

218893

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SIDNEY L. STRICKLAND, JR.
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

March 26, 2007

Honorable Vernon A. Williams
Surface Transportation Board
395 E. Street, N.W.
Washington, DC 20423-0001

Re: Surface Transportation Board Finance Docket No. 35003 BNSF Railway Company and Soo Line Railroad Company—Exemption— Joint Relocation Project — Duluth, Minnesota

Dear Secretary Williams,

Enclosed for filing in the referenced docket are the original and ten (10) copies of a Verified Notice of Exemption pursuant to the class exemption for joint relocation projects, 49 C.F.R. §1180.2(d)(5), and a check for \$2,000.00, covering the filing fee.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Sincerely,

Sidney L. Strickland, Jr.
Sidney L. Strickland, Jr.

FILED

MAR 26 2006

**SURFACE
TRANSPORTATION BOARD**

SLS/bbw
Encs.

cc: Mr. John Sims
Mr. Michael Galassi
Ms. Leigh K. Currie
Mr. Barry McGrath

ENTERED
Office of Proceedings

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Public Record

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MAR 26 2007

**SURFACE
TRANSPORTATION BOARD**

218893
BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 35003

BNSF RAILWAY COMPANY
AND SOO LINE RAILROAD COMPANY
—JOINT RELOCATION PROJECT EXEMPTION—
DULUTH, MINNESOTA

VERIFIED NOTICE OF EXEMPTION

Leigh Currie
Barry McGrath
Canadian Pacific Railway
Leonard, Street and Deinard, PA
150 South Fifth Street
Suite 2300
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Sidney L. Strickland, Jr.
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Washington, DC 20007
Tel: (202) 338-1325
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ATTORNEYS FOR SOO LINE
RAILROAD COMPANY

ATTORNEYS FOR BNSF
RAILWAY COMPANY



Dated: March 26, 2007

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BEFORE THE
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STB Finance Docket No. 35003

BNSF RAILWAY COMPANY
AND SOO LINE RAILROAD COMPANY
—JOINT RELOCATION PROJECT EXEMPTION—
DULUTH, MINNESOTA

VERIFIED NOTICE OF EXEMPTION

The Notice of Exemption is filed on behalf of BNSF Railway Company (“BNSF”) and Soo Line Railroad Company d/b/a Canadian Pacific Railway Company (“CPR”) pursuant to the class exemption for relocation of lines of railroad provided in 49 C.F.R. §1180.2(d)(5). The following information is provided as required by 49 C.F.R. §1180.4(g):

Section 1180.6(a)(1) Description of Proposed Transaction

The transaction covered by this notice is the relocation and construction of portions of BNSF and CPR tracks within and around Rice’s Point Yard between CPR milepost 288.70 and CPR milepost 287.20 in Duluth, Minnesota. The relocation and construction will accommodate a new public roadway, Davis-Helberg Drive, being constructed by the City of Duluth, Minnesota, as part of a Port of Duluth improvement project in Duluth.

Such construction will include a portion of CPR’s rail line as shown on Exhibit 1 between Point A and Point B (Point A being the westerly BNSF right of way near Point

C) on BNSF real property ("Easement"). The construction will also include a portion of BNSF rail line as shown on Exhibit 1 between Point L and Point M. This construction shall be under the Duluth Public Works Project. CPR shall thereafter own that portion of the trackage on the Easement as shown on Exhibit 1 between Points A and B including the turnouts at Points D, E, F and I, and BNSF shall thereafter own the portion of the trackage as shown on Exhibit 1 between Points L and M and the turnout at Point H. Certain portions of CPR rail line between Point N and Point O as shown on Exhibit 1 shall be removed to allow for the construction and relocation project. Additionally, CPR industry lead tracks leading to Azcon, AG Processing Inc., and crossing Helberg Drive to the Port of Duluth will be realigned to facilitate the relocation and construction project. Following the relocation and construction, BNSF and CPR will continue to have access to the Port of Duluth. See Exhibit 1 for a map showing the project components.

Section 1180.6(a)(1)(i) Summary of the proposed transaction

The relocation project covered by the notice consists of the following elements:

(1) BNSF will grant CPR a freight easement on BNSF property for the construction of a portion of CPR's rail line as shown on Exhibit 1 between Point A and Point B (Point A being the westerly BNSF right of way near Point C). CPR shall construct under the Duluth Public Works Project and thereafter own that portion of the trackage on the Easement as shown on Exhibit 1 between Points A and B including the turnouts at Points D, E, F and I. BNSF shall construct under the Duluth Public Works Project and thereafter own the portion of the trackage as shown on Exhibit 1 between Points L and M and the turnout at Point H. Certain portions of CPR rail line between Point N and Point O as shown on Exhibit 1 shall be removed to allow for the construction and relocation project. Additionally, CPR's industry lead tracks leading to Azcon, AG Processing Inc., and crossing Helberg Drive to the Port of Duluth will be realigned to facilitate the relocation and construction project. Following the relocation and construction, BNSF and CPR will continue to have access to the Port of Duluth. See

Exhibit 1 for a map showing the project components.

(2) BNSF will grant CPR non-exclusive overhead trackage rights to operate its trains, locomotives, cars and equipment with its own crews over trackage owned and operated by the BNSF and located between Points "C" and "D" as identified on the attached Exhibit 1, a distance of approximately 825 feet. There are no mileposts available to delineate the start and end point of this trackage. These trackage rights are intended to enable CPR a direct run though to bypass switches at Cargill (or its successor).

(3) CPR will grant BNSF non-exclusive overhead trackage rights to operate its trains, locomotives, cars and equipment with its own crews over trackage owned and operated by CPR, and located between Points E and I as identified on the attached Exhibit 1 map, a distance of approximately 350 feet. There are no mileposts available to delineate the start and end point of this trackage. These trackage rights are intended to enable BNSF to continue to connect with the Duluth Seaway Port Authority, which includes serving AG Processing Inc. or its successor, Azcon or its successor, and the Garfield Industrial area.

Incidental abandonment, construction, and trackage rights components of joint relocation projects subject to class exemptions under 49 CFR 1180.2(d)(5) do not require separate approval or exemption when the relocation project, as here, will not disrupt service to shippers.

Section 1180.6(a)(1)(i) Name, business, address and telephone number of applicant, and the name of counsel to whom questions can be addressed

The name and business address of the applicants are:

BNSF Railway Company
2600 Lou Menk Drive
P. O. Box 961051
Fort Worth, Texas 76161

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

Questions regarding this transaction are to be addressed to the representatives named below:

Sidney L. Strickland Jr.
Strickland and Associates, PLLC
3050 K Street, NW
Washington, D.C. 20007
Tel: (202) 338-1325
Fax: (202) 295-3854

Leigh Currie
Leonard, Street and Deinard, PA
150 South Fifth Street
Suite 2300
Minneapolis, MN 55402
Tel: (612) 335-1955
Fax: (612) 335-1657

Section 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on the effective date of Surface Transportation Board approval of this transaction.

Section 1180.6(a)(1)(iii) Purpose of the Transaction

The purpose of the transaction is for the relocation and construction of portions of CPR and BNSF rail line in order to accommodate a new public roadway, Davis-Helberg Drive, being constructed by the City of Duluth, as part of a Port of Duluth improvement project in Duluth, Minnesota. The transaction will also improve railroad access to the Port of Duluth. The transaction will not disrupt service to any rail shippers, as CPR and BNSF will continue to have access to the Port of Duluth. The relocated line and trackage rights will not involve an expansion of service by BNSF or CPR into a new territory, or alter the existing competitive situation.

Section 1180.6(a)(5) States in which the Applicant Operates

The trackage which is subject to this transportation is located in the state of Minnesota. BNSF operates in the states of Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri,

Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming. CPR operates in the states of Illinois, Indiana, Michigan, Minnesota, North Dakota, South Dakota Wisconsin.

Section 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

Section 1180.6(a)(7)(ii) Agreement (Exhibits 2 & 3)

The agreement covering the trackage rights being granted by BNSF and CPR is attached as Exhibit 2. The agreement covering the easement being granted by BNSF to CPR is attached as Exhibit 3.

Section 1180.4(g)(2)(i) Caption Summary (Exhibit 4)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 4.

Section 1180.4(g)(1)(i) Labor Protection

The applicable labor protection conditions on the trackage rights component of this transaction are those imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

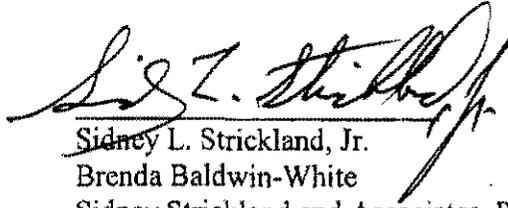
Section 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. As provided in 49 C.F.R. §1105.6(c)(4) and §1105.8(b)(3), the trackage rights involved in the proposed relocation do not require preparation of environmental reports and documentation.

Respectfully submitted,



Leigh Currie
Barry McGrath
Canadian Pacific Railway
Leonard, Street and Deinard, PA
150 South Fifth Street
Suite 2300
Minneapolis, MN 55402
Tel: (612) 335-1955

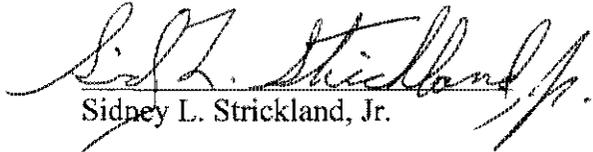


Sidney L. Strickland, Jr.
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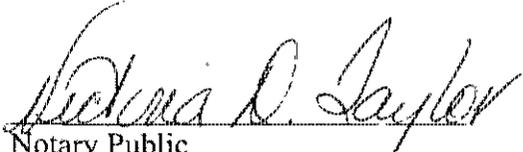
VERIFICATION

THE DISTRICT OF COLUMBIA, §

Sidney L. Strickland, Jr., being duly sworn, deposes and says that he has read the foregoing notice of exemption and that the contents thereof are true and correct to the best of his knowledge and belief.

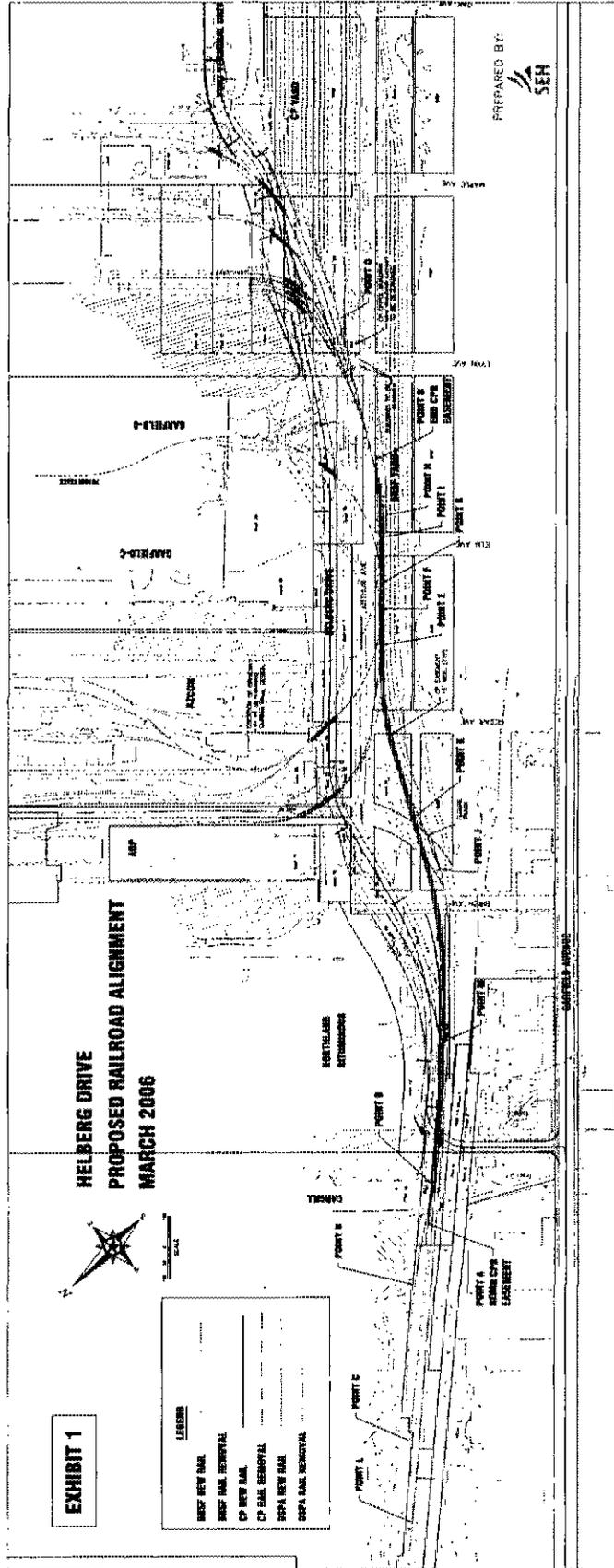

Sidney L. Strickland, Jr.

Subscribed and sworn to before me this 26th day of March, 2007.


Notary Public

My Commission expires:

Victoria D. Taylor
Notary Public District of Columbia
My Commission Expires May 14, 2011



RECIPROCAL TRACKAGE RIGHTS AGREEMENT

Rice's Point Yard in Duluth, MN

THIS AGREEMENT is made and entered into this **23** day of **May**, 2006, by and between BNSF Railway Company, 2600 Lou Menk Drive, P. O. Box 961051, Fort Worth, Texas 76161 ("BNSF"), a Delaware corporation; and Soo Line Railroad Company, d/b/a Canadian Pacific Railway, 501 Marquette Avenue, P.O. Box 530, Minneapolis, Minnesota 55440 ("CPR"), a Minnesota corporation, and sometimes individually referred to herein as "Party" or sometimes collectively referred to herein as "Parties".

WITNESSETH:

WHEREAS, CPR and BNSF have rail operations in the Rice's Point Yard in Duluth, MN and the Port of Duluth is proposing a new public roadway (Helberg Drive) through the area that will require CPR and BNSF to modify existing tracks, and relocate existing tracks and turnouts ("Duluth Public Works Project"); and

WHEREAS, BNSF and CPR jointly own and operate a certain line of railroad at Duluth, MN, and in order to accommodate the Duluth Public Works Project, BNSF desires to obtain the right to operate its trains, engines, cabooses and freight cars in its account over CPR's line of railway between Point E and Point I hereinafter referred to as "Joint Line" at Rice Yard Duluth, MN as shown on Exhibit A (all "Points" hereinafter refer to Exhibit A) which right CPR is willing to grant BNSF upon the terms and conditions hereinafter set forth; and

WHEREAS, BNSF and CPR jointly own and operate a certain line of railroad at Duluth, MN, and in order to accommodate the Duluth Public Works Project, CPR desires to obtain the right to operate its trains, engines, cabooses and freight cars in its account over the line of railway between Point C and Point D at Rice Yard Duluth, MN which BNSF is willing to grant CPR upon the terms and conditions hereinafter set forth; and

WHEREAS, in order to accommodate the Duluth Public Works Project, CPR desires to obtain a freight easement on BNSF property for the purchase, re-location and reconstruction of a portion of CPR's rail line as shown on Exhibit A between Point A and Point B (Point A being the westerly BNSF right of way near Point C), and BNSF is willing to grant CPR an easement by separate agreement; and

WHEREAS, in order to accommodate the Duluth Public Works Project it will be necessary to establish a new roadway crossing at Helberg Drive as shown on Exhibit A; and

WHEREAS, in order to fund construction required by the Duluth Public Works Project, CPR and BNSF shall each separately enter into a construction and maintenance agreement ("Construction and Maintenance Agreement") with the City of Duluth;

NOW, THEREFORE, in consideration of the premises, mutual covenants and other considerations set forth herein, the Parties agree as follows:

Section 1. OWNER AND USER DEFINED

1.1 As used hereinafter in this Agreement, whenever BNSF is operating over track owned or controlled by CPR, then BNSF shall be considered as "User" and CPR as "Owner". Whenever CPR is operating over track owned or controlled by BNSF, then CPR shall be considered as "User" and BNSF as "Owner". BNSF shall be considered as "User" and CPR as "Owner" for that portion of track owned and controlled by CPR that is relocated and/or constructed on BNSF real property ("Easement") as provided in a separate agreement dated **June 28, 2006** ("Easement Agreement") and as shown on the attached Exhibit "A" to this Agreement between Points A and B, to the extent that BNSF is granted trackage rights over trackage between the Point E and Point I and future track between Point K and Point G residing on the Easement. The attached print

labeled Exhibit A dated March 2006 shall be deemed incorporated herein and made a part of this Agreement.

Section 2. RECIPROCAL GRANT OF TRACKAGE RIGHTS

2.1 Subject to the terms and conditions herein provided, CPR hereby grants to BNSF the non-exclusive right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "BNSF Trackage Rights") over trackage owned and operated by CPR, and located between Points E and I as identified on the attached Exhibit A.

2.2 Subject to the terms and conditions herein provided, BNSF hereby grants to CPR the non-exclusive right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "CPR Trackage Rights" or collectively, the BNSF Trackage Rights and CPR Trackage Rights shall be referred to as the "Trackage Rights") over trackage owned and operated by the BNSF and located between Points "C" and "D" as identified on the attached Exhibit A.

2.3 Collectively and individually each Trackage Rights segment, shall be referred to as the "Joint Line" which shall include all of the respective Owner's trackage, track connections, facilities and appurtenances, signals and switches located between these Points, as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of the Owner.

2.4 The BNSF Trackage Rights herein granted are intended to enable the User to connect with the DSPA (Duluth Seaway Port Authority), which includes serving AG Processing Inc or its successor, Azcon or its successor, and the Garfield Industrial area.

2.5 The CPR Trackage Rights herein granted are intended to enable the User a direct run through to bypass switches at Cargill (or its successor).

Section 3. RESTRICTIONS ON USE

3.1 Except as expressly provided otherwise in Section 2, the Trackage Rights granted herein are for overhead freight traffic only. The User shall not have the right, except as otherwise provided for within this Agreement, to:

- (a) Set off, pick up, or store equipment or switch industries upon all or any part of the Joint Line, except as necessary for the handling of locomotives, cars or cabooses bad ordered en route; or
- (b) Serve any industry, team or house track now existing or hereinafter located along the Joint Line; or
- (c) Permit or admit, without permission in writing from the Owner any third party to the use of all or any part of the Joint Line, nor contract, or make any agreement to provide haulage over the Joint Line of trains, locomotives, cars or cabooses of any third party which in the normal course of business would not be considered as the trains, locomotives, cars or cabooses of Owner (the foregoing shall not prevent Owner, pursuant to a run-through agreement with any railroad, or a bona fide equipment lease, from using the locomotives and cabooses of another railroad as its own under this Agreement); or
- (d) Construct tracks connecting to the Joint Line without the express written consent of the Owner; or
- (e) Interchange with any carrier along the Joint Line; or
- (f) Connect with itself or any other railroad along the Joint Line; or

(g) Enter or Exit the Joint Line at any point other than those designated on Exhibit A hereto.

Section 4. CONSTRUCTION, MAINTENANCE, REPAIR, AND RENEWAL OF TRACKAGE

4.1 A. Construction

(1) CPR shall construct under the Duluth Public Works Project and thereafter own that portion of the trackage on the Easement as shown on Exhibit A between Points A and B including the turnouts at Points D, E, F and I. All construction performed by CPR under the Duluth Public Works Project shall be funded in accordance with a Construction and Maintenance Agreement executed between CPR and the City of Duluth at no expense to BNSF.

(2) BNSF shall construct under the Duluth Public Works Project and thereafter own the turnouts at Point H as shown on Exhibit A. All construction performed by BNSF under the Duluth Public Works Project shall be funded in accordance with a Construction and Maintenance Agreement executed between BNSF and the City of Duluth at no expense to CPR.

(3) If in the future a cross-over track is built between Points J and K to provide for access to the Garfield Industrial area, CPR shall construct the turnout at Point K and BNSF shall construct the balance of the track to Point J. CPR shall also construct the turnout at Point G. At that future time, BNSF Trackage Rights will be extended from Point E westward to Point K to allow BNSF use of the cross-over to access the future Garfield Industrial area. All future construction to be performed by CPR as hereinabove described shall be at no expense to BNSF. All future construction to be performed by BNSF as hereinabove described shall be at no expense to CPR.

B. Maintenance, Repair and Renewal.

(1) CPR shall maintain, repair and renew, at its own expense or at the expense of the industry served, CPR owned trackage located on the Easement between Points A and B including the turnouts at C, D, E, F, I from the point of switch up to the fourteen (14) foot clearance point and future turnout at Point K from the point of switch to the fourteen (14) foot clearance point. CPR shall maintain, repair and renew at its own expense the turnouts at Points C and D, including the trackage between Points C and D. CPR shall maintain, repair and renew at its own expense the trackage between Point L and Point C from BNSF's property line to Point C.

(2) BNSF shall maintain, repair and renew at its own expense the trackage between Point L and Point C, including the turnout at Point L to BNSF's property line. BNSF shall maintain, repair and renew at its own expense that proportion of Joint Line of the crossover, between Points marked H, I and future J and K which is located on its property, including the turnout marked H and J from the point of switch to the fourteen (14) foot clearance point.

(3) CPR will own maintain, repair and renew at its own expense or at the expense of the industry served, the proposed future turnout and switch marked G needed to access the Garfield Industrial area from the turnout eastward to the clearance point of its Easement.

(4) CPR shall design and install the grade crossing signals at Helberg Drive, located between Points D and J, under the project contract. Each Party shall be responsible for maintenance, repair, and renewal of their own track in order for the proper function of those signals (including but not limited to bonding and insulated joints). CPR shall provide the routine inspection and maintenance for the crossing signals and CPR track except for track work required on the BNSF owned track. Any unrecoverable cost of repairs due to hit and run or vandalism

shall be divided on a 50-50 basis (including but not limited to broken signal arms and broken lenses.).

Where applicable, each Owner shall be responsible for seeking and obtaining reimbursement from the Port Authority of Duluth for construction related to the Duluth Public Works Project, and User shall not be responsible for reimbursement to the Owner therefore.

4.2 Existing connections or facilities, which are jointly used by the Parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.

4.3 If, in the opinion of the User, a new or upgraded connection is required at the point of permitting entry or exit, or, if in the opinion of the User, other upgrading, including but not limited to capacity capital, switches, power switches, signals, communications and other is required for the operational efficiency, then the Owner will, unless such improvements will have a material adverse effect on the Owner's operations, cooperate and the User shall be responsible for the funding that construction/upgrade at actual cost plus customary additives, unless mutually agreed otherwise in writing by the User and the Owner.

Section 5. MAINTENANCE, REPAIR AND RENEWAL OF JOINT LINE

5.1 Except as provided for in Section 4, the Owner shall, in its sole and absolute discretion, be responsible for the maintenance, repair and renewal of the Joint Line. The Owner does not guarantee the conditions of the Joint Line or that operations there over will not be interrupted. Furthermore, except as may be otherwise provided in Section 14, the User shall not by reason of failure or neglect on the part of the Owner to maintain, repair or renew the Joint Line, have or make any claim or demand against the

Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for any nature suffered by the User resulting from such failure or neglect.

5.2 The Owner at its sole and absolute discretion may perform, at the sole expense of the User, such additional maintenance as the User may request on the Joint Line, subject to any terms and conditions as may be mutually agreed in writing.

Section 6. ADDITIONS, BETTERMENTS AND ALTERATIONS

6.1 The Owner may, from time to time and in its sole cost and expense and in its sole and absolute discretion, may make changes in, additions and betterments to or retirements from the Joint Line as shall, in its judgment, be necessary or desirable. Such additions shall become part of the Joint Line and such retirements shall be excluded from the Joint Line.

6.2 In the event changes in or additions and betterments to the Joint Line, including changes in the communication or signal facilities are required to accommodate the User's operations beyond that required by the Owner to accommodate its operations, the Owner in its reasonable discretion may construct the additional or altered facilities, and the User shall pay to the Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

6.3 Capacity related betterments in and/or additions to the Joint Line other than those covered by Sections 6.1 and 6.2 above shall be shared by the Owner and the User on the basis that the Parties' respective car miles operated over the Joint Line bear to total car miles operated over the Joint Line for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of the Joint Line by any third party shall be attributed to the Owner for purposes of computing respective car miles for purposes of this Section 6.3. The Owner shall advise the User in advance of any

betterments and/or additions contemplated under this Section 6.3. The Owner's failure to advise the User of any betterments and/or additions shall not relieve the User from assuming its share of expense under this Section 6.3.

Section 7. OPERATION AND MANAGEMENT OF JOINT LINE

7.1 The management and operation of the Joint Line shall be under the exclusive direction and control of the Owner. The Owner shall have the unrestricted right to change the management and the operations on and over the Joint Line as it, in its sole judgment, may deem necessary, expedient or proper for the operation of the Joint Line.

7.2 The User shall comply with the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment or trains, locomotives, cars and equipment under its control while such trains, locomotives, cars and equipment are being operated over the Joint Line. Notwithstanding any other provisions herein, the User shall indemnify, protect, defend, and save harmless the Owner and its subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon the Owner or its subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court of competent jurisdiction, when attributable solely to the failure of the User to comply with its obligations in this regard.

7.3 When operating Trackage Rights traffic over the Joint Line, the User's locomotives and crews shall be equipped to communicate with the operators of the segments of Joint Line on radio frequencies then normally used in directing train movements on the Joint Line. The User's locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by the Owner's operating rules with a minimum requirement of horsepower per ton rating of 1 to 1 and equipped

with such cab signals, locomotive speed limiter and other safety equipment that is required by law or instruction for the operation over any or all of the Joint Line.

7.4 The User, at its sole expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices including but not limited to end of train devices with functioning telemetry as may now or in the future be mandated by the Federal Railroad Administration, or other governing body having authority, for the safe and efficient operation of trains over the Joint Line.

7.5 The operation of the User over the Joint Line shall at all times be in accordance with the rules, instructions and restrictions of the Owner, provided, however, that such rules, instructions and restrictions shall be reasonable, just and fair between all Parties using the Joint Line and shall not unjustly discriminate against any of them. These rules and instructions shall include, but not be limited to, operating and safety rules, timetables, special instructions, bulletins, general orders and authoritative directions of train dispatchers and operating officers. Other than those restrictions provided for herein, the Owner will not make any rule or restriction applying to the User's trains that does not apply with equal force to the Owner's trains.

7.6 The User's trains while operating over the Joint Line shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Joint Line as published in the governing document and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by the Owner's operating rules and regulations without the prior consent of the Owner.

7.7 In the event that a train of the User shall be forced to stop on the Joint Line due to mechanical failure of the User's equipment or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of the User fails to maintain the speed required by the Owner on the Joint Line, or if in emergencies, crippled or otherwise defective cars are set out of the User's trains on the Joint Line, the

Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Joint Line, and the User shall reimburse the Owner for the actual cost of rendering any such assistance.

7.8 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Joint Line, such work shall be performed or arranged by the Owner, and the User shall reimburse the Owner for the cost thereof.

7.9 All employees of the User engaged in the operation of the User's trains over the Joint Line shall be required to qualify for entry onto the Joint Line by passing periodic examinations on the operating and safety rules of the Owner in addition to the physical characteristics. The User shall make such arrangements with the Owner as may be required to ensure that all of its employees who shall operate its trains, locomotives, cars and equipment over the Joint Line are qualified for operation there over, and the User shall pay to the Owner, upon receipt of bills therefore, any and all costs incurred by the Owner in connection with the qualification of such employees of the User which may include, but are not limited to, those costs addressed in Section 10 of this Agreement including the cost of pilots furnished by the Owner, until such time as such employees are deemed by the appropriate examining officer of the Owner to be properly qualified for operation as herein contemplated. The Owner may require that such qualification trips be repeated if the subject User's employee has not made a trip over the Joint Line within a reasonable period of preceding time, but only to the same extent as would be required of the Owner's own employees. Pending qualification or re-qualification of subject employees, the Owner shall furnish a pilot or pilots, at the expense of the User, to allow operation as contemplated in this Agreement. For purposes of Section 14 of this Agreement, any employee of the Owner acting as a pilot for the User will be considered an employee of the User.

7.10 If any employee of the User, neglects, refuses or fails to abide by the Owner's rules, safety rules, instructions or restrictions governing the operation over the Joint Line, the Owner shall in writing so notify the User. The Owner shall have the right to require the User to promptly withhold any User's employee from service over the Joint Line pending the result of formal investigation of the alleged neglect, refusal or failure. After the notice is given to the User, the Owner and the User shall promptly hold a joint investigation, in which each of the Parties shall bear its own expenses for its own employees and witnesses. Notice of such investigation to the User's employees shall be given by the User's officers. The investigation shall be conducted in accordance with the terms and conditions of the agreements between the User and its employees. If the result of such investigation warrants, any subject User's employee so investigated shall upon written request by the Owner be restricted by the User from operating on the Joint Line, and the User shall release and indemnify the Owner from and against any and all claims and expenses related to such restriction, provided, however, that the Owner shall not unreasonably exercise this right of restriction.

7.11 Neither Party hereto shall require the other Party's crews to perform any work beyond that required by its current labor agreements, subject to any modifications that may result from future labor agreements, while said crews are on the other Party's property and/or subject to the other Party's supervision. Should either Party require the other Party's crews to perform additional services over and above that contemplated herein, which results in penalty claims being progressed, that Party shall reimburse the other Party for the cost of all such claims. It is agreed that the Party subject to the claims shall notify the other Party of such claims so that the movement(s) causing the claim(s) can be corrected to avoid liability.

7.12 To promote more efficient train operations over the Joint Line, the User shall, when practicable, submit non-binding schedules of proposed train operations over the Joint Line to the Owner, and the User shall, when practicable, provide the Owner with advance notice of the estimated time of arrival of trains, and documentation, prior to entering the Joint Line.

7.13 It is understood and agreed that the engines and cars of the Owner and of any company whose trains now have equal rights with those of the Owner shall at all times have precedence over the engines and cars of the User and that the Owner does not guarantee to the User free and unobstructed use of its tracks and shall not be responsible for any delay to the engines or cars of the User caused by the congestion of traffic or by reason of any defect in the roadbed, tracks, or appliances of the Owner.

Section 8. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in the User's trains on the Joint Line shall be assumed by the User and reported and paid by the User.

Section 9. BAD ORDERS AND LIGHT RUNNING REPAIRS

If any cars, cabooses, or locomotives of the User are bad ordered en route on the Joint Line and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by the User. The Owner may, upon request of the User and at the exclusive expense of the User, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the Association of American Railroads ("Interchange Rules"), furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to the Interchange Rules.

Section 10. BILLING AND PAYMENT OF CHARGES

10.1 The sole consideration for the rights granted herein shall be the reciprocal exchange of Trackage Rights, and there shall be no monetary compensation required for exercise of the BNSF Trackage Rights or the CPR Trackage Rights.

10.2 In consideration for maintenance of the signals at the grade crossing located at Helberg Drive, BNSF shall pay to CPR, an annual rate ("Annual Rate") in the amount of \$2,400.00. This Annual Rate shall be subject to adjustment in accordance with Section 11 below.

10.3 Bills submitted for reimbursements pursuant to the provisions of this Agreement, shall include direct labor and material costs, together with the customary surcharges, overhead percentages and equipment rentals as specified at the time any work is performed by CPR for BNSF as the case may be.

10.4 The payment of bills for reimbursements required under this Agreement, other than bills related to claims for indemnities for personal injury or property damage, shall not be delayed or payment refused or reduced on the face amount of bill rendered because of errors in supporting details which are not material relative to the billed amount, but such bill shall be paid as rendered and exception to charges shall be taken in writing addressed to the officer of the Party responsible for the issuance of the bill; provided that no exception to any charge contained in any such bill shall be honored, recognized or considered if submitted for payment after the expiration of two (2) years from the last day of the calendar month during which the charge was incurred.

Section 11. ESCALATION OF ANNUAL RATE

11.1 The Annual Rate shall be subject to change to reflect increases or decreases in labor, material and other costs subsequent to the year 2005, hereinafter referred to as the Base Calendar Year. The Annual Rate shall be adjusted upward or downward effective July 1 of each year beginning with the year 2007 to compensate for one hundred percent (100%) of the increase or decrease in the cost of labor and material, excluding fuel as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977 = 100), Series RCR, included in the "AAR Railroad Cost Recovery Index" and supplement thereto, issued by the AAR (as hereinafter defined). In making such determination, the final "Material prices, wage rates and supplements combined

(excluding fuel)" index for the Western District shall be used. No such adjustment shall reduce the charges below the levels of the original Annual Rate provided for in Section 10.1.

11.2. The first adjustment to the Annual Rate shall be computed by calculating the percentage of increase or decrease in the final index published for the calendar year immediately prior to the year to be escalated, as related to the index for the Base Calendar Year (2005). This factor shall then be applied to the Annual Rate.

11.3. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel) final index figure for (2005) Western District; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel) final index figure for (2006) Western District; "C" to be the Base Annual Rate, "D" to be the percentage of increase or decrease; then the revised Annual Rate would be determined by the following formula:

- a. $((B - A)/A) \times 100\% = D$
- b. $(D \times C) + C = \text{revised rate effective July 1 of the year being revised.}$

11.4. In the event the base for the "Annual Indices of Charge out Prices and Wage Rates" issued by the Association of American Railroads ("AAR") shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues the "Annual Indices of Charge out Prices and Wage Rates," an equitable replacement for determining the percentage of increase or decrease shall be negotiated by the Parties hereto. In the absence of agreement, the Parties shall submit the matter to binding arbitration.

Section 12. CLAIMS AND SETTLEMENTS

12.1 Except as provided in Section 12.2, all claims, injuries, deaths, property damages and losses arising out of or connected with this Agreement shall be investigated,

adjusted and defended by the Party bearing the liability, cost and expense therefore under the provisions of this Agreement. The Parties shall be bound by the Freight Claim Rules, Principles and Practices of the AAR as to the handling of any claims for the loss or damage to lading.

12.2 Each Party will investigate, adjust and defend all cargo related liability claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.

12.3 In the event a claim or suit is asserted against one of the Parties hereto which is the other Party's duty hereunder to investigate, adjust or defend, then unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

12.4 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth herein, except that salaries or wages of full-time claim agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by the employing Party.

12.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Fifty Thousand Dollars (\$50,000).

12.6 It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions or apportionments provided in Section 14.

12.7 Except as provided for in Section 7.2 herein, each Party hereto agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of labor claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or predicated on a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of labor claims and grievances filed by its own employees arising under its collective bargaining agreements with its employees.

Section 13. CLEARING OF WRECKS

13.1 Whenever the User's use of the Joint Line requires re-railing, wrecking service or wrecking train service, the Owner shall perform or provide such service, including the repair and restoration of roadbed, track and structures, except that the Owner in its sole discretion may request a third party to perform such re-railing service at the User's sole reasonable expense.

13.2 The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting there from, shall be apportioned in accordance with the provisions of Section 14 hereof. All locomotives, cars, equipment and salvage that are owned by or under the management and control of or used by the User at the time of such wreck, shall be promptly delivered to the User, unless the Parties otherwise agree.

Section 14. LIABILITY

14.1 Except as provided in Section 4 and 7.2 of this Agreement, the responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorneys' and consultants' fees resulting from the use of the Joint Line as described herein, all of which are collectively referred to as a "Loss", will be divided as follows:

(a) If a Loss occurs on the Joint Line involving the trains, cars, equipment and/or locomotives of only one of the Parties hereto, then that one Party is solely responsible for the Loss, even if caused partially or completely by the other Party.

(b) If a Loss occurs on the Joint Line involving the trains, cars, equipment and/or locomotives of more than one Party, then (i) each Party is solely responsible for any Loss to its own employees, locomotives and equipment and that in its own revenue account including lading and (ii) the Parties are equally responsible for any Loss to the Joint Line and any Loss sustained by third parties or the environment, regardless of the proportionate responsibility between them as to the cause of the Loss.

(c) If a Loss occurs on the Joint Line which does not involve the trains, cars, equipment and/or locomotives of either Party, then the respective Owner shall be solely responsible for such Loss, regardless of the proportionate responsibility between them as to the cause of the Loss; provided, however, each Party is solely responsible for any Loss to its own employees and property. For purposes of the allocations set forth in this subsection (c), CPR shall be deemed the

"Owner" of the real estate, ballast and appurtenances in addition to the Track for that portion of the right of way described in the Easement.

(d) Except as expressly provided herein, whenever any liability, cost, or expense is assumed by or apportioned to a Party hereto under the foregoing or succeeding provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and their parent corporations, subsidiaries and affiliates, and all of its respective directors, officers, agents and employees from and against that liability, cost and expense assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees. Notwithstanding any provision to the contrary in this Agreement, neither Party shall indemnify the other Party for: i) any Loss to the extent such Loss arises as a result of the intentional misconduct of the indemnitee; and/or ii) any punitive or exemplary damages, regardless of the whether resulting in whole or in part from the fault, failure, or negligence of the indemnitee or its directors, officers, agents, or employees.

(e) In every case of death or injury suffered by an employee of any Party hereto, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and any of said Parties, under the provisions of this Agreement, are required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party (ies) shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) For purposes of determining liability, pilots furnished by the Owner to the User pursuant to this Agreement shall be considered as the employees of the User while such pilots are on duty as pilots.

(g) If a claim or suit shall be commenced against any of the Parties hereto for Damage for which another Party hereto is ultimately liable, the Party sued or against whom the claim is asserted may give notice of such claim or suit to the other Party and thereupon the latter shall assume the defense of the claim or suit and save harmless there from the Party sued or against whom the claim is asserted. The Party liable hereunder shall also be responsible and indemnify the other Party for all costs and expenses associated with defending the claim or suit (excluding the salaries, wages and benefits of the Parties' employees), including reasonable outside attorneys' and consultants' fees. Where both Parties are liable hereunder, each Party shall bear its own costs and expenses associated with defending the claim or suit.

Section 15. DEFAULT AND PARTIAL TERMINATION OF RIGHTS

In the event of any substantial failure on the part of the User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the Owner, the Owner shall have the right at its option, after first giving thirty (30) days written notice thereof, and notwithstanding any waiver by the Owner of any prior breach thereof, to terminate User's Trackage Rights and the User's use of the Joint Line under this Agreement. The exercise of such rights by the non-defaulting Party shall not impair its rights under this Agreement or any cause or causes of action it may have against the Party in default for the recovery of damages, nor shall such exercise result in termination of the non-defaulting Party's own trackage rights granted pursuant to this Agreement. All rights, liabilities and obligations which arise or accrue prior to the termination of a User's rights under this Section 15, shall survive and be enforceable for the applicable statute of limitations period.

Section 16. REGULATORY APPROVALS

16.1 Should all or part of this Agreement require the prior approval or exemption from approval of the Surface Transportation Board ("STB"), the User at its own cost and expense will initiate and thereafter diligently pursue an appropriate notice, application or petition to secure such approval or exemption to allow this Agreement to become effective.

16.2 Upon expiration of the term of this Agreement, neither Party shall oppose any effort to obtain such governmental approval or exemption as may be necessary, if any, to discontinue the rights granted under this Agreement. Pending final governmental authority, if required, to discontinue the rights granted herein, the Parties shall continue to be bound by the terms of this Agreement, and the terms of this Agreement shall survive to the extent necessary until all rights are terminated. The Parties agree that

money damages alone may not adequately remedy a breach of this Section 16, and accordingly, the Parties agree that the terms of this Section 16.2 may be specifically enforced, without prejudice to other rights or remedies which may be available at law or in equity.

Section 17. ABANDONMENT AND DISCONTINUANCE OF JOINT LINE PRIOR TO EXPIRATION OF THE TERM.

17.1. At any time during the term of this Agreement, User shall have the right, subject to securing any necessary regulatory approval or exemption, at User's sole cost and expense, in its sole and absolute discretion to discontinue its own use of the Joint Line or any portion thereof. In such event, the Owner shall cooperate with User in any efforts to acquire regulatory approvals or exemptions necessary to effect such discontinuance, provided such discontinuance shall not alter or amend any rights of the respective Owner under this Agreement.

17.2. Owner shall have the right, subject to securing any necessary regulatory approval or exemption, and at Owner's sole cost and expense, to abandon and/or discontinue its use of the Joint Line or any portion thereof. Before filing an application for regulatory approval of such abandonment, the Owner shall give the User ninety (90) days' advance notice in writing of its intention to do so in order that the User may determine whether it desires to purchase Owner's interests in the Joint Line (or the relevant portion thereof, as the case may be) or to discontinue its use thereof.

17.2. If the User desires to purchase the Joint Line, unless otherwise mutually agreed in writing, it may only do so pursuant to the Offer of Financial Assistance procedures under 49 U.S.C. Section 10904. In the event the offer meets the requirements of 49 U.S.C. Section 10904 and the Owner receives more than one such offer, the Owner will exercise its statutory right to negotiate with the User rather than with any other

offeror(s). Thereafter, the rights and obligations of the Parties in respect to the User's acquisition of the Joint Line shall be governed by applicable provisions of the law.

17.3. In any one of the circumstances listed below the User shall be deemed to have determined that it does not desire to purchase the Joint Line and shall be deemed to have concurred in the discontinuance of User's use thereof:

(i) The User fails to submit an offer of financial assistance to purchase the Joint Line within the time prescribed by statute and applicable regulations, or

(ii) The User, having made an offer of financial assistance to purchase the Joint Line, but being unable to reach agreement with the Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or

(iii) The User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or

(iv) The User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In the event of any circumstances described in subsections (i)-(iv) above, the User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Joint Line. If the User does not promptly file an application seeking approval of its discontinuance of the User's operations over the Joint Line, at Owner's election, on written notice to User and to the extent allowed by applicable law, the Owner shall be deemed to have been given the User's power of attorney to take such action on the User's behalf. The Parties agree that money damages alone may not adequately remedy a breach of this Section 17.3, and accordingly, the Parties agree that the terms of this Section 17.3 may be specifically enforced, without prejudice to other rights or remedies (including, without limitation, the

rights to act on User's behalf to proceed with discontinuance approval or exemption) which may be available at law or in equity.

17.4 In the event any application filed by the Owner is granted but an application filed by the User under Subsection (iii) above is denied by the proper regulatory authority, the Parties shall cooperate in taking such action as is reasonably necessary to effect a sale of Owner's interest in the Joint Line (or part thereof as the case may be) to the User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904. The terms of this Section 17.4 may be specifically enforced without prejudice to any other rights or remedies available at law or in equity.

17.5 In the event the Owner abandons the Joint Line (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the Parties shall cooperate and take such action as is necessary to assure that the User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement. The terms of this Section 17.5 may be specifically enforced without prejudice to any other rights or remedies available at law or in equity.

17.6. Except as otherwise expressly agreed in writing, in the event any actions taken by the Parties under this Section 17 result in imposition of labor protective conditions as part of any approved abandonment, discontinuance, or sale transaction, the responsibility for bearing the cost thereof shall be borne by the Party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

Section 18. TERM

18.1 Unless earlier terminated pursuant to the terms of this Agreement, and further subject to possible survival of the terms of this Agreement pursuant to Section 16.2, this Agreement shall be effective the day and the year first written above ("Execution Date") or, in the event STB approval or exemption is required, on the effective date such approval or exemption is secured and shall remain in full force and effect for an initial term of twenty-five (25) years from the Execution Date ("Initial Term"). Unless the Owner or User notifies the other in writing at least six (6) months prior to the expiration of the Initial Term, this Agreement may continue in full force and effect for up to three (3) successive terms of twenty-five (25) year terms under the same terms and conditions.

18.2 Expiration or termination of this Agreement shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination or expiration hereof.

Section 19. ARBITRATION

(a) If at any time a question or controversy shall arise between the Parties hereto in connection with this Agreement upon which the Parties cannot agree, either Party shall have the right to require a meeting of designated representatives with authority to settle the matter within 30 days of written notice of a desire to meet; if it cannot be resolved within 30 days of the meeting of the Parties, then the aggrieved Party may demand arbitration. Unless other procedures are agreed to by the Parties, arbitration between the Parties pursuant to this Section 19 shall be governed by the rules and procedures set forth in this Section 19.

(b) If the Parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one Party of its desire for arbitration to the other Party, then the question or controversy shall be

submitted to and settled by that single arbitrator. Otherwise, any Party (the notifying Party) may notify the other Party (the noticed Party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed Party shall appoint an arbitrator and notify the notifying Party in writing of such appointment. Should the noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association, which shall designate said appointment from the CPR Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the Parties, upon application by either Party after ten (10) days' written notice to the other Party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a Party, be appointed in the same manner hereto before stated.

(c) Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both Parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either Party may submit with witnesses required to be sworn, and hear arguments of counsel or others. In no event shall the arbitrator(s) have authority to award indirect, special, consequential, punitive or exemplary damages. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.

(d) After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all Parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of

America having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

(e) Each Party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

The Parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

(g) Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points (or the maximum interest allowed by applicable law, if lower), shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 20. SUCCESSORS AND ASSIGNS

Subject to the terms of this Section 20, this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. Neither Party may transfer or assign this Agreement in whole or in part, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining

the prior written consent of the non-assigning Party; provided, however, no such consent shall be required where assignment or transfer results from the sale or transfer of all or substantially all of a Party's assets pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

Section 21. NOTICES

21.1 Except as may be otherwise provided in this Agreement or as may be otherwise mutually agreed to by the Parties hereto from time to time, any and all notices or other communications hereunder shall be in writing and shall become effective when delivered by hand or by a major overnight courier service and shall be addressed to the persons at the following addresses:

If to BNSF:

Assistant Vice President, Contracts and Joint Facilities
BNSF Railway Company
2600 Lou Menk Drive, P. O. Box 961051,
Fort Worth, Texas 76161

If to CPR:

Director of Interline Management
Canadian Pacific Railway
1200 Jorie Boulevard
Oak Brook, Illinois 60521

with a copy to –

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

21.2 Either Party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other Party to this Agreement, in the same manner as provided above for all other written notices.

Section 22. GOVERNING LAW

It is the intention of the Parties hereto that the laws of the State of Minnesota shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties' hereto.

Section 23. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and copies or fax transmissions may be used in lieu of the original Agreement for all purposes.

Section 24. OTHER AGREEMENTS

This Agreement does not supercede any other agreement in place between BNSF and CPR as it may pertain to the Duluth, MN area. All existing agreements that are presently in place between BNSF and CPR remain whole and in effect.

Section 25. WAIVERS AND AMENDMENTS

This Agreement may not be modified or amended except by an instrument in writing signed by both Parties. Except as may be expressly provided otherwise in this Agreement, no failure on the part of either Party or any of its agents to exercise, and no

course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either Party or any of its agents of any right, power or remedy hereunder preclude any other or further exercise of such right or any other right, power or remedy.

Section 26. NO THIRD PARTY BENEFICIARIES

This Agreement is made and intended for the benefit of the Parties hereto and their respective successors and permitted assigns and for no other parties.

Section 27. INTEGRATION

This Agreement together with Exhibit A embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and mergers and supersedes all prior understandings and agreements (whether oral or written) concerning the subject matter hereof.

Section 28. CONSTRUCTION OF TERMS

The headings and titles to provisions in this Agreement are for convenience only and shall not be deemed to modify or affect the rights or duties of the Parties. The terms of this Agreement have been arrived at after an arms' length negotiation and mutual review of the Parties and their counsel, and the Parties agree that none of the provisions herein shall be deemed or presumed to be construed against either Party, regardless of which Party drafted all or part of the terms of this Agreement. Except where expressly provided otherwise, references herein to any rule, tariff, regulation, law, order, or contract shall mean such rule, tariff, regulation, law, order, or contract as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

BNSF RAILWAY COMPANY

By *Mark Schultz*

Its VP – Operations Support

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

By *Jim Bender*

Its Director Interline Management

**EASEMENT AGREEMENT
PORT OF DULUTH - HELBERG DRIVE PROJECT**

THIS EASEMENT AGREEMENT FOR PORT OF DULUTH - HELBERG DRIVE PROJECT ("Easement Agreement") is made and entered into as of the 28th day of June 2006, ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), and SOO LINE RAILROAD COMPANY, d/b/a CANADIAN PACIFIC RAILWAY, a Minnesota corporation ("Grantee").

A. Grantor owns or controls certain real property situated at or near the vicinity of Rice's Point Yard, County of St. Louis, State of Minnesota, as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. In order to accommodate a public works project in Duluth, MN, ("Duluth Public Works Project"):

1.) Grantor and Grantee have entered into a separate Reciprocal Trackage Rights Agreement ("Reciprocal Trackage Rights Agreement") governing the joint use of track in the vicinity of Rice's Point Yard.

2.) Grantor and Grantee, in order to fund construction required by the Duluth Public Works Project, have each separately entered into a construction and maintenance agreement ("Construction and Maintenance Agreement") with the City of Duluth, MN.

3.) Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

C. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be to provide a right of way for the relocation of a portion of Grantee's tracks in order to accommodate a new public roadway, Davis-Helberg Drive, being constructed as part of a Port of Duluth improvement project. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the Plans and Specifications (as hereinafter defined) approved as set forth in **Section 5**.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all Laws (as hereinafter defined), including without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities, if any.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;

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- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

1.4 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 2 Compensation. Grantee shall pay Grantor, prior to the Effective Date, the sum of one (1) and No/100 Dollars (\$1.00) as compensation for the grant of this Easement.

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Plans and Specifications for Improvements. Initial improvements shall be constructed in accordance with the Construction and Maintenance Agreement. If Grantee desires to construct any subsequent Improvements within the Premises, Grantee shall submit to Grantor for its review and approval detailed information concerning the design, location and configuration of such Improvements ("**Plans and Specifications**"). As soon as reasonably practicable after Grantor's receipt of the Plans and Specifications and other information required by Grantor about the proposed location of the Improvements, Grantor will notify Grantee in writing whether Grantor has approved or disapproved the design, location and configuration of the proposed Improvements or the Plans and Specifications, and shall include one or more reasons for any disapproval. Following any disapproval, Grantee shall have the right to modify the location, configuration or other aspects of the Plans and Specifications of the proposed Improvements and to resubmit such modified information to Grantor for its further review and approval. Grantor may approve or disapprove of the Plans and Specifications in Grantor's sole discretion. Any approval or consent by Grantor of any of such plans shall in no way obligate Grantor in any manner with respect to the finished product design and/or construction. Any such consent or approval shall mean only that such Plans and Specifications meet the subjective standards of Grantor, and such consent or approval by Grantor shall not be deemed to mean that such Plans and

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Specifications or construction are structurally sound and appropriate or that such Plans and Specifications or construction meet the applicable construction standards or codes. Any deficiency in design or construction, notwithstanding the prior approval of Grantor shall be solely the responsibility of Grantee.

Section 6 Improvements.

6.1 Construction of Improvements. If the construction of any subsequent Improvements on the Premises is approved by Grantor pursuant to **Section 5** above, Grantee, and Grantee's Contractors, at Grantee's sole cost and expense, shall locate, configure, construct and maintain the Improvements: (i) in a good and workmanlike manner and in strict accordance with the Plans and Specifications approved by Grantor pursuant to the provisions of **Section 5** above, (ii) in conformance with applicable building uses and all applicable engineering, safety and other Laws, (iii) in accordance with the highest accepted industry standards of care, skill and diligence, and (iv) in such a manner as shall not adversely affect the structural integrity or maintenance of the Premises, any structures on or near the Premises, or any lateral support of structures adjacent to or in the proximity of the Premises. The construction of the Improvements within the Premises shall be completed by Grantee and Grantee's Contractors within one (1) year after the Effective Date. Grantee shall provide as built drawings of all Improvements to Grantor promptly upon completion of construction and shall use its best efforts to cause such as built drawings to be electronically accessible to Grantor.

6.2 Maintenance of Improvements. Grantee shall at all times during the term of this Easement Agreement, at Grantee's sole cost and expense, keep and maintain the Improvements located upon the Premises in a structurally safe and sound condition, in good repair and in compliance with the Plans and Specifications and this Easement Agreement. Grantee shall also promptly repair any damage to the Premises or the Improvements caused, either in whole or in part, by Grantee Parties (as hereinafter defined). Grantee shall not cause or permit another person to cause any damage to the Premises or the Improvements, and Grantee shall be responsible for any such damage which may occur as a result of any Grantee Party's action or inaction. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Premises and shall keep the Premises in a clean and safe condition. Grantee shall, at its sole cost and expense, remove ice and snow from the Premises. Grantee shall keep the Premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on the Premises, said work of cutting and removal to be done at such times and with such frequency as to comply with local Laws and regulations and abate any and all hazard of fire. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Improvements in the Premises.

6.3 No Interference. During the construction of, and any subsequent maintenance performed on, operation of, or removal of, all or any portion of the Improvements, Grantee, at Grantee's sole cost, shall perform all activities and work on or near Grantor's rail corridor or property and/or the Premises in such a manner as to preclude injury to persons or damage to the property of Grantor, or any party on or with property on Grantor's rail corridor or property, and shall ensure that there is no interference with the railroad operations or other activities of Grantor, or anyone present on Grantor's rail corridor or property with the authority or permission of Grantor. Grantee shall not disturb any improvements of Grantor or Grantor's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements. Grantor may direct one of its field engineers to observe or inspect the construction, maintenance, operation or removal of the Improvements, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that the Improvements comply with the Plans and Specifications. If any Grantee Party is ordered at any time to leave the Premises or to halt any activity on the Premises, then the party conducting that activity immediately shall cease such activity and leave the Premises, if the order was issued by Grantor's personnel to promote safety, such noninterference with other activities or property, or because the Improvements were not in compliance with this Easement Agreement. Notwithstanding the foregoing right of Grantor, Grantor has no duty or obligation to observe or inspect, or to halt work on, the Premises, it being solely Grantee's responsibility to ensure that the Improvements are constructed, maintained, operated and removed in strict accordance with all Laws, safety measures, such noninterference and the Plans and Specifications and in compliance with all terms hereof. Neither the exercise nor the failure by Grantor to exercise any right set forth in this **Section 6.3** shall alter the liability allocation set forth in this Easement Agreement.

6.4 No Alterations. Except as may be shown in the Plans and Specifications approved by Grantor for the Easement or to the extent permitted in the Construction and Maintenance Agreement, Grantee may not

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make any alterations to the Premises, or permanently affix anything to the Premises, without Grantor's prior written consent. If Grantee desires to change either the location of any of the Improvements or any other aspect of the Plans and Specifications of any of the Improvements, Grantee shall submit such change and modified Plans and Specifications to Grantor in writing for its approval in the same manner as provided for in **Section 5**. Grantee shall have no right to commence any such change until after Grantee has received Grantor's approval of such change in writing.

6.5 Approvals; Compliance with Laws and Safety Rules.

- (a) Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required approvals or authorizations from applicable governmental authorities.
- (b) Prior to entering the Premises, and at all times during the term of this Easement Agreement, Grantee shall comply, and shall cause its contractor, any subcontractor, any assignee, and any contractor or subcontractor of any assignee performing work on the Premises or entering the Premises on behalf of Grantee (collectively, "**Grantee's Contractors**"), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) (collectively, "**Laws**"), and all of Grantor's applicable safety rules and regulations including those found on the website noted below in **Section 6.5(c)**.
- (c) No Grantee Party may enter the Premises without first having completed Grantor's safety orientation found on the website: www.contractororientation.com.

6.6 Other Improvements. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist.

6.7 Flagging and Other Costs. Grantee shall not conduct any activities on, or be present on, any portion of the Premises or Grantor's rail corridor or property that is within twenty-five (25) feet of any active railroad track, except in the presence of a flagman. In any case where a flagman or flagmen are required in connection with the presence of individuals on Grantor's rail corridor or the Premises, Grantee shall provide as much advance notice as possible prior to any entry upon the Premises. Grantor shall arrange for the presence of the flagman or flagmen as soon as practicable after receipt of such notice from Grantee. Grantee shall reimburse to Grantor, within thirty (30) days following Grantee's receipt of each bill therefor, Grantor's costs in arranging for and providing the flagman or flagmen, which shall be billed to Grantee at Grantor's then applicable standard rate. Grantee agrees to reimburse Grantor (within thirty (30) days after receipt of a bill therefore) for all other costs and expenses incurred by Grantor in connection with Grantee's use of the Premises or the presence, construction, maintenance, and use of any Improvements situated thereon.

6.8 No Unauthorized Tests or Digging. Grantee, and Grantee's Contractors, must not conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Grantor's rail corridor or property (whether or not such centerline is located within the Premises), except after Grantee has obtained written approval from Grantor, and then only in strict accordance with the terms and any conditions of such approval.

6.9 Boring. Prior to conducting any boring work on or near Grantor's rail corridor or property (which shall only be permitted within the Premises), Grantee and Grantee's Contractors shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Grantee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Grantee's written request, which shall be made thirty (30) business days in advance of Grantee's proposed construction or modification of any Improvements, Grantor will provide to Grantee any information that Grantor has in the possession of its Engineering Department concerning the existence and approximate location of Grantor's underground utilities and pipelines at or near the vicinity of any proposed Improvements. Prior to conducting any boring work, Grantee, and Grantee's Contractors, shall review all such material. Grantor does not warrant the accuracy or completeness of information relating to subsurface conditions and Grantee's, and Grantee's Contractors', operations at all times shall be subject to the liability provisions set forth herein. For all bores greater than 20 inches in diameter and at a depth less than ten (10) feet below the bottom of a rail, Grantee, and Grantee's Contractors, shall perform a soil investigation which must be reviewed by Grantor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Grantor's reasonable opinion that granular material is present, Grantor may select a new location for Grantee's use, or may require Grantee, and Grantee's Contractors, to furnish for Grantor's review and approval, in Grantor's sole discretion, a remedial plan to deal with the granular material. Once Grantor has approved any such remedial plan in writing, Grantee, and Grantee's Contractors, at Grantee's sole cost, shall carry out the approved plan in accordance with all terms thereof and hereof. Any open hole, boring or well constructed on the Premises by Grantee, or Grantee's Contractors, shall be safely covered and secured at all times when anyone who is not creating it, working in it or using it as permitted hereunder is present in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises shall be promptly filled in by Grantee and Grantee's Contractors to surrounding ground level with compacted bentonite grout, or otherwise secured or retired in accordance with any applicable Laws. No excavated materials may remain on Grantor's rail corridor or property for more than ten (10) days, and must be properly disposed of by Grantee and Grantee's Contractors in accordance with applicable Laws.

6.10 Drainage of Premises and Property. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Premises shall be made and maintained by Grantee in such manner, form and to the extent as will provide adequate drainage of and from the Premises and Grantor's adjoining right of way; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from the Premises and Grantor's adjoining right of way, Grantee shall construct and maintain such culverts or drains within the Premises as may be requisite to preserve such natural and pre-existing drainage. Grantee shall wherever necessary, construct extensions of existing drains, culverts or ditches through or along the Property, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

6.11 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

6.12 Modification, Relocation or Removal of Improvements.

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Section 7 Indemnification.

DURING THE TERM THAT THE RECIPROCAL TRACKAGE RIGHTS AGREEMENT REMAINS IN FULL FORCE AND EFFECT, LIABILITY FOR DAMAGE OR DESTRUCTION OF PROPERTY AND INJURY OR DEATH OF PERSONS UPON THE PREMISES PURSUANT TO THIS EASEMENT SHALL BE APPORTIONED BETWEEN GRANTOR AND GRANTEE AS SET FORTH IN SECTION 14 OF THE RECIPROCAL TRACKAGE RIGHTS AGREEMENT, WHERE, FOR THE PURPOSE OF SAID SECTION 14 THE GRANTEE SHALL BE DEEMED TO BE THE OWNER OF THE TRACK, BALLAST AND PREMISES. SUBJECT TO THE PRECEDING, GRANTOR AND GRANTEE AGREE AS FOLLOWS:

7.1 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL [AND SHALL CAUSE GRANTEE'S CONTRACTORS TO] RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AND GRANTOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY, "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS EASEMENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS EASEMENT AGREEMENT,
- (iii) OCCUPATION AND USE OF THE PREMISES BY GRANTEE'S OR GRANTEE'S OFFICERS, AGENTS, INVITEES, LICENSEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER (INDIVIDUALLY, A "GRANTEE PARTY," AND COLLECTIVELY, "GRANTEE PARTIES"),
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY GRANTEE PARTIES, OR
- (v) ANY ACT OR OMISSION OF GRANTEE PARTIES,

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

7.2 TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 7.1, GRANTEE SHALL [AND SHALL CAUSE GRANTEE'S CONTRACTORS TO] NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT GRANTOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE IMPROVEMENTS FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. GRANTEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. GRANTEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS EASEMENT AGREEMENT SHALL NOT IN ANY WAY SUBJECT GRANTOR TO CLAIMS THAT GRANTOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY

AND ALL SUCH CLAIMS. IN NO EVENT SHALL GRANTOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

7.3 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL [AND SHALL CAUSE GRANTEE'S CONTRACTORS TO], REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF GRANTEE OR ANY OF ITS AGENTS, INVITEES, CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

7.4 Upon written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Easement Agreement for which Grantee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 8 Insurance. Grantee shall, at its sole cost and expense, procure and maintain during the life of this Easement Agreement the following insurance coverage:

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- ◆ Grantee's statutory liability under the worker's compensation Laws of the state(s) in which the work is to be performed. If optional under State Law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability Insurance is required if there is any construction or demolition activities. This insurance shall name only the Railway as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Railway prior to performing any work or services under this Easement Agreement

If available and in lieu of providing a Railroad Protective Liability Policy, Grantee may participate in the Railway's Blanket Railroad Protective Liability Insurance Policy available to Grantee or its contractor. The limits of coverage are the same as above. The cost is \$_____.

- I elect to participate in Grantor's Blanket Policy;
- I elect not to participate in Grantor's Blanket Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Grantee agrees to waive its right of recovery against Railway for all claims and suits against Railway. In addition, its insurers, through policy endorsement, waive their right of subrogation against Railway for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Grantee further waives its right of recovery, and its insurers also waive their right of subrogation against Railway for loss of its owned or leased property or property under its care, custody, or control.

Grantee's insurance policies through policy endorsement, must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Railway. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Railway and Staubach Global Services - RR, Inc. as an additional insured with respect to work performed under this Easement Agreement. Severability of interest and naming Railway and Staubach Global Services - RR, Inc. as an additional insured shall be indicated on the certificate of insurance.

Grantee is not allowed to self-insure without the prior written consent of Railway. If granted by Railway, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Grantee in lieu of insurance. Any and all Railway liabilities that would otherwise, in accordance with the provisions of this Easement Agreement, be covered by Grantee's insurance will be covered as if Grantee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing work, Grantee shall furnish to Railway an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This

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cancellation provision shall be indicated on the certificate of insurance. Upon request from Railway, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Grantee represents that this Easement Agreement has been thoroughly reviewed by Grantee's insurance agent(s)/broker(s), who have been instructed by Grantee to procure the insurance coverage required by this Easement Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Grantee, Grantee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Grantee is required to release, defend and indemnify Railway herein.

Failure to provide evidence as required by this **Section 8** shall entitle, but not require, Railway to terminate the Easement immediately. Acceptance of a certificate that does not comply with this **Section 8** shall not operate as a waiver of Grantee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Grantee shall not be deemed to release or diminish the liability of Grantee including, without limitation, liability under the indemnity provisions of this Easement Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

However, if Soo Line Railway d/b/a Canadian Pacific Railway is and remains a Class I Rail Carrier, Soo Line Railway may, in lieu of insurance coverage described in this Section 8, as a prerequisite to the easement, and annually thereafter, provide to BNSF Railway proof of adequate financial responsibility to secure its liability obligations under this Easement Agreement.

For purposes of this **Section 8**, Railway shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 9 Environmental.

9.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

9.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of

all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

9.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

9.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

9.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 9. Should Grantee not comply fully with the above-stated obligations of this Section 9, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in Section 12.

Section 10 PERSONAL PROPERTY WAIVER. EXCEPT FOR LOSSES AS DEFINED IN THE RECIPROCAL TRACKAGE RIGHTS AGREEMENT THAT ARE THE RESPONSIBILITY OF GRANTOR UNDER THE RECIPROCAL TRACKAGE RIGHTS AGREEMENT, ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF GRANTEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

Section 11 Default and Termination.

11.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

11.2 Grantor's Termination Rights. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee: (i) if default shall be made in any of the covenants or agreements of Grantee contained in this Easement Agreement, (ii) in case of any assignment or transfer of the Easement by operation of law, or (iii) if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

11.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts,

omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 12**.

11.4 **Non-exclusive Remedies**. The remedies set forth in this **Section 11** shall be in addition to, and not in limitation of, any other remedies that Grantor may have at law or in equity.

Section 12 Surrender of Premises.

12.1 **Removal of Improvements and Restoration**. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

12.2 **Limited License for Entry**. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 13 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 13** or any other section of this Easement Agreement.

Section 14 Tax Exchange. Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("**Apex**"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

Section 15 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the

United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantor: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, Texas 76131
Attn: Director of Real Estate

With a copy to: BNSF Railway Company
2600 Lou Menk Drive - OOB-GL
Fort Worth, Texas 76131
Attention: AVP - Contracts and Joint Facilities

If to Grantee: Director of Interline Management
Canadian Pacific Railway
1200 Jorie Boulevard
Oak Brook, Illinois 60521

with a copy to: Manager Interline Agreement Management
Canadian Pacific Railway
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta Canada T2P 4Z4

Section 16 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. *IF LEGAL DESCRIPTION IS NOT AVAILABLE USE THE FOLLOWING IN PLACE OF THE PRIOR SENTENCE: As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**").* The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within ____ days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 17 Miscellaneous.

17.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Minnesota without regard to conflicts of law provisions.

17.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

17.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary

Easement Agreement-Helberg Drive

disbursements in addition to any other relief to which such party or parties may be entitled.

17.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

17.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

17.6 Time is of the essence for the performance of this Easement Agreement.

[Signature page follows]

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: *David P. Schneider*

Name: **David P. Schneider**

Title: **General Director – Land Revenue Management**

Date: **June 26, 2006**

GRANTEE:

SOO LINE RAILROAD COMPANY, a Minnesota corporation
d/b/a **CANADIAN PACIFIC RAILWAY**

By: *David Drach*

Name: **David Drach**

Title: **Director, Real Estate Marketing**

Date: **June 26, 2006**

EXHIBIT "A"

Premises

EXHIBIT "B"

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this ____ day of _____, 2006, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and **SOO LINE RAILROAD COMPANY, d/b/a CANADIAN PACIFIC RAILWAY**, a Minnesota corporation ("**Grantee**"), whose address for purposes of this instrument is 501 Marquette Avenue, P.O. Box 530, Minneapolis, Minnesota 55440, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in St. Louis County, Minnesota as described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

This instrument was acknowledged before me on the ____ day of _____, 2006, by _____
(name) as _____ (title) of _____
_____, a _____.

Notary Public

(Seal)

My appointment expires: _____

Exhibit "B"

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 35003**

**BNSF RAILWAY COMPANY
AND SOO LINE RAILROAD COMPANY, INC.
D/B/A CANADIAN PACIFIC RAILWAY
-- JOINT RELOCATION PROJECT EXEMPTION --**

BNSF Railway Company ("BNSF") and Soo Line Railroad Company, Inc., d/b/a Canadian Pacific Railway ("CPR") are undertaking a joint relocation project covering the relocation of trackage to accommodate a new public roadway, Davis-Helberg Drive, being constructed by the City of Duluth, Minnesota, as part of a Port of Duluth improvement project in Duluth (the "Project"). This transaction will be effective on the effective date of Surface Transportation Board ("STB") approval of this transaction.

The joint relocation project consists of the following elements:

- (1) CPR and BNSF will be constructing and relocating track within and around Rice's Point Yard between CPR milepost 288.70 and CPR milepost 287.20.
- (2) BNSF will grant CPR non-exclusive overhead trackage rights to operate over trackage owned by BNSF for a distance of approximately 825 feet to bypass the switches at Cargill. CPR will grant BNSF non-exclusive overhead trackage rights to operate over trackage owned by CPR from its turnout to AG Processing Inc. and continuing southeasterly for a distance of approximately 350 feet to enable BNSF to continue to connect with the Duluth Seaway Port Authority, which includes service to AG Processing Inc. or its successor, Azcon or its successor, and the Garfield Industrial area. There are no mileposts to delineate the start and end points of this trackage.

This Notice is filed under the Board's class exemption for joint relocation projects, 49 C.F.R. § 1180.2(d)(5). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:
By the Board,

Vernon A. Williams,
Secretary