDOT pursuant to the terms of the Deed of Trust and Security Agreement, Exhibit E. "Material breach" shall include, without limitation, Purchaser's failure to comply with the provisions of Sections 4(a), 4(c)(vi), 4(d) or 4(f). This section in no way limits any rights or remedies to which CDOT may be entitled under the terms of this Agreement or under the laws of Colorado.

Section 18. SURRENDER AT TERMINATION.

(a) Purchaser shall surrender the Line without further written notice at termination of this Agreement in as good condition as existed at the beginning of this Agreement, reasonable wear and tear excepted, provided, however, that the Line, if improved, repaired, or renovated during the term of this Agreement shall be surrendered by Purchaser in as good condition as existed after such improvements, reasonable wear and tear excepted. This provision shall not relieve Purchaser of its obligations to maintain and repair the Line.

(b) Any capital improvements, alterations, additions and repairs made by Purchaser shall become the property of CDOT at the termination of this Agreement.

(c) It is understood and agreed that Purchaser, and/or its subcontractors, will bring onto the Line its own personal property such as locomotives, cars and tools to operate the Line, and may erect trade fixtures which may be removed without damage to structures. Such trade fixtures or personal property shall remain the property of Purchaser and may be removed at any time or upon the termination of this Agreement.

(d) Upon termination, Purchaser agrees to grant CDOT, if it so desires, a proxy to seek in the Purchaser's name as if it had filed such a request itself, Surface Transportation Board approval to transfer the common carrier status, file for abandonment, or discontinuance of service of the Line. The proxy shall include the right to undertake any and all actions which the Purchaser could have taken including the right to seek discontinuance of service authorization by means of an exemption and to cancel tariffs, notify customers and other carriers and consummate the authority given.

Section 19. APPLICABLE LAW. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extrajudicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void.

Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.

Section 20. COMPLETE AGREEMENT. This Agreement, including all exhibits, supersedes any and all prior written or oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.

Section 21. NO BENEFICIAL INTEREST. The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein.

Section 22. NO VIOLATION OF LAW. The signatories hereto aver that they are familiar with §18-8-301, et seq., (Bribery and Corrupt Influences) and §18-8-401, et seq., (Abuse of Public Office), C.R.S., as amended, and that no violation of such provisions is present.

Section 23. CONSENT. Unless otherwise specifically provided, whenever consent or approval of CDOT or Purchaser is required under the terms of this Agreement, such consent or approval shall not be unreasonably withheld or delayed and shall be deemed to have been given if no response is received within thirty (30) days of the date of request was made. If either party withholds any consent or approval, such party shall on written request deliver to the other party a written statement giving the reasons therefor.

Section 24. GOVERNMENTAL IMMUNITY. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as now or hereafter amended. The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended, and § 24-30-1501, et seq., C.R.S., as now or hereafter amended. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of CDOT to the above cited laws.

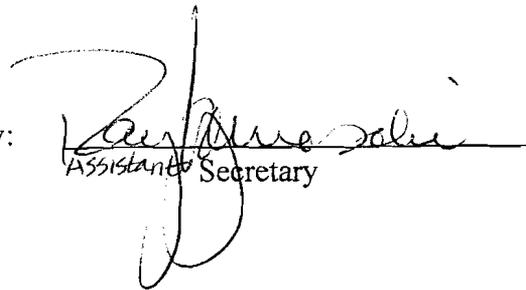
[The balance of this page is intentionally left blank—signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

PURCHASER:

V&S Railway, Inc.

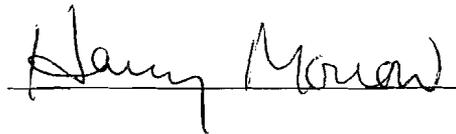
Attest (Seal)

By: 
Assistant Secretary

By: 
Name: MORRIS F. KILMER
Title: President
88-0289896
Federal Tax Identification Number

Approved as to form:
John W. Suthers
Colorado Attorney General

STATE OF COLORADO
Bill Owens, Governor
Acting by and through
The Department of Transportation

By: 

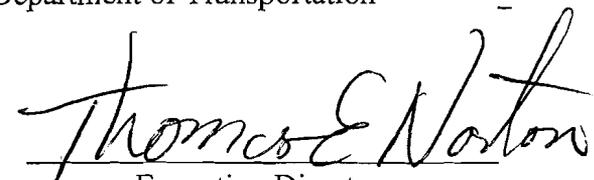
By: 
Executive Director

EXHIBIT 2



1654263

Page: 1 of 4

12/22/2005 03:17P

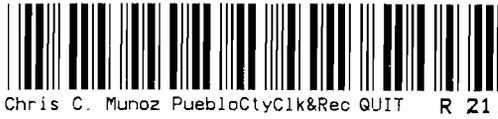
Chris C. Munoz PuebloCtyCik&Rec QUIT R 21.00 D 0.00

QUITCLAIM DEED

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION, ("Grantor"), whose address is 4201 East Arkansas Avenue, Denver, Colorado, 80222, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto V and S Railway, Inc., ("Grantee"), its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand both at law and in equity, of, in, and to that certain real property particularly described in Attachment I, hereto attached and hereby made a part hereof, located in the County of Pueblo, in the State of Colorado (the "Property").

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, consistent with the terms of Colo. Rev. Stat. (2005) §43-1-1306(4), a possibility of reverter in the event that Grantee abandons the railroad line on the Property (the "Line") or an associated right-of-way or if the Line or an associated right-of-way is used or conveyed for any purpose other than the operation of railroad services, and, additionally, for any purpose that is inconsistent or in conflict with the continued provision of rail service on the Line, such reverter to be effective only as to the Property, being the real estate underlying the Line conveyed hereby, and not as to any personal property conveyed from Grantor to Grantee nor as to any rail, ties, track materials or other railroad equipment or property conveyed from Grantor to Grantee and affixed to the Property.

FURTHER RESERVING unto Grantor, its successors and assigns, pursuant to Colo. Rev. Stat. (2005) §43-1-1306, a right of first refusal to purchase the Line, the associated rights-of-way, or any right to use the Line or right-of-way. Grantee may not sell the Line, the associated rights-of-way, or any right to use the Line or right-of-way, without first providing written notice to Grantor not less than thirty (30) days prior to the commencement of the next following session of the Colorado General Assembly, allowing one hundred twenty (120) days after commencement of said session for Grantor to purchase the Line for the lesser of: (i) the Purchase Price paid by Grantee hereunder, plus documented capital improvements made by Grantee to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantee expended such funds, or (ii) the net salvage value of the Line at the time Grantee intends to sell all or any part of the Line. If Grantor exercises the right of first refusal set forth herein, Grantee shall be deemed to have retained for a period of Ten (10) years following execution of this Quitclaim Deed, a right of first refusal to purchase the Line or any portion thereof. Grantor or its successors-in-interest may not abandon or sell the Line or any portion thereof for salvage without first giving Grantee written notice of its intent to do so, allowing one hundred twenty (120) days for Grantee to purchase the Line for the lesser of: (i) the



price paid by Grantor to Grantee hereunder, plus documented capital improvements made by Grantor to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantor expended such funds, or (ii) the net salvage value of the Line at the time Grantor intends to sell all or any part of the Line. Grantee's right of refusal to re-purchase the Line from Grantor shall automatically expire if, following Grantor's exercise of its right of refusal to purchase the Line, Grantor secures a Line operator under either a lease or purchase agreement. For purposes of this Quitclaim Deed, "net salvage value" shall be determined as follows: within 30 days of giving the notice required above, the party giving the notice shall obtain, at its sole expense, three competitive public bids for the railroad track materials, provided that none of the bidders shall be an affiliate of Grantee or Grantor, and the highest bid received for the railroad track materials shall be the net salvage value.

It is expressly understood that the subjacent support of the Property may have been impaired by mining operations heretofore carried on beneath the surface thereof, and the quitclaiming of the Property is upon the condition that Grantor, its successors and assigns, shall not be liable for damages resulting therefrom. This quitclaim shall not impair or diminish the right of any ditch owner, or of any owner of real property along the right-of-way of the Line, as provided in §§43-1-1306(7) and 43-1-1310, C.R.S.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee and unto its successors and assigns.

Grantor is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee.

IN WITNESS WHEREOF, Grantor has caused this deed to be duly executed as of the 21 day of DECEMBER, 2005.

Attest:

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION

Regina W. Bennett
Chief Clerk *for Right of Way*

By: Thomas E. Norton
Title: Ex. Dir.

(SEAL)



1654263

Page: 4 of 4
12/22/2005 03:17P

Chris C. Munoz PuebloCtyClk&Rec QUIT R 21.00 D 0.00

Attachment I
(Exhibit A-1)

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION
Pueblo County, Colorado

That portion of the right of way of the Towner railroad line (f/k/a the Hoisington Subdivision of the Union Pacific Railroad Company) as now constituted, as said Towner railroad line extends in a westerly direction from the Crowley/Pueblo county line to Mile Post 869.40 in, over, and across the following legal subdivisions:

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
N ½	1	22S.	60W.	6TH
NE ¼ NE ¼	2	22S.	60W.	6TH
S ½ S ½	35	21S.	60W.	6TH
(INDIAN CLAIM 3)	34	21S.	60W.	6TH
(INDIAN CLAIM 2)	33	21S.	60W.	6TH
SW ¼ SW ¼	28	21S.	60W.	6TH
(INDIAN CLAIM 1)	29	21S.	60W.	6TH

Also, that portion of the right of way of said Towner railroad line, situate in Indian Claim No. 1 of Section 30, Township 21 South, Range 60 West of the Sixth Principal Meridian in Pueblo County, Colorado, that lies between the east line of said Section 30 and a line (Mile Post: 869.40) drawn at right angles through the centering of said main track at a point thereon that is 1,677.0 feet distant westerly, measured along said centerline of the main track from said east line of Section 30.

3451545_2.DOC

QUITCLAIM DEED

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION, ("Grantor"), whose address is 4201 East Arkansas Avenue, Denver, Colorado, 80222, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto V and S Railway, Inc., ("Grantee"), its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand both at law and in equity, of, in, and to that certain real property particularly described in Attachment I, hereto attached and hereby made a part hereof, located in the County of Crowley, in the State of Colorado (the "Property").

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, consistent with the terms of Colo. Rev. Stat. (2005) §43-1-1306(4), a possibility of reverter in the event that Grantee abandons the railroad line on the Property (the "Line") or an associated right-of-way or if the Line or an associated right-of-way is used or conveyed for any purpose other than the operation of railroad services, and, additionally, for any purpose that is inconsistent or in conflict with the continued provision of rail service on the Line, such reverter to be effective only as to the Property, being the real estate underlying the Line conveyed hereby, and not as to any personal property conveyed from Grantor to Grantee nor as to any rail, ties, track materials or other railroad equipment or property conveyed from Grantor to Grantee and affixed to the Property.

FURTHER RESERVING unto Grantor, its successors and assigns, pursuant to Colo. Rev. Stat. (2005) §43-1-1306, a right of first refusal to purchase the Line, the associated rights-of-way, or any right to use the Line or right-of-way. Grantee may not sell the Line, the associated rights-of-way, or any right to use the Line or right-of-way, without first providing written notice to Grantor not less than thirty (30) days prior to the commencement of the next following session of the Colorado General Assembly, allowing one hundred twenty (120) days after commencement of said session for Grantor to purchase the Line for the lesser of: (i) the Purchase Price paid by Grantee hereunder, plus documented capital improvements made by Grantee to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantee expended such funds, or (ii) the net salvage value of the Line at the time Grantee intends to sell all or any part of the Line. If Grantor exercises the right of first refusal set forth herein, Grantee shall be deemed to have retained for a period of Ten (10) years following execution of this Quitclaim Deed, a right of first refusal to purchase the Line or any portion thereof. Grantor or its successors-in-interest may not abandon or sell the Line or any portion thereof for salvage without first giving Grantee written notice of its intent to do so, allowing one hundred twenty (120) days for Grantee to purchase the Line for the lesser of: (i) the

price paid by Grantor to Grantee hereunder, plus documented capital improvements made by Grantor to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantor expended such funds, or (ii) the net salvage value of the Line at the time Grantor intends to sell all or any part of the Line. Grantee's right of refusal to re-purchase the Line from Grantor shall automatically expire if, following Grantor's exercise of its right of refusal to purchase the Line, Grantor secures a Line operator under either a lease or purchase agreement. For purposes of this Quitclaim Deed, "net salvage value" shall be determined as follows: within 30 days of giving the notice required above, the party giving the notice shall obtain, at its sole expense, three competitive public bids for the railroad track materials, provided that none of the bidders shall be an affiliate of Grantee or Grantor, and the highest bid received for the railroad track materials shall be the net salvage value.

It is expressly understood that the subjacent support of the Property may have been impaired by mining operations heretofore carried on beneath the surface thereof, and the quitclaiming of the Property is upon the condition that Grantor, its successors and assigns, shall not be liable for damages resulting therefrom. This quitclaim shall not impair or diminish the right of any ditch owner, or of any owner of real property along the right-of-way of the Line, as provided in §§43-1-1306(7) and 43-1-1310, C.R.S.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee and unto its successors and assigns.

Grantor is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee.

IN WITNESS WHEREOF, Grantor has caused this deed to be duly executed as of the 21 day of DECEMBER, 2005.

Attest:

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION

Douglas W. Bennett
Chief Clerk for Right of Way

By: Thomas E. Norton
Title: Ex. Dir.

(SEAL)



THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION
 Crowley County, Colorado

That portion of the right of way of the Towner railroad line (f/k/a the Hoisington Subdivision of the Union Pacific Railroad Company) as now constituted, as said Towner railroad line extends in a westerly direction from the Crowley/Otero county line to the Crowley/Pueblo county line in, over, and across the following legal subdivisions:

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
N $\frac{1}{2}$ N $\frac{1}{2}$	1	21S.	55W.	6TH
N $\frac{1}{2}$	2	21S.	55W.	6TH
N $\frac{1}{2}$	3	21S.	55W.	6TH
N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$	4	21S.	55W.	6TH
S $\frac{1}{2}$	5	21S.	55W.	6TH
S $\frac{1}{2}$ S $\frac{1}{2}$	6	21S.	55W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	7	21S.	55W.	6TH
N $\frac{1}{2}$	12	21S.	56W.	6TH
S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$	11	21S.	56W.	6TH
S $\frac{1}{2}$	10	21S.	56W.	6TH
N $\frac{1}{2}$ N $\frac{1}{2}$	15	21S.	56W.	6TH
S $\frac{1}{2}$ S $\frac{1}{2}$	9	21S.	56W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	16	21S.	56W.	6TH
N $\frac{1}{2}$	17	21S.	56W.	6TH
S $\frac{1}{2}$ N $\frac{1}{2}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$	18	21S.	56W.	6TH
S $\frac{1}{2}$	13	21S.	57W.	6TH
S $\frac{1}{2}$ S $\frac{1}{2}$	14	21S.	57W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	23	21S.	57W.	6TH
N $\frac{1}{2}$	22	21S.	57W.	6TH
S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$	21	21S.	57W.	6TH
S $\frac{1}{2}$	20	21S.	57W.	6TH
S $\frac{1}{2}$ S $\frac{1}{2}$	19	21S.	57W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	30	21S.	57W.	6TH
N $\frac{1}{2}$	25	21S.	58W.	6TH
SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$	26	21S.	58W.	6TH
S $\frac{1}{2}$ SE $\frac{1}{4}$	27	21S.	58W.	6TH
N $\frac{1}{2}$ N $\frac{1}{2}$	34	21S.	58W.	6TH
N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$	33	21S.	58W.	6TH
S $\frac{1}{2}$	32	21S.	58W.	6TH
SE $\frac{1}{4}$ SE $\frac{1}{4}$	31	21S.	58W.	6TH
N $\frac{1}{2}$	6	22S.	58W.	6TH
E $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$	1	22S.	59W.	6TH
S $\frac{1}{2}$	2	22S.	59W.	6TH
N $\frac{1}{2}$ NW $\frac{1}{4}$	11	22S.	59W.	6TH
N $\frac{1}{2}$ N $\frac{1}{2}$	10	22S.	59W.	6TH
N $\frac{1}{2}$ N $\frac{1}{2}$	9	22S.	59W.	6TH
NE $\frac{1}{4}$ NE $\frac{1}{4}$	8	22S.	59W.	6TH
S $\frac{1}{2}$	5	22S.	59W.	6TH
S $\frac{1}{2}$, S $\frac{1}{2}$ NW $\frac{1}{4}$	6	22S.	59W.	6TH

Also, that portion of the right of way of said Towner railroad line, situate in the S1/2SE1/4 of Section 36, Township 20 South, Range 55 West of the Sixth Principal Meridian in Crowley County, Colorado, that lies between the east line of said Section 36 and the south line of said Section 36.

State of Colorado }
 County of Kiowa } ss

INDEX

BOOK 141 PAGE 976

I hereby certify that this instrument
 was filed in my office at 4:15 o'clock
 P M DEC 22 2005 and

MICROFILMED

recorded in Book 141 Page 976-981

Betsy S. Beane
 Recorder

QUITCLAIM DEED

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION, ("Grantor"), whose address is 4201 East Arkansas Avenue, Denver, Colorado, 80222, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto V and S Railway, Inc., ("Grantee"), its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand both at law and in equity, of, in, and to that certain real property particularly described in Attachment I, hereto attached and hereby made a part hereof, located in the County of Kiowa, in the State of Colorado (the "Property").

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, consistent with the terms of Colo. Rev. Stat. (2005) §43-1-1306(4), a possibility of reverter in the event that Grantee abandons the railroad line on the Property (the "Line") or an associated right-of-way or if the Line or an associated right-of-way is used or conveyed for any purpose other than the operation of railroad services, and, additionally, for any purpose that is inconsistent or in conflict with the continued provision of rail service on the Line, such reverter to be effective only as to the Property, being the real estate underlying the Line conveyed hereby, and not as to any personal property conveyed from Grantor to Grantee nor as to any rail, ties, track materials or other railroad equipment or property conveyed from Grantor to Grantee and affixed to the Property.

FURTHER RESERVING unto Grantor, its successors and assigns, pursuant to Colo. Rev. Stat. (2005) §43-1-1306, a right of first refusal to purchase the Line, the associated rights-of-way, or any right to use the Line or right-of-way. Grantee may not sell the Line, the associated rights-of-way, or any right to use the Line or right-of-way, without first providing written notice to Grantor not less than thirty (30) days prior to the commencement of the next following session of the Colorado General Assembly, allowing one hundred twenty (120) days after commencement of said session for Grantor to purchase the Line for the lesser of: (i) the Purchase Price paid by Grantee hereunder, plus documented capital improvements made by Grantee to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantee expended such funds, or (ii) the net salvage value of the Line at the time Grantee intends to sell all or any part of the Line. If Grantor exercises the right of first refusal set forth herein, Grantee shall be deemed to have retained for a period of Ten (10) years following execution of this Quitclaim Deed, a right of first refusal to purchase the Line or any portion thereof. Grantor or its successors-in-interest may not abandon or sell the Line or any portion thereof for salvage without first giving Grantee written notice of its intent to do so, allowing one hundred twenty (120) days for Grantee to purchase the Line for the lesser of: (i) the

price paid by Grantor to Grantee hereunder, plus documented capital improvements made by Grantor to the Line, plus interest at the statutory rate of Eight Percent (8%) per annum, compounded annually (as provided in Colo. Rev. Stat. (2005) §5-12-102(2) or its replacement), calculated as of the date Grantor expended such funds, or (ii) the net salvage value of the Line at the time Grantor intends to sell all or any part of the Line. Grantee's right of refusal to re-purchase the Line from Grantor shall automatically expire if, following Grantor's exercise of its right of refusal to purchase the Line, Grantor secures a Line operator under either a lease or purchase agreement. For purposes of this Quitclaim Deed, "net salvage value" shall be determined as follows: within 30 days of giving the notice required above, the party giving the notice shall obtain, at its sole expense, three competitive public bids for the railroad track materials, provided that none of the bidders shall be an affiliate of Grantee or Grantor, and the highest bid received for the railroad track materials shall be the net salvage value.

It is expressly understood that the subjacent support of the Property may have been impaired by mining operations heretofore carried on beneath the surface thereof, and the quitclaiming of the Property is upon the condition that Grantor, its successors and assigns, shall not be liable for damages resulting therefrom. This quitclaim shall not impair or diminish the right of any ditch owner, or of any owner of real property along the right-of-way of the Line, as provided in §§43-1-1306(7) and 43-1-1310, C.R.S.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee and unto its successors and assigns.

Grantor is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee.

IN WITNESS WHEREOF, Grantor has caused this deed to be duly executed as of the 21 day of DECEMBER, 2005.

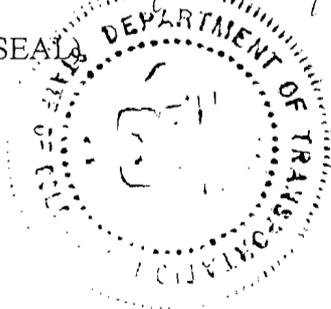
Attest:

THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION

Douglas W. Bennett
Chief Clerk *for Right of Way*

By: Thomas E. Norton
Title: Ex. Dir.

(SEAL)



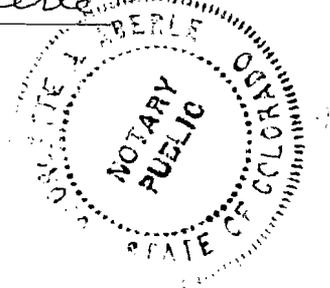
ACKNOWLEDGMENT

STATE OF COLORADO)
) ss
COUNTY OF DENVER)

On this 12 day of December, 2005, before me appeared THOMAS E. NORTON to me personally known, who, being by me duly sworn, did say that he is the Executive Director of the Colorado Department of Transportation, and that said instrument was signed in behalf of the Colorado Department of Transportation, and the said Executive Director acknowledged said instrument to be the free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Georgette A. Oberle
Notary Public



My Commission Expires:

07/11/2008

Attachment I
(Exhibit A-4)THE STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION
Kiowa County, Colorado

EXHIBIT "A"

That portion of the right of way of the Tower railroad line (f/k/a the Hoisington Subdivision of the Union Pacific Railroad Company), as now constituted, as said Towner railroad line extends in a westerly direction from Mile Post 747.50 to the Kiowa/Crowley county line in, over, and across the following legal subdivisions:

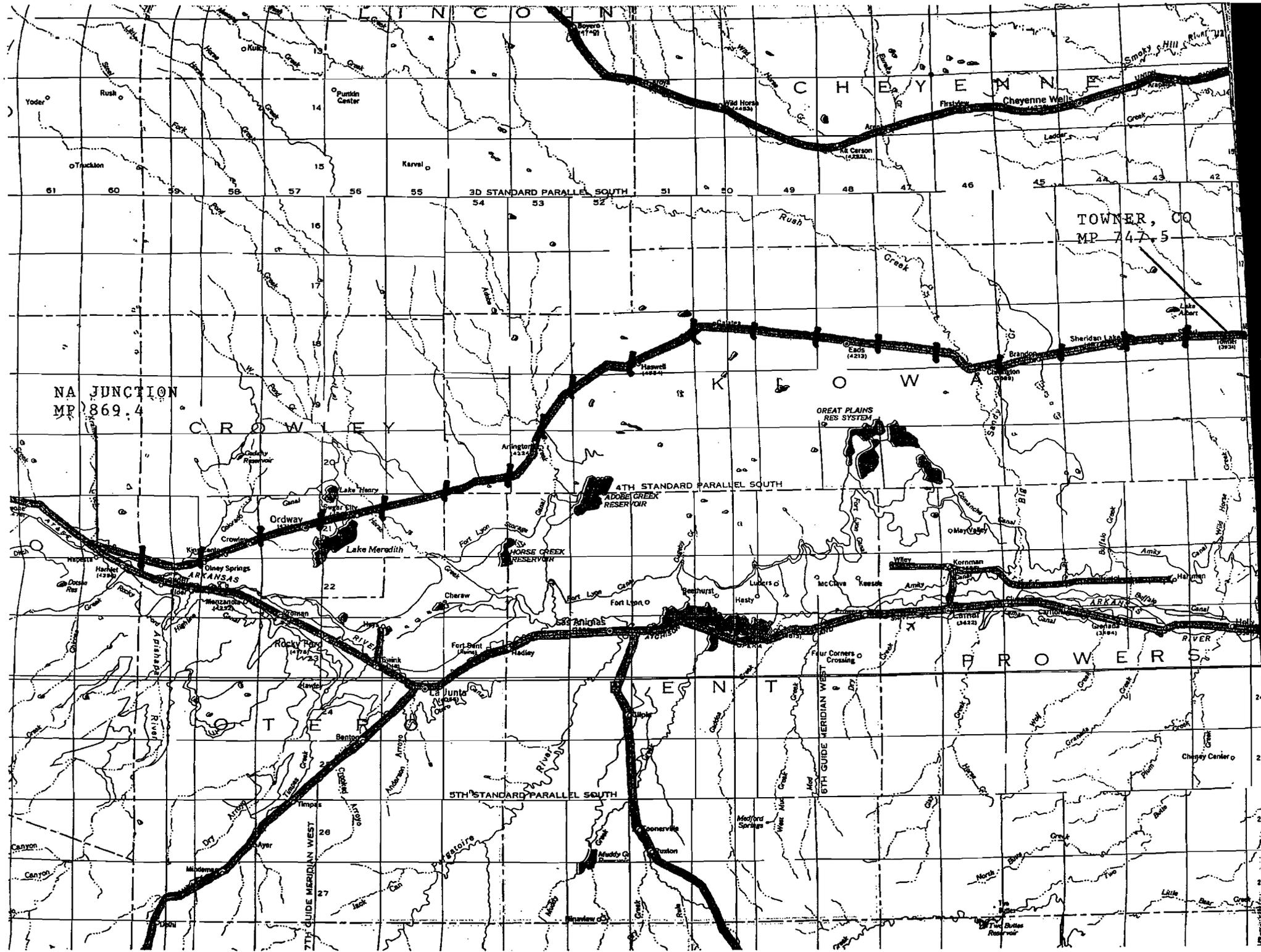
<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
S½S½	22	18S.	42W.	6TH
S½S½	21	18S.	42W.	6TH
S½S½	20	18S.	42W.	6TH
S½S½	19	18S.	42W.	6TH
S½S½	24	18S.	43W.	6TH
S½S½	23	18S.	43W.	6TH
S½S½	22	18S.	43W.	6TH
S½S½	21	18S.	43W.	6TH
S½S½	20	18S.	43W.	6TH
N½N½	29	18S.	43W.	6TH
N½	30	18S.	43W.	6TH
N½	25	18S.	44W.	6TH
S½N½, N½SW¼	26	18S.	44W.	6TH
N½S½	27	18S.	44W.	6TH
S½	28	18S.	44W.	6TH
S½S½	29	18S.	44W.	6TH
SE¼SE¼	30	18S.	44W.	6TH
N½N½	31	18S.	44W.	6TH
N½	36	18S.	45W.	6TH
S½N½	35	18S.	45W.	6TH
ALL	34	18S.	45W.	6TH
S½	33	18S.	45W.	6TH
S½	32	18S.	45W.	6TH
SE¼SE¼	31	18S.	45W.	6TH
N½N½	6	19S.	45W.	6TH
N½N½	1	19S.	46W.	6TH
S½S½	36	18S.	46W.	6TH
N½	2	19S.	46W.	6TH
S½N½	3	19S.	46W.	6TH
N½	4	19S.	46W.	6TH
SW¼	33	18S.	46W.	6TH
E½E½	32	18S.	46W.	6TH
S½	29	18S.	46W.	6TH
N½S½	30	18S.	46W.	6TH
E½, S½NW¼	25	18S.	47W.	6TH
S½N½	26	18S.	47W.	6TH
N½	27	18S.	47W.	6TH
N½N½	28	18S.	47W.	6TH
SW¼SW¼	21	18S.	47W.	6TH
S½S½	20	18S.	47W.	6TH

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
S½	19	18S.	47W.	6TH
S½	24	18S.	48W.	6TH
S½, S½NW¼	23	18S.	48W.	6TH
S½N½	22	18S.	48W.	6TH
N½	21	18S.	48W.	6TH
N½N½	20	18S.	48W.	6TH
N½N½	19	18S.	48W.	6TH
S½SW¼	18	18S.	48W.	6TH
S½S½	13	18S.	49W.	6TH
S½	14	18S.	49W.	6TH
S½	15	18S.	49W.	6TH
ALL	16	18S.	49W.	6TH
S½N½	17	18S.	49W.	6TH
N½	18	18S.	49W.	6TH
N½N½	13	18S.	50W.	6TH
N½N½	14	18S.	50W.	6TH
S½S½	11	18S.	50W.	6TH
S½S½	10	18S.	50W.	6TH
S½	9	18S.	50W.	6TH
S½	8	18S.	50W.	6TH
S½	7	18S.	50W.	6TH
NW¼NW¼	18	18S.	50W.	6TH
E½, S½SW¼	13	18S.	51W.	6TH
NW¼NW¼	24	18S.	51W.	6TH
N½, NW¼SW¼	23	18S.	51W.	6TH
SE¼NE¼, S½	22	18S.	51W.	6TH
S½SE¼	21	18S.	51W.	6TH
N½	28	18S.	51W.	6TH
E½, SW¼	29	18S.	51W.	6TH
S½	30	18S.	51W.	6TH
N½NW¼	31	18S.	51W.	6TH
N½	36	18S.	52W.	6TH
N½	35	18S.	52W.	6TH
N½, SW¼	34	18S.	52W.	6TH
SE¼	33	18S.	52W.	6TH
N½	4	19S.	52W.	6TH
E½, SW¼	5	19S.	52W.	6TH
SE¼SE¼	6	19S.	52W.	6TH
N½, NW¼SW¼	7	19S.	52W.	6TH
S½	12	19S.	53W.	6TH
NW¼	13	19S.	53W.	6TH
E½	14	19S.	53W.	6TH
N½, SW¼	23	19S.	53W.	6TH
NW¼NW¼	26	19S.	53W.	6TH
E½, SE¼SW¼	27	19S.	53W.	6TH
W½	34	19S.	53W.	6TH
W½NW¼	3	20S.	53W.	6TH
E½	4	20S.	53W.	6TH
E½, SE¼SW¼	9	20S.	53W.	6TH
W½	16	20S.	53W.	6TH

SUBDIVISION	SECTION	TOWNSHIP	RANGE	MERIDIAN
W½	16	20S.	53W.	6TH
SE¼SE¼	17	20S.	53W.	6TH
E½, SW¼	20	20S.	53W.	6TH
NW¼NW¼	29	20S.	53W.	6TH
N½	30	20S.	53W.	6TH
S½N½, NW¼SW¼	25	20S.	54W.	6TH
SE¼NE¼, N½S½	26	20S.	54W.	6TH
S½	27	20S.	54W.	6TH
S½SE¼	28	20S.	54W.	6TH
N½	33	20S.	54W.	6TH
E½, N½SW¼	32	20S.	54W.	6TH
S½	31	20S.	54W.	6TH

Also, that portion of the right of way of said Towner railroad line situate in the SW1/4 of Section 23, Township 18 South, Range 42 West of the Sixth Principal Meridian in Kiowa County, Colorado, that lie between the west line of said Section 23 and a line (Mile Post 747.50) drawn at right angles through the centerline of the main track of said Towner railroad line at a point thereon that is 2,499 feet distant easterly, measured along said centerline of the main track, from said west line of Section 23.

EXHIBIT 3



NA JUNCTION
MP 869.4

TOWNER, CO
MP 747.5

C O L O R A D O

C H E Y E N N E

C R O W L E Y

K E L O W

T E L L E R

E L B E R T

A R A P A H O E

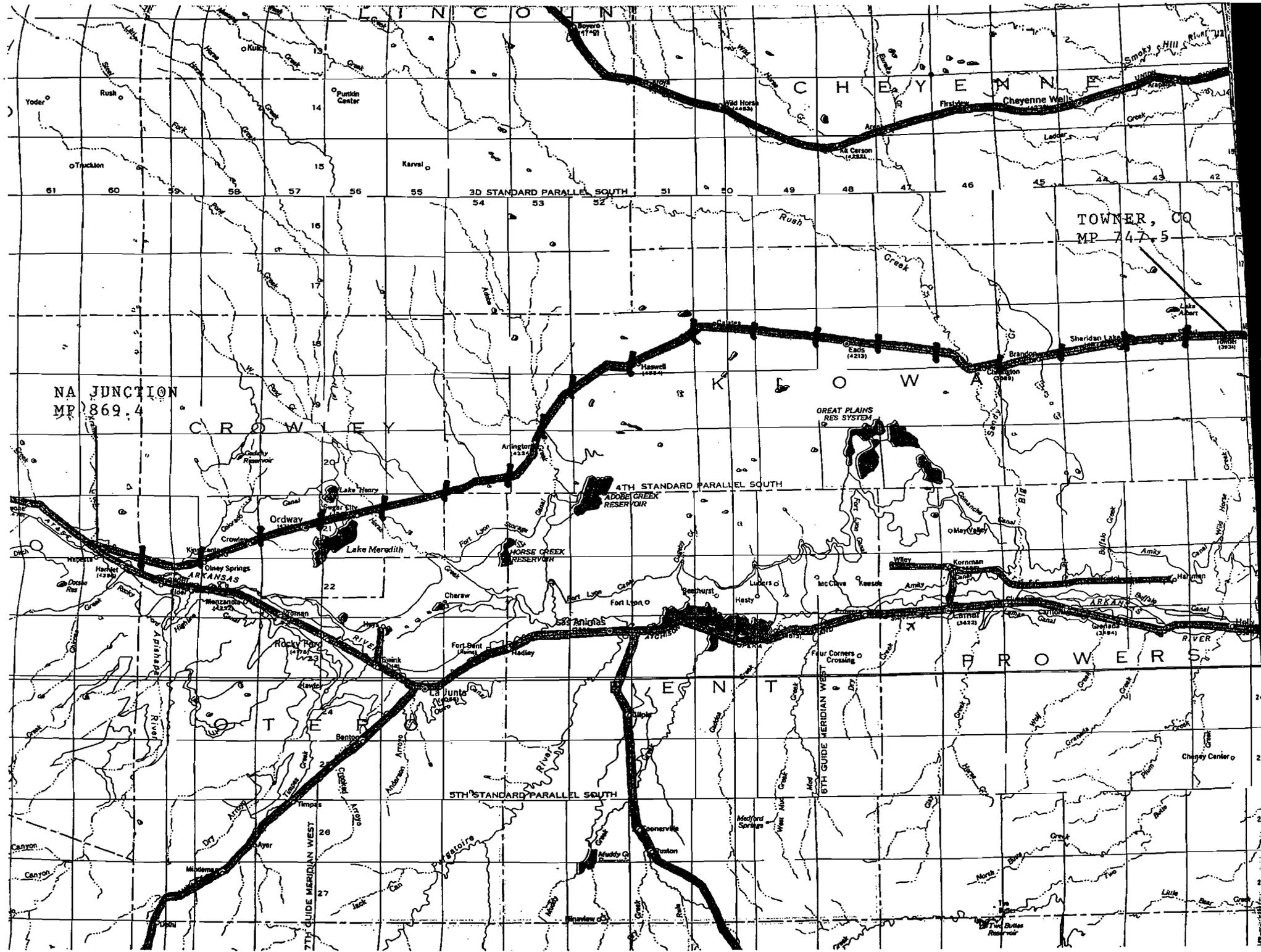
5TH STANDARD PARALLEL SOUTH

6TH GUIDE MERIDIAN WEST

7TH GUIDE MERIDIAN WEST

4TH STANDARD PARALLEL SOUTH

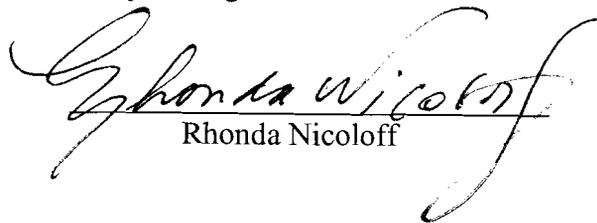
3D STANDARD PARALLEL SOUTH



VERIFICATION

I, Rhonda Nicoloff, Managing Member of V & S Railway, LLC, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Petition for Acquisition and Operation Exemption and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of V & S Railway, LLC. I know that willful misstatements or omission of material fact constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

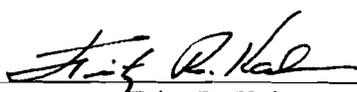
Dated at Salt Lake City, Utah this 13th day of August 2012.


Rhonda Nicoloff

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Verified Petition for Exemption of V and S Railway, LLC upon Bartlett and Company by mailing a copy by first class prepaid mail to Mr. Frank Miller, General Manager, Bartlett and Company, 1401 Maine Street, Eads, CO 81036.

Dated at Washington, DC, this 15th day of August, 2012.



Fritz R. Kahn