

**AGREEMENT FOR  
SALE OF CERTAIN ASSETS, RIGHTS  
AND OBLIGATIONS  
OF  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY  
TO  
STATE OF OKLAHOMA**

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**INDEX**

1.	Description of Assets, Rights and Obligations to be Conveyed	2
2.	Consideration for the Sale	15
3.	Government Approval	19
4.	Representations and Warranties	20
5.	Inspection and Condition of the Rail Lines	25
6.	Liability and Indemnity	26
7.	Seller to Deliver Certain Property Records to Buyer	34
8.	Assignment	34
9.	Obligations are Continuing	35
10.	Liens and Encumbrances	35
11.	Pending Public Works Projects	36
12.	Buyer to Require Freight Operator to Offer to Hire Seller's Qualified Employees	37
13.	Closing	37
14.	Interchange	39
15.	Car Hire Costs	39
16.	Liability Insurance	40
17.	Selection of Freight Operator and Passenger Operator	42
18.	Authority to Establish Through Routes and Offer Through Rates	42
19.	Divisions of Revenue	43
20.	Time is of the Essence	45
21.	Transfer of Operations	46
22.	Collection of Revenues	46
23.	Transfer of Liabilities; Payment of Charges	47
24.	Electronic Data Interchange	48
25.	Assignment of Freight Transportation Contracts	48
26.	Applicable Law	49
27.	Effect of Waiver	49
28.	Notices	49
29.	Entire Agreement; Integration of Agreement	50

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**EXHIBITS**

- Exhibit A Bill of Sale**
- Exhibit B-1 Oklahoma City - Sapulpa Rail Freight Service Easement**
- Exhibit B-2 Pawnee Junction - Stillwater Rail Freight Service Easement**
- Exhibit C-1 Option to Acquire Oklahoma City - Sapulpa Rail Freight Service Easement**
- Exhibit C-2 Option to Acquire Pawnee Junction-Stillwater Rail Freight Service Easement**
- Exhibit D Passenger Rail Service Easement**
- Exhibit E Option to Operate Interim Rail Service Trackage Rights**
- Exhibit F ATL Trackage Rights Agreement**

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THIS AGREEMENT ("Agreement") is entered into as of this 12 day of February, 1998, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Seller"), and the STATE OF OKLAHOMA, acting through the OKLAHOMA DEPARTMENT OF TRANSPORTATION ("Buyer").

WHEREAS, Seller desires to sell and convey to Buyer, on the terms and conditions set forth in this Agreement, the tracks, certain other improvements and personal property comprising two of Seller's rail lines between: (1) a point in Sapulpa, Oklahoma and a point in Oklahoma City, Oklahoma; and (2) a point on Seller's Stillwater Subdivision rail line just south of Pawnee Junction, Oklahoma and the south end of that rail line in Stillwater, together with: (a) a passenger rail service easement over both of these rail lines; and (b) options to acquire freight rail service easements over both of these rail lines; and also certain other rights and obligations as specified in this Agreement; and

WHEREAS, Buyer desires to purchase, pursuant to the terms and conditions set forth in this Agreement, such tracks, improvements and personal property comprising Seller's Sapulpa-Oklahoma City, and Pawnee Junction-Stillwater rail lines, a passenger rail service easement over

both of these rail lines, options to acquire freight rail service easements over both of these rail lines, and also certain other rights and obligations as specified in this Agreement; and

WHEREAS, Seller intends to donate to Buyer, simultaneously or soon before this conveyance, and Buyer intends to accept, the real property and supporting structures underlying both of these rail lines, pursuant to a Donation Agreement between the parties ("Donation Agreement");

NOW THEREFORE, Buyer and Seller agree as follows:

1. Description of Assets, Rights and Obligations to be Conveyed.

(a) Seller shall convey to Buyer, on the date of closing specified herein ("Closing"), by delivering to Buyer on that date a Bill of Sale identical in form to the Bill of Sale set forth in Exhibit A attached hereto, all of Seller's interest in the following items of track, improvements and personal property: all rail, ties, spikes, tie plates, rail anchors, signaling and road crossing protection equipment, ballast, track materials and supplies (but excluding: (i) any vehicles, maintenance equipment on wheels, portable radios or computer equipment; and (ii) all bridges, embankments, supporting track structures, culverts and ditches) that on the date of the Closing are present on the Rail Lines (as defined hereafter), whether such property is installed or uninstalled, and including all such property that constitutes improvements or appurtenances to the land. This conveyance shall be subject to the terms and conditions set forth in this Agreement, the Bill of Sale, the Rail Freight Service Easements, the Passenger Rail Service Easement and/or any agreement assigned by Seller to Buyer by the terms of this Agreement. For the purposes of this Agreement, "Rail Lines" shall

mean all property within the boundaries of two rail corridors in which Seller has an ownership interest, as follows: (1) between Milepost 438.9 in Sapulpa, Oklahoma and Milepost 536.4 immediately west of the Midwest City spur interlocker in eastern Oklahoma City, Oklahoma (the "Oklahoma City - Sapulpa Rail Line"), and (2) between Seller's Stillwater Subdivision rail line at about Milepost 8.46 just south of Pawnee Junction, Oklahoma, and the southern end of this rail line at about Milepost 30.74 in Stillwater, Oklahoma ("Pawnee Junction-Stillwater Rail Line"). The exact boundaries of these rail corridors are set forth in Attachments A-1 and A-2 to Exhibit A.

(b)(1) Seller shall retain a permanent, assignable and exclusive rail freight service easement over the Oklahoma City-Sapulpa Rail Line, such easement to be referenced herein as "Oklahoma City-Sapulpa Rail Freight Service Easement", and a permanent, assignable and exclusive rail freight service easement over the Pawnee Junction-Stillwater Rail Line, such easement to be referenced herein as "Pawnee Junction-Stillwater Rail Freight Service Easement." These easements are referenced collectively herein as "Rail Freight Service Easements." The Rail Freight Service Easements shall grant to Seller, and its successors and permitted assignees (collectively, "Seller" as used in this Subparagraph), an exclusive and permanent right to enter and remain on each of the respective Rail Lines for the sole purpose of operating and/or developing freight rail service over, or constructing, maintaining, replacing or lawfully removing any rail facilities used for rail freight service on each respective Rail Line (including tracks, communication lines, bridges, embankments, culverts, ditches, road crossings, signal systems and maintenance roadways) that now or in the future are present on each of the respective Rail Lines. Seller shall not assign the Oklahoma City - Sapulpa Rail Freight Service Easement before December 31, 1998 (or later, to the extent this date may be

extended as permitted hereunder), except as reasonably directed in writing by Buyer acting under the authority granted to Buyer by the terms of this Agreement; and Seller shall not assign the Pawnee Junction-Stillwater Rail Freight Service Easement before June 26, 1998 (or later, to the extent this date may be extended as permitted hereunder), except as reasonably directed in writing by Buyer acting under the authority granted to Buyer by the terms of this Agreement.

In this connection, the holder of each Rail Freight Service Easement ("Holder"), for so long as Seller is the Holder, shall have the right to attempt to prevent any access to each of the respective Rail Lines that does not exist on February 6, 1998, where such access would more than insignificantly increase Holder's liability risk or interfere with Holder's freight rail service operation, construction or maintenance activities, and accordingly, in these circumstances, the owner of the Rail Lines land shall obtain Holder's prior written consent before entering into any agreement providing such access to such other parties. As a condition to this easement, Holder shall not have the right to salvage any portion of the main line track on each of the respective Rail Lines (other than salvage of materials replaced by Holder), except following the written consent of the owner of the Rail Lines land. As a further condition of this easement, Holder shall: (1) maintain all rail facilities on each of the respective Rail Lines which are necessary to rail operations, including, but not limited to, all tracks, communications lines, bridges, embankments, culverts, ditches, road crossings, signal systems and maintenance roadways, and maintain a continuous line of railroad; and (2) perform general maintenance and weed cutting on each of the respective Rail Lines. The Rail Freight Service Easements shall be in the form set forth in Exhibit B-1 (Oklahoma City-Sapulpa Rail Freight Service Easement) and Exhibit B-2 (Pawnee Junction-Stillwater Rail Freight Service Easement). The

boundaries of each Rail Freight Service Easement shall be the same as the boundaries of each of the Rail Lines and shall be set forth as Attachment 1 to Exhibits B-1 and B-2, respectively. The Rail Freight Service Easements shall be subject to the terms and conditions set forth in this Agreement, the Rail Freight Service Easements, the Passenger Rail Service Easement, the Bill of Sale and/or any agreement assigned by Seller to Buyer by the terms of this Agreement.

(2) Seller shall convey to Buyer, on the date of Closing, by delivering to Buyer on that date:

(i) an option, in the form set forth as Exhibit C-1, to acquire or terminate the Oklahoma City-Sapulpa Rail Freight Service Easement; and (ii) an option, in the form set forth as Exhibit C-2, to acquire or terminate the Pawnee Junction-Stillwater Rail Freight Service Easement. Subject to the terms of this Agreement, Buyer may assign each option to, or after acquisition or termination designate, an operator that Buyer selects to provide rail freight service ("Freight Operator") over each of the Rail Lines. Buyer may select itself or another agency of the State of Oklahoma as Freight Operator.

(A) Buyer's option to acquire or terminate the Oklahoma City-Sapulpa Rail Freight Service Easement may be exercised by Buyer or Freight Operator only in accordance with the following conditions: (1) this option must be exercised on or before December 31, 1998 (and if this option is not exercised by December 31, 1998, Buyer shall pay to Seller, for extension of the option period, the sum of \$30,000 for each month (or portion thereof) until this option is exercised); (2) this option can be exercised only following at least 30 days' prior written notice from Buyer, or Freight Operator, to Seller setting forth the date on which this option will be exercised; (3) this option



can be exercised only after Buyer and/or Freight Operator has obtained effective approval, or exemption from approval, by the Surface Transportation Board of its acquisition of the Oklahoma City-Sapulpa Rail Line and the right to operate rail freight service over this Rail Line; and (4) Buyer, or Freight Operator, shall deliver to Seller a check for \$1.00 on the date of exercise of this option.

- (B) Seller hereby grants to Freight Operator, effective on the date of such acquisition or termination of such easement, and on the condition that Buyer and/or such Freight Operator has obtained effective approval, or exemption from approval, by the Surface Transportation Board of its acquisition of the Oklahoma City-Sapulpa Rail Line, incidental trackage rights for Freight Operator to operate rail freight service, free of any charge payable by Freight Operator, only between Milepost 438.9 in Sapulpa and Milepost 437.00, also in Sapulpa, for the sole purpose of Freight Operator and Seller interchanging rail freight cars and equipment with each other. The line segment and yard tracks over which these trackage rights are granted are referenced herein as "Trackage Rights Line." Freight Operator shall conduct all of its operations over the Trackage Rights Line using Freight Operator's trains, operated by Freight Operator's employees, subject to dispatching control and direction of Seller. Seller shall maintain the Trackage Rights Line as reasonably required. Freight Operator and Seller shall work in good faith to establish an

interchange in the Oklahoma City area that does not more than minimally interfere with Seller's other rail freight service operations there.

- (C) Effective as of the date of acquisition or termination of the Oklahoma City-Sapulpa Rail Freight Service Easement, Seller shall retain an option, exercisable by Seller in its sole discretion, after providing at least 60 days' prior written notice to Buyer or Holder of such Easement, at any time within 99 years following the date of Closing, for Seller to obtain from Buyer or such Holder as appropriate, overhead trackage rights over the entire Oklahoma City-Sapulpa Rail Line, at Seller's sole discretion, at any time within 99 years following the date of Closing, for Seller to obtain from Buyer or such Holder, as appropriate, overhead trackage rights over the entire Oklahoma City-Sapulpa Rail Line, subject to Seller obtaining all required regulatory authority, which trackage rights shall be operated by Seller in compliance with all federal and state laws, using Seller's trains operated by Seller's employees, subject to the operating rules and regulations of, and dispatching control and direction by, Freight Operator, which dispatching shall not discriminate against Seller in the operation of rail freight service over the Rail Line. Seller's Option Trackage Rights shall not include the right for Seller to switch or store cars, or make up or break up trains. These overhead trackage rights shall be referenced hereinafter as "Seller's Option Trackage Rights." Use of Seller's Option Trackage Rights cannot interfere

with any rail passenger service being conducted on the Rail Lines under the Passenger Rail Service Easement, and where there is any question of such interference, Seller can proceed only after, and in accordance with consent received from the party operating the Passenger Rail Service Easement, which consent will not be unreasonably delayed or withheld. Following the date, if any, on which Seller commences rail operations under Seller's Option Trackage Rights, Seller shall pay monthly to Buyer or Holder of the Oklahoma City-Sapulpa Rail Freight Service Easement, whichever is appropriate, making payment within 30 days of receipt of an invoice therefor, a fee for Seller's Option Trackage Rights (which fee shall be for Seller's use as described herein of Oklahoma City-Sapulpa Rail Line and full compensation for dispatching, maintenance and capital costs that are associated with Seller's Option Trackage Rights), of 2.00 mils per gross ton mile, escalated at the rate set forth in Paragraph 19(b) of this Agreement. Freight Operator shall maintain the Rail Line, but will not guarantee the condition of the Rail Line. Freight Operator may make changes (including additions and retirements) and abandonments as it deems necessary upon compliance with applicable law and its agreements with Buyer. Seller and Freight Operator may enter into a separate trackage rights agreement consistent with the applicable terms of this Agreement; provided, however, if they do not do so then the applicable terms of this Agreement shall serve

as the trackage rights agreement. Any dispute as to the interpretation of the terms of the trackage rights shall be determined by Seller and Freight Operator by arbitration under the procedures set forth in Paragraph 19(b).

(D) Effective as of the date of acquisition or termination of the Oklahoma City-Sapulpa Rail Freight Service Easement, Seller shall retain rail freight service operating rights between Milepost 536.4 and Milepost 535.5, use of all turnouts and switches in the Midwest City Interlocker, and use of 2000 feet of adjacent track of Buyer's Midwest City rail line, at no charge to Seller, for use by Seller's trains moving to and from Seller's Shawnee, Oklahoma rail line. Seller shall conduct train operations over this track using Seller's trains, operated by Seller's employees, subject to the dispatching control and direction by Freight Operator, which dispatching shall not discriminate against Seller in the operation of rail freight service over these rail lines. Buyer or Freight Operator shall maintain these rail lines as reasonably required. These rail service operating rights shall be referenced hereinafter as "Seller's Midwest City Rights."

(E) Buyer's option to acquire or terminate the Pawnee Junction-Stillwater Rail Freight Service Easement may be exercised by Buyer or Freight Operator only in accordance with the following conditions: (1) this option must be exercised before June 26, 1998 (and if this option is not exercised by June 26, 1998, Buyer shall pay Seller, for extension of the option period, the sum of

\$30,000 for each month (or portion thereof) through August 31, 1998, until this option is exercised) (2) this option can be exercised only following at least 30 days' prior written notice from Buyer, or Freight Operator, to Seller setting forth the date on which the option will be exercised; (3) such option can be exercised only after Buyer and/or Freight Operator has obtained effective approval, or exemption from approval, by the Surface Transportation Board of its acquisition or termination of the Pawnee Junction-Stillwater Rail Freight Service Easement and the right to operate rail freight service over this Rail Line; (4) the new interchange track to be built just south of Pawnee Junction, Oklahoma, described in Paragraph 1(b)(2)(F) must be completed; and (5) Buyer, or Freight Operator, shall deliver to Seller a check for \$1.00 on the date of exercise of this option. This option must be exercised on or before August 31, 1998 or the option will expire at 12:01 a.m. on September 1, 1998

- (F) Seller and Buyer shall construct a new interchange track acceptable to Seller and Buyer at or near Pawnee Junction, Oklahoma prior to the date on which Buyer or Freight Operator acquires or terminates the Pawnee Junction-Stillwater Rail Freight Service Easement. Seller shall be responsible for installation, at Seller's cost, of two turnouts on the existing Stillwater Subdivision track (at about Milepost 8.46 and 8.72) and one switch point derail, and will furnish second-hand rail track material for about 1170 feet of

transfer track to be built between these turnouts. Buyer or Freight Operator (as Buyer may designate) shall be responsible for the remaining cost of this construction.

(G) Effective as of the date of acquisition or termination of the Pawnee Junction-Stillwater Rail Freight Service Easement, Seller shall retain operating rights over 2000 feet of track on the north end of the line, and on the new interchange track near Pawnee Junction, at no charge to Seller, for the purpose of Seller interchanging rail traffic and equipment with Freight Operator at Pawnee Junction. Seller shall conduct train operations over this track using Seller's trains, operated by Seller's employees, subject to the dispatching control and direction by Freight Operator, which dispatching shall not discriminate against Seller in the operation of rail freight service over its track. Buyer or Freight Operator shall maintain this track as reasonably required. These rail service operating rights shall be referenced hereinafter as "Seller's Pawnee Junction Rights."

(c) Seller shall convey to Buyer, on the date of Closing, by delivering to Buyer on that date, a Passenger Rail Service Easement, in the form of the Passenger Rail Service Easement set forth in Exhibit D attached hereto, which easement shall grant to Buyer, or its designated operator on each of the Rail Lines ("Passenger Operator") the right to enter and remain on the Rail Lines for the sole purpose of operating and/or developing rail passenger service over, or constructing, maintaining, replacing or lawfully removing any facilities used only for passenger rail service on the

Rail Lines (including exclusive passenger train sidings, platforms, passenger stations, parking and related facilities, but not including any rights to construct, maintain, replace or remove any facilities on the Rail Lines that are used for rail freight service, except following receipt of written consent of the Holder of the rail freight service easement over the applicable Rail Line) that now or in the future are present on the Rail Lines. As a condition to this Passenger Rail Service Easement, rail passenger service operation cannot be commenced over all or any portion of the Oklahoma City-Sapulpa Rail Line until after: (1) January 1, 1999; (2) Buyer or Passenger Operator has provided to Seller at least six months' prior written notice of the intention to commence rail passenger operations over this Rail Line; and (3) Buyer or Freight Operator either has exercised the option to acquire the Oklahoma City-Sapulpa Rail Freight Service Easement, or Buyer has terminated the Oklahoma City-Sapulpa Rail Freight Service Easement. As a further condition to this easement, Buyer or Passenger Operator shall conduct any and all activities in a manner which minimizes interference with any rail freight service activities conducted on the Rail Lines. The Passenger Rail Service Easement shall be subject to the terms and conditions set forth in this Agreement, the Rail Freight Service Easements, the Bill of Sale and/or any agreement assigned by Seller to Buyer by the terms of this Agreement. Buyer may select itself or another agency of the State of Oklahoma as Passenger Operator.

(d) Seller shall convey to Buyer, on the date of Closing, by delivering to Buyer on that date, an option, in the form set forth as Exhibit E, that can be exercised by Buyer, or a Freight Operator designated by Buyer, following at least 7 days' advance written notice to Seller, at any time thereafter until December 31, 1998, to allow Freight Operator to operate interim local rail service

trackage rights over the Oklahoma City-Sapulpa Rail Line using trains of Freight Operator, operated by Freight Operator, or its employees, subject to dispatching control and direction by Seller, such rights to expire on the acquisition or termination of the Oklahoma City-Sapulpa Rail Freight Service Easement. Such rights shall be free of charge to Buyer and Freight Operator.

(e) Seller shall grant to Buyer, effective on the date of Closing, for a term of 99 years, a license to permit Passenger Operator to operate passenger rail service only over Seller's connecting rail line east of the Oklahoma City-Sapulpa Rail Line, between Milepost 438.9 in Sapulpa, and Milepost 422.00 just east of the existing rail passenger depot building in downtown Tulsa. This license is referenced hereinafter as "Buyer's Passenger Service Rights." The line segments over which Buyer's Passenger Service Rights are granted are referenced collectively herein as "Passenger Service Rights Lines." Passenger Operator shall conduct all of its operations over the Passenger Service Rights Lines using Passenger Operator's trains, operated by Passenger Operator's employees, subject to dispatching control and direction of Seller, and speed limits established by Seller. The speed limits for passenger trains that are established by Seller on the Passenger Service Rights Lines shall not be less than the speed limits established for Seller's freight trains operating over the Passenger Service Rights Lines. Seller shall maintain the Passenger Service Rights Lines as reasonably required for passenger train operations conducted on behalf of Buyer. Passenger Operator shall pay to Seller a fee of \$9.00 per train mile, escalated at the rate set forth in Paragraph 19(b) of this Agreement, for Seller's capital, maintenance and dispatching service and use of the Passenger Service Rights. The Passenger Service Rights cannot be exercised by Passenger Operator until after both: (i) January 1, 1999, and (ii) Buyer has provided to Seller at least six months' prior



written notice of the intention to commence rail passenger operations over the Passenger Service Rights Lines. The Passenger Service Rights shall permit Passenger Operator to operate no more than four passenger trains on any day over any portion of the Passenger Service Rights Lines, until after Buyer or Passenger Operator has paid to Seller the cost for Seller to construct all track capacity and related rail facility improvements that Seller, in its sole reasonable discretion, determines to be necessary to allow Passenger Operator safely to operate a specified number of additional passenger trains each day without interfering with Seller's rail freight service, and Seller has completed construction of all such track capacity. Seller's determination as to whether any construction is necessary, and if so, the construction itself, will not be unreasonably withheld or delayed.

(f) Seller hereby assigns to Buyer or Freight Operator (as Buyer may determine), effective on the date of acquisition or termination of each Rail Freight Service Easement, subject to all applicable terms and conditions set forth in this Agreement, each Rail Freight Service Easement, the Passenger Rail Service Easement, the Bill of Sale and/or any agreement assigned by Seller to Buyer by the terms of this Agreement, all assignable rights and obligations of Seller in and to all agreements relating to rail operations over the Rail Lines which are not assigned to Buyer by the terms of the Donation Agreement, including without limitation, all assignable rights and obligations of Seller in rail freight transportation agreements and rail crossing maintenance agreements that are applicable to the particular Rail Line, which are performable after the date of such acquisition or termination. Buyer and/or Freight Operator (as Buyer may determine) hereby accepts the assignment of all such rights and obligations of Seller, effective on the date of each applicable acquisition or termination, in accordance with the terms of each applicable agreement and

the terms of this Agreement. Seller, and not Buyer, shall be responsible for performing all of Seller's duties which are required to be performed on or before the date of the assignment, and Buyer, and/or Freight Operator, and not Seller, shall be responsible for performing all of Seller's duties to be assigned to Buyer, and/or Buyer's assignee(s), which are required to be performed after the effective date of the assignment. Seller reserves all rights and obligations set forth in any agreement assigned in part to Buyer or Freight Operator, to the extent those rights and obligations are related to one or more other rail lines or property of Seller, other than the Rail Lines, or to Seller's retained rights in either Rail Line. If any contract inadvertently is not identified at the time of conveyance of the applicable rail freight service easement, Seller promptly shall provide to Buyer a copy of any such contract immediately upon locating it, and Buyer, and/or Buyer's designee, shall assume the rights and obligations in such contract after it has been provided. Neither Buyer nor its designee(s) shall make any claim against Seller arising out of any failure to obtain a consent to assignment from any party to any agreement assigned by Seller to Buyer, in whole or in part, under the terms of this Agreement; provided that Seller will use its best efforts to obtain any such consents. It is the intent of both Seller and Buyer that all assignments of rights and obligations under the terms of this Subparagraph shall be effective as of the applicable effective date of the assignment.

2. Consideration for the Sale.

(a) In consideration for Seller's conveyance to Buyer of the assets, rights, interests and obligations described in Paragraph 1 of this Agreement, Buyer agrees to all of the following obligations:

- (1) To accept all transferred tracks, certain other improvements and personal property to be conveyed in accordance with the terms of this Agreement "AS IS, WHERE IS" and "WITH ALL FAULTS", except for the specific representations and warranties set forth in this Agreement, the Rail Freight Service Easements, the Passenger Rail Service Easement and the Bill of Sale.
  
- (2) To pay on the date of Closing the purchase price of SIX MILLION FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$6,550,000.00) for Seller's assets, rights, and interests conveyed under the terms of this Agreement. Seller intends to assign to Apex Property & Track Exchange, Inc. ("APEX") Seller's right to receive payment of the purchase price for these assets, rights and interests, for the purpose of Seller completing a tax-deferred exchange. APEX is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation §1.1031(k)-1(g). Accordingly, Buyer shall pay the purchase price at the Closing by wire transfer to an escrow agent for APEX, unless changed circumstances cause Seller to elect in writing to direct Buyer to pay the purchase price instead to Seller. The wire transfer by Buyer shall be made in accordance with written wire transfer instructions provided to Buyer by Seller.

- (3) Subject to the provisions of this Subparagraph, to cooperate with Seller with respect to any tax-deferred exchange, and to execute such documents as may be required to effect any tax-deferred exchange. Seller shall indemnify, defend and hold harmless Buyer fully against all additional costs, expenses, and liabilities which Buyer may incur as a result of any tax-deferred exchange. Seller's representations and warranties and the allocation of liabilities hereunder shall not be affected by any tax-deferred exchange, and Buyer shall not assume any liability or responsibility for any tax or other consequences to Seller arising out of structuring this transaction as a tax-deferred exchange.
- (4) To pay in addition to the purchase price, all costs of Closing (other than attorneys', accountants' and consultants' fees and any fees or other costs and expenses related to any tax-deferred exchange), including, but not limited to, any escrow and service fees, real estate transfer taxes, excise taxes, recording fees and sales taxes associated with this Agreement or any of the conveyances governed by this Agreement.
- (5) Cooperate as necessary to continue in place the trackage rights to AT&L Railroad Company ("ATL") over the rail line between El Reno and Oklahoma City that is owned by the State of Oklahoma, such trackage rights being in the form attached hereto as Exhibit F.

- (6) To establish, at no cost to Seller, a track connection between the former MKT route through the Midwest City interlocker at BNSF MP 535.8 and Buyer's Midwest City rail line trackage, and to agree that, notwithstanding any terms to the contrary in the agreement between Buyer and Seller's predecessor companies dated June 9, 1995, Seller for 99 years shall retain the right to use this connector trackage at no cost to Seller.
- (7) Because the purchase price set forth in Paragraph 2(a)(2) does not fully compensate Seller for the going concern value of the assets, rights and interests to be conveyed to Buyer under the terms of this agreement: (a) to require Freight Operator not to interchange or attempt to interchange any rail freight traffic handled over the Oklahoma City-Sapulpa Rail Line at any location in or near Sapulpa, Tulsa or northeast Oklahoma with any railroad other than Seller (or Seller's successor or affiliates), without Seller receiving a linehaul division for rail service by Seller between Sapulpa and such other railroad and Seller participating in the interline rate under which such traffic is moved, under rates by which Seller shall receive \$325.00 per carload, and \$25.00 per empty car for any rail movements between Sapulpa and any railroad within the switching limits of Sapulpa or Tulsa (the "Agreed Divisions"); (b) to require Freight Operator not to construct or acquire, or cooperate in any effort to construct or acquire, any rail line or track that would permit direct movement of rail traffic between the Oklahoma City-Sapulpa Rail Line via Sapulpa and any railroad other than Seller without

Seller receiving the Agreed Divisions; and (c) to require Freight Operator not to cooperate in any effort by any railroad or any current or future customer that would lead to traffic moving directly between the Oklahoma City-Sapulpa Rail Line via Sapulpa and any railroad other than Seller, without Seller receiving the Agreed Divisions. Nothing in this Agreement shall preclude Seller and Freight Operator from negotiating and mutually agreeing that Seller shall receive different divisions than the Agreed Divisions.

(b) This transaction and the consideration paid by Buyer is not divisible; however, Buyer and Seller agree that the purchase price shall be allocated as follows among the various assets being conveyed under the terms of this Agreement:

Rail	\$ 3,950,000.00
Ties	1,500,000.00
Ballast	<u>1,100,000.00</u>
Total	\$ 6,550,000.00

Seller and Buyer agree that this allocation shall be conclusive and binding for purposes of federal, state and local tax returns, and that neither party will take any position inconsistent herewith.

3. Governmental Approval.

Buyer represents that Buyer is not a Class I or Class II railroad, and covenants that if Freight Operator is a Class I or Class II railroad when it commences operation of either Rail Line, then Buyer will require Freight Operator to indemnify Seller from any employee protection imposed on the transaction by the STB. Buyer and/or Freight Operator at their sole expense, shall prepare and

file such documents as may be required to secure from the STB approval, or exemption from approval, as appropriate, for the authority to acquire each Rail Freight Service Easement and provide rail freight service over each applicable Rail Line. Buyer and Freight Operator shall make reasonable efforts to obtain this approval or exemption in time for the applicable Rail Freight Service Easement to be acquired or terminated on the date specified by Buyer or Freight Operator in the applicable option notice. Buyer and Freight Operator shall permit Seller to review prior to filing all documents proposed to be filed with the STB.

4. Representations and Warranties.

(a) Seller hereby represents and warrants to Buyer, and Buyer's successors and assignees, the following facts, as of the date of this Agreement, the date of Closing, and the date of exercise of each option:

- (1) Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and is qualified to do business as a foreign corporation in the State of Oklahoma.
- (2) Seller has the corporate power and authority to enter into this Agreement and carry out its obligations under this Agreement;
- (3) The execution, delivery and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of Seller, and no further corporate proceedings of Seller are required to complete the transactions covered by this Agreement;

- (4) All of Seller's obligations set forth in this Agreement constitute legal, valid and binding obligations of Seller which are enforceable against Seller in accordance with their terms, except to the extent enforcement may be limited by bankruptcy, insolvency or reorganization law;
- (5) There is no provision in the Certificate of Incorporation or By-Laws of Seller which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (6) The negotiations related to this Agreement have been handled by Seller on its own behalf, without intervention of any agent or other person, and in such manner as not to give rise to any valid claim by any party for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;
- (7) Seller has duly filed with the appropriate agencies of the United States, the State of Oklahoma, and appropriate local governments or political subdivisions in Oklahoma, all tax returns and reports required to be filed; Seller either has paid in full, or will pay in full as finally determined, and will indemnify and hold Buyer harmless from, all taxes, interest, penalties, assessments or deficiencies which are due for the period up to and including the date of Closing; and Seller has made all withholdings of tax which are required to be made under all applicable regulations of the United States, the State of Oklahoma, and local governments in Oklahoma;



- (8) To Seller's knowledge, there is no pending or threatened litigation or arbitration proceeding, or administrative proceeding or investigation, against or affecting the properties or assets comprising the Rail Lines, the Trackage Rights Lines or the Passenger Service Rights Lines, nor Seller's rights to conduct rail transportation operations over such lines as Seller conducts those operations on the date of this Agreement, the result of which foreseeably would materially adversely affect the ability of Buyer, Freight Operator or Passenger Operator to conduct rail transportation operations over such lines following the date of Closing or the exercise of the options, as applicable;
- (9) Seller has no actual knowledge of, and has received no written notice of, any pending or threatened civil, criminal, or administrative actions or any condition that may violate any environmental statute or regulation with respect to any hazardous or toxic substance on or adjacent to the Rail Lines (as used in this Subparagraph, "knowledge" shall mean knowledge of, and "written notice" shall mean written notice delivered to, either Seller's Assistant Vice President-Environmental and Hazardous Materials, or Seller's Director Environmental Remediation and Special Projects, who are the people designated by Seller to receive notice of such matters);
- (10) The physical condition of the Rail Lines and the Trackage Rights Lines, and Seller's title thereto, will be sufficient to enable Buyer or Freight Operator, to conduct rail freight transportation operations over all or any portion of the

Rail Lines and the Trackage Rights Lines after the date of exercise of the options;

- (11) Seller owns, and will transfer to Buyer or Freight Operator (as Buyer may designate), interests in the Rail Lines that are sufficient to permit Buyer or Freight Operator to operate rail service over the Rail Lines in a manner consistent with Seller's current operation of rail service over the Rail Lines; and
- (12) No representation or warranty by Seller in this Agreement contains any untrue statement of a material fact, nor omits any material fact that is necessary to make any representation or warranty not materially misleading.

(b) Buyer hereby represents and warrants to Seller, and Seller's successors and assignees, the following facts as of the date of this Agreement, the date of Closing and the date of exercise of each option:

- (1) Buyer is an agency of the State of Oklahoma and is authorized to acquire Seller's assets, rights and interests to be conveyed under the terms of this Agreement;
- (2) Buyer has all requisite authority to purchase Seller's assets, rights and interests which are to be conveyed to Buyer under the terms of this Agreement; to enter into this Agreement; and to perform all of Buyer's obligations under this Agreement;
- (3) The execution of this Agreement, and consummation of the transactions which are governed by this Agreement, have been duly authorized and

approved as required by Oklahoma law, and immediately upon execution of this Agreement by Buyer's authorized representative, all of Buyer's obligations set forth in or referenced in this Agreement shall constitute legal, valid and binding obligations of Buyer, which obligations are enforceable against Buyer in accordance with their terms, except to the extent enforcement may be limited by bankruptcy, moratorium or reorganization law;

- (4) The negotiations related to this Agreement have been handled by Buyer on its own behalf, without intervention of any agent or party, and in such manner as not to give rise to any valid claim by any party for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement; and
- (5) No representation or warranty by Buyer in this Agreement contains any untrue statement of a material fact, nor omits any material fact that is necessary to make any representation or warranty not materially misleading.

(c) Buyer will require Freight Operator to represent and warrant to Seller, and Seller's successors and assignees, the following facts as of the date of exercise of each option:

- (1) Freight Operator has all requisite authority to conduct rail freight transportation business on the applicable Rail Lines, and to perform all of Freight Operator's obligations under this Agreement; and
- (2) The consummation of the transactions involving Freight Operator which are governed by this Agreement, have been duly authorized and approved by the

Freight Operator, and immediately upon execution of an agreement with Buyer, all of Freight Operator's obligations set forth in or referenced in this Agreement and in the agreement with Buyer shall constitute legal, valid and binding obligations of Freight Operator, which obligations will be enforceable against Freight Operator in accordance with their terms, except to the extent enforcement may be limited by bankruptcy, moratorium or reorganization law.

5. Inspection and Condition of the Rail Lines.

(a) By signing this Agreement, Buyer acknowledges that Buyer has inspected the Rail Lines, including all improvements and structures on the Rail Lines. Buyer further acknowledges that: (i) except as set forth in Paragraphs 4(a)(8), 4(a)(9), and 4(a)(10) of this Agreement, no representation has been made by Seller to Buyer concerning the physical state or condition of the Rail Lines, or the age of any improvements on the Rail Lines; (ii) Buyer has not relied upon any statement or declaration of Seller, oral or in writing, as an inducement to entering into this Agreement, other than as stated in this Agreement, the Rail Freight Service Easements, the Passenger Rail Service Easement and the Bill of Sale; and (iii) the sole consideration for execution of this Agreement by Buyer is set forth in this Agreement.

(b) EXCEPT AS SPECIFICALLY SET FORTH ELSEWHERE IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION PARAGRAPHS 4(a)(10) AND (11), THE RAIL FREIGHT SERVICE EASEMENTS, THE PASSENGER RAIL SERVICE EASEMENT AND THE BILL OF SALE, SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR

WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE RAIL LINES, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE RAIL LINES, OR THE CONFORMITY OF THE RAIL LINES TO THEIR INTENDED USES. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WITH RESPECT TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE RAIL LINES, OR THE CONFORMITY OF THE RAIL LINES TO THEIR INTENDED USES. SELLER OFFERS, AND BUYER ACCEPTS, THE RAIL LINES IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON SELLER'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE RAIL LINES.

6. Liability and Indemnity.

(a) Cooperation in Defense. Buyer and Seller agree that they will cooperate as necessary in defense of any claim, demand, investigation or litigation arising out of Seller's or Buyer's ownership of, or activities on or near, the Rail Lines.

(b) Definition of Losses. In this Agreement, the term "Losses" shall include all costs, expenses, fees or liabilities of, or in any way related to: (i) any violation of law or regulation; (ii) any damage to property, the environment or natural resources; (iii) any bodily injury or death of any person; or (iv) the breach of any contract, including this Agreement and without limitation, any contract assigned pursuant to this Agreement, to the extent set forth in this Agreement. "Losses"

shall include, but not be limited to, all costs of claims, activities in response to enforcement, costs of investigation and remediation, damages, judgments, awards, order, decrees, payments, fines, penalties, assessments, court costs, and attorney, consultant and expert witness fees, and shall include cost recovery or contribution claims made pursuant to CERCLA or similar federal or state laws.

(c) General Liability and Indemnity.

- (1) Seller's General Liability and Indemnity. Except as provided in Paragraph 6(d) of this Agreement, as between Buyer and Seller, Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer, Freight Operator and Passenger Operator against, all Losses, which: (i) arise out of Seller's ownership of, or activities on, the Rail Lines on or prior to the date of Closing, or activities of Seller or any lessee, licensee, permittee, invitee, contractor, representative or agent of Seller, or any of their employees, related to the Rail Freight Service Easements, Seller's Midwest City Rights, Seller's Pawnee Junction Rights and Seller's Option Trackage Rights after the date of Closing, except to the extent such Losses are proximately caused by Buyer's gross negligence or intentional misconduct; (ii) result from any breach by Seller of any of its representations and warranties set forth in Paragraphs 4(a) and 10 of this Agreement, or any failure by Seller to perform any of its obligations under this Agreement; (iii) result from claims of third parties caused by Seller's performance or nonperformance under any contract, lease, permit, license, easement or

commitment related to the Rail Lines that is being assigned under this Agreement, on or before the effective date of the assignment; (iv) result from any lien on the Rail Lines, or any portion thereof, that secures an obligation to pay money, exists prior to Closing and is not released as of Closing; or (v) are directly related to activities or operations of Freight Operator on the Trackage Rights Line or in connection with exercise by Buyer or Passenger Operator of the Passenger Service Rights or Buyer's Passenger Service Rights, to the extent such Losses are proximately caused by Seller's gross negligence or intentional misconduct.

- (2) Buyer's and Operators' General Liability and Indemnity. Except as provided in Paragraph 6(d) of this Agreement, and further except for Losses for which Buyer is indemnified pursuant to Paragraph 6(c)(1) hereof, to the extent permitted under Oklahoma statutes, as between Buyer and Seller, Buyer, and any Freight Operator or Passenger Operator shall be responsible for, and any Freight Operator or Passenger Operator who is not an agency of the State of Oklahoma, as appropriate, shall indemnify, defend and hold harmless Seller against, all Losses which: (i) arise out of Buyer's ownership of, or activities of any party (other than Seller or any lessee, licensee, permittee, invitee, contractor, representative or agent of Seller, or any of their employees) on or near the Rail Lines after 12:01 a.m. on the day following the date of Closing, except to the extent such Losses are proximately caused by the activities after the date of Closing of Seller or any lessee, licensee, permittee, invitee,

contractor, representative or agent of Seller, or any of their employees, related to the Rail Freight Service Easements, Seller's Pawnee Junction Rights, Seller's Midwest City Rights and Seller's Option Trackage Rights; (ii) result from any breach by Buyer of any of its representations or warranties set forth in Paragraph 4(b) of this Agreement, or any failure by Buyer or any Freight Operator or Passenger Operator to perform any of its obligations under this Agreement; (iii) result from claims of third parties caused by the nonperformance or performance of Buyer or any Freight Operator or Passenger Operator under any material contract, lease, permit, license, easement or commitment relating to the Rail Lines that is being assigned under this Agreement after the effective date of the assignment; (iv) result from the activities or presence on or near the Rail Lines, Trackage Rights Line or Passenger Service Rights Lines, of Buyer or any Freight Operator or Passenger Operator, or any of their employees, or the presence or activities on or near the Rail Lines, Trackage Rights Line or Passenger Service Rights Lines of any assignee, transferee, lessee, licensee, permittee, invitee, contractor, easement holder, representative or agent of Buyer, or any Freight Operator or Passenger Operator or any of their employees, except to the extent such Losses are proximately caused by Seller's gross negligence or intentional misconduct; or (v) are directly related to Seller's activities or operations in connection with Seller's Option Trackage Rights or in connection with Seller's Pawnee Junction Rights and Seller's Midwest City



Rights, to the extent such Losses are proximately caused by the gross negligence or intentional misconduct of Buyer or any Freight Operator or Passenger Operator, or any assignee, transferee, lessee, licensee, permittee, invitee, contractor, easement holder, representative or agent of Buyer or any Freight Operator or Passenger Operator, or any of their employees.

(d) Environmental Liability and Indemnity.

- (1) Buyer's Acknowledgments with Respect to the Rail Lines. Buyer acknowledges that Seller has provided Buyer with full access to inspect the Rail Lines. Buyer further acknowledges that Seller makes only those representations and warranties to Buyer concerning the existence of any hazardous or toxic substances on or near the Rail Lines, or compliance of the Rail Lines with any statutes, ordinances, rules, regulations, orders or decisions with regard to hazardous or toxic substances on or near the Rail Lines, which are expressly set forth in Paragraph 4(a)(9) of this Agreement.
- (2) Seller's Environmental Liability and Indemnity. Notwithstanding any other liability or indemnification provision in this Agreement, Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer (including its successors and assignees) fully against, Losses incurred due to any claim, demand or litigation, to the extent it is based on any violation or requirement of any applicable environmental statute, ordinance, rule, regulation, order or decision (collectively, "Environmental Laws"), and the Losses arise from: (i) any chemical, material or substance that is now, or at

the time in question is, regulated or governed by any law, the release of which creates any liability under any applicable law; or (ii) any other material which, when released, would cause significant ecological damage (items described by (i) or (ii) above are referenced hereinafter as "Hazardous Materials") located on, under or near the Rail Lines, to the extent that such

Losses:

- (a) result from a violation of one or more Environmental Laws that existed on or prior to the date of Closing, or result from a violation of one or more Environmental Laws on, under or near the Rail Lines, and the rail lines covered by Seller's Midwest City Rights or Seller's Pawnee Junction Rights after the date of Closing by Seller or any lessee, licensee, permittee, invitee, contractor, representative or agent of Seller, or any of their employees; and
- (b) to the extent that the Loss results from a violation of one or more Environmental Laws that existed on or prior to the date of Closing, a written claim made by a party other than Buyer (whether presented to Seller or Buyer) ("Claim") is delivered to Seller within four years following the date of Closing.

(3) Buyer's and Operators' Environmental Liability and Indemnity.

Notwithstanding any other liability provision in this Agreement, to the extent permitted under Oklahoma statutes, Buyer and any Freight Operator or Passenger Operator shall be responsible for, and any Freight Operator or

Passenger Operator, who is not an agency of the State of Oklahoma, as appropriate, shall indemnify, defend and hold harmless Seller against, all Losses incurred due to any claim, demand or litigation, to the extent it is based on any violation or requirement of any applicable Environmental Laws, and the Losses arise from any Hazardous Materials located on, under or near the Rail Lines, to the extent such Losses are not the responsibility of Seller as set forth in Paragraph 6(d)(2) of this Agreement. Buyer, and any subsequent Freight Operator or Passenger Operator also shall be responsible for, and any Freight Operator or Passenger Operator, who is not an agency of the State of Oklahoma, as appropriate, shall indemnify, defend and hold harmless Seller against, all Losses incurred due to any claim, demand or litigation, to the extent it is based on any violation of any applicable Environmental Laws, and the Losses arise from any Hazardous Materials on or near the Trackage Rights Line, and/or near the Passenger Service Rights Lines, to the extent such Losses arise out of, or are attributable to, any activities or operations of Buyer or any Freight Operator or Passenger Operator, or any assignee, transferee, lessee, licensee, contractor, easement holder, representative, agent or invitee of Buyer or any Freight Operator or Passenger Operator, or any of their employees, after the date of Closing, on or near the Trackage Rights Line and/or the Passenger Service Rights Lines, except to the extent such Losses are proximately caused by Seller's gross negligence or intentional misconduct.

- (4) Buyer and Operators to Comply With Environmental Laws. After Closing, Buyer, and any Freight Operator or Passenger Operator, shall comply with all Environmental Laws concerning handling and disposal of Hazardous Materials in connection with Buyer's ownership of, and Buyer's, or its assignees, activities on, the Rail Lines, Trackage Rights Line and Passenger Service Rights Lines.
- (5) Seller to Comply With Environmental Laws. After Closing, Seller agrees to comply with all Environmental Laws concerning handling and disposal of Hazardous Materials in connection with activities on or near the Rail Lines, Seller's Midwest City Rights and Seller's Pawnee Junction Rights.
- (e) (1) Arbitration of Allocation of Liability Between Buyer and Seller. Any dispute between Buyer and Seller as to allocation between them of Losses for which both Buyer and Seller are responsible under the terms of this Paragraph 6 shall be settled by arbitration by a panel of three arbitrators experienced in railroad commercial transactions in accordance with the commercial arbitration rules of the American Arbitration Association.
- (2) Liability Remedies and Obligations are Exclusive. Buyer and Seller agree that the remedies and obligations set forth in this Paragraph 6 shall be exclusive remedies and obligation of each one to the other with respect to any Losses, including those relating to the release or existence of Hazardous Materials on or near the Rail Lines and the Trackage Rights Line. The

foregoing sentence shall not affect any claims of Buyer for breach of any representation or warranty of Seller under Paragraph 4(a) of this Agreement.

(f) Liability Limitations. Nothing in this Paragraph 6 shall cause Buyer or the State of Oklahoma to assume any liability obligation that either Buyer or the State is prohibited from assuming under Oklahoma laws, but Buyer and the State do agree to accept the liability obligations in this Agreement to the extent that Buyer or the State can do so consistent with Oklahoma laws.

7. Seller to Deliver Certain Property Records to Buyer.

Seller shall deliver to Buyer, on or promptly following the date of Closing, originals or copies of whatever records, prints, archival information, or other evidence Seller locates in a reasonable search of Seller's records, which bears upon the use of, maintenance, or title to the personal or real property comprising the two rail corridors that are described specifically in Attachments A-1 and A-2 to Exhibit A. If, at any time after Closing, Seller locates any other documents which bear upon the use of, maintenance, or title to any such personal or real property, Seller promptly shall provide originals or copies of those documents to Buyer.

8. Assignment.

While Seller is holding the Rail Freight Service Easements, Buyer shall not assign this Agreement, or any property, rights or obligations under this Agreement relating to the Rail Freight Service Easements other than to Freight Operator, without the prior written consent of Seller. Any assignee, including any successor in interest, of Buyer's or Seller's rights under or to property acquired by this Agreement, shall assume in writing all of Buyer's or Seller's continuing and existing

or thereafter arising obligations under this Agreement, and under any then effective contract assigned by Seller to Buyer, in whole or in part, in accordance with the terms of this Agreement, which obligations are related to the property or rights involved in the assignment.

9. Obligations are Continuing.

The representations, warranties and obligations of Buyer and Seller in this Agreement are continuing and survive the Closing, delivery of the Bill of Sale and Passenger Rail Service Easement, and exercise of the options in accordance with the terms of this Agreement. Terms of continuing obligations in this Agreement are subject to amendment only by a written contract signed by both Buyer and Seller, or their respective successors or assignees. Each party shall execute and deliver such instruments, and take such other actions, as the other party reasonably may request in order to carry out the intent of this Agreement.

10. Liens and Encumbrances.

Seller represents, warrants and covenants that Seller has not caused or suffered, and will not cause or suffer prior to the date of Closing, or the exercise of the options, any liens or encumbrances to secure the payment of a debt of Seller to be filed against the Rail Lines which would materially adversely affect the ability of Buyer or Freight Operator to conduct rail freight transportation operations as contemplated in this Agreement on each of the Rail Lines on the day following the exercise of each option. Buyer agrees that Buyer or its assignee(s) shall take title to the interests and assets conveyed by the terms of this Agreement subject to all liens and encumbrances on the Rail Lines, except for any monetary liens or liens that would violate one or more of Seller's

representations and warranties in Paragraph 4(a) or this Paragraph. If a lien for payment of money exists on one of the Rail Lines as of the date of Closing, Seller shall cause the release of such lien within 30 days of the date Seller receives notice of the lien, or shall indemnify Buyer and/or Freight Operator against any Losses that Buyer and/or Freight Operator may incur as a result of Seller's failure to so release any such lien.

11. Pending Public Works Projects.

Seller shall notify Buyer, prior to the date of exercise of an option to acquire the Rail Freight Service Easement over a Rail Line, of any and all then pending government funded public works projects on the applicable Rail Line of which Seller is then aware. Seller shall pay the railroad's share of the cost of whatever work is performed on pending government funded public works projects on or before the date of exercise of the applicable option, and Buyer or Freight Operator, as Buyer designates, shall pay the railroad's share of the cost of whatever work is performed on these projects after the date of exercise of the applicable option. Any payments received by Buyer or Freight Operator, on the one hand, or Seller, on the other hand, from any government body for such a pending public works project shall be apportioned on the basis that Seller shall receive that share of the payments applicable to work performed on these projects on or before the date of exercise of the applicable option, and Buyer or Freight Operator, as Buyer designates, shall receive that share of the payments applicable to work performed on these projects after the date of exercise of the applicable option. Buyer shall be responsible to determine who owns materials present on a Rail Line in connection with such pending public works projects on the date of exercise of an option to acquire the Rail Freight Service Easement over that Rail Line.

12. Buyer to Require Freight Operator to Offer to Hire Seller's Qualified Employees.

Subject to applicable laws, Buyer shall require Freight Operator to attempt to interview for employment positions to provide rail freight service over the Rail Lines all of Seller's employees who are eligible to work on the Rail Lines on the date of exercise of the applicable option. Freight Operator, in hiring employees in connection with providing rail freight service over the Rail Lines, shall give priority hiring consideration to employees of Seller who work on the Rail Lines and are represented by the Brotherhood of Maintenance of Way Employees. Freight Operator, in hiring employees in connection with providing rail freight service over the Rail Lines, shall offer to hire, at salary levels and other terms and conditions of employment that are determined by Freight Operator, in its sole discretion, to be appropriate, all of those employees who Freight Operator, in its discretion, determines to be qualified and needed. Freight Operator promptly shall notify Seller of the name of each of Seller's current employees who Freight Operator offers to hire, and also the name of each of these employees who actually is hired. In the event that Freight Operator has obtained its operating authority from the STB under 49 U.S.C. § 10901, Freight Operator shall assume a neutral stance in any Brotherhood of Maintenance of Way Employees union organizing effort of Freight Operator's employees providing rail freight service over, and/or maintenance of, the Rail Lines.

13. Closing.

(a) The closing of this transaction shall occur on February 26, 1998, or another date mutually agreeable to the parties (referenced herein as "Closing").

(b) At Closing, Seller shall deliver to Buyer the following documents:



- (1) An executed option, in the form set forth as Exhibits C-1 and C-2 to acquire or terminate the Oklahoma City-Sapulpa Retained Rail Freight Service Easement, and the Pawnee Junction-Stillwater Retained Rail Freight Service Easement, respectively;
  - (2) An executed option, in the form set forth as Exhibit E, to operate interim local rail service trackage rights over the Oklahoma City-Sapulpa Rail Line, on the terms set forth in Paragraph 1(c);
  - (3) An executed Passenger Rail Service Easement, in the form set forth as Exhibit D;
  - (4) An executed Bill of Sale in exact form as the Bill of Sale attached hereto as Exhibit A;
  - (5) A copy of Seller's Certificate of Incorporation and By-Laws; and
  - (6) An opinion of counsel for Seller to Buyer with respect to those items represented by Seller to Buyer in Paragraphs 4(a)(1), 4(a)(2), 4(a)(3), 4(a)(4), 4(a)(5), 4(a)(8) and 4(a)(11) of this Agreement.
- (c) At Closing, Buyer shall deliver to Seller an opinion of counsel for Buyer to Seller with respect to those items represented by Buyer to Seller in Paragraphs 4(b)(1), 4(b)(2) and 4(b)(3) of this Agreement.
- (d) At Closing, Buyer shall deliver to Seller, or an escrow agent for APEX, as designated by Seller, the purchase price of \$6,550,000.00, as set forth in Paragraph 2 of this Agreement.

14. Interchange.

(a) Freight Operator and Seller shall interchange rail freight cars and equipment to and from each other at: (i) between BNSF Milepost 437.3 and 438.4 in Sapulpa; (ii) on Buyer's Pawnee Junction interchange track; and (iii) in a rail yard as to which Freight Operator and Seller shall agree in or near Oklahoma City, all of which shall be referenced hereinafter as "Interchange Tracks."

(b) Cars and their contents that are delivered by one party to the other on an Interchange Track shall be deemed to be in the possession of the receiving party as of the time they are placed on the Interchange Track and uncoupled from the delivering party's train or engine, except that if any such car is rejected by the receiving party under the Interchange Rules of the Association of American Railroads ("AAR") or any successor rules, the refused car shall be deemed to remain in the possession of the delivering party until that car is accepted by the receiving party.

15. Car Hire Costs.

The party in possession of any car shall be responsible for all car hire costs, per diem expenses and mileage allowances payable with respect to such car, for any per diem charges for trailers or containers carried by such car, or for any equipment use charges applicable to any Road Railer equipment or similar carless intermodal technology, except that Seller agrees that Freight Operator shall be entitled to 120 hours of per diem relief in connection with any loaded or empty rail equipment moving in rail freight transportation service and interchanged between Freight Operator and Seller on an Interchange Track. To obtain credit for this per diem relief, Freight Operator must submit to Seller a written per diem reclaim statement no later than five months following the end of the month in which the rail equipment was interchanged with Seller for the

movement. The statement should show a rail equipment identification number and initial, if available, the date and time of interchange of the equipment with Seller, and the number of hours of per diem relief being claimed for the specific movement. If Freight Operator pays any car hire bills for which Freight Operator is entitled to per diem relief under the terms of this Paragraph, Freight Operator shall be reimbursed by Seller within 30 days following Seller's receipt of appropriate written information from Freight Operator. Freight Operator shall be responsible for all car mileage payments for freight cars moved over the Rail Lines. Seller shall use reasonable efforts to make empty freight cars available for loading at or Freight Operator's request, on an Interchange Track, as needed by Freight Operator for shippers on the Rail Lines, on a non-discriminatory basis between those shippers and shippers on similar rail lines of Seller or on similar shortline railroads connecting with Seller.

16. Liability Insurance.

(a) For so long as Passenger Operator or Freight Operator conducts any activities under the Passenger Rail Service Easement, or on or near the Trackage Rights Line or Buyer's Passenger Rail Service Lines, Passenger Operator and Freight Operator shall maintain a Commercial General form of insurance covering liability in connection with any of Buyer and/or such Passenger Operator's or Freight Operator's activities, including but not limited to Public Liability, Personal Injury and Property Damage, Federal Employers Liability Act Liability (or, if Worker's Compensation applies, Worker's Compensation coverage as required, or as optional, under applicable state law; which insurance must contain a specific waiver of the insurance company's subrogation rights against Seller), Bill of Lading and Foreign Rolling Stock Liability, and

Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as are customary in the rail industry, provided however, that: (i) such limits shall not be less than \$10 million per occurrence in connection with passenger rail service, and shall not be less than \$5 million per occurrence in connection with rail freight service; and (ii) policy terms shall not exclude or limit coverage where activities or operations are on or near railroad tracks. Seller shall be named as an additional insured on such liability insurance policy or policies. Any coverage afforded to Seller, as an Additional Insured, shall apply as primary insurance of Seller and shall not be deemed to be excess to any insurance issued in the name of Seller. Such liability insurance must be purchased from an insurance company licensed to do business in Oklahoma, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

(b) Passenger Operator and/or Freight Operator, as appropriate, shall furnish to Seller an Accord Certificate of Insurance satisfactory to Seller, certifying the issuance to Buyer or such Operator, as appropriate, of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that Seller shall be given not less than thirty days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies shall not preclude Seller from recovery thereunder for any liability arising under this Agreement.

(c) Passenger Operator and/or Freight Operator, as appropriate, shall provide to Seller on the date of exercise of the applicable Rail Freight Service Easement option, or the date of commencement of passenger rail service operations over the Rail Lines or Buyer's Passenger Rail

Service Lines, evidence of its then effective liability insurance coverage, and a copy of its liability insurance policy, including all effective amendments. Passenger Operator and/or Freight Operator, as appropriate, shall provide to Seller once each year, within 30 days after its liability insurance policy is renewed, evidence of its continued liability insurance coverage, and copies of any new policy and/or policy amendments. Failure to provide such evidence, within seven days of any subsequent written request therefor by Seller, shall entitle Seller to purchase such liability insurance, and withhold from the divisions payment forwarded to, or bill, Passenger Operator and/or Freight Operator, as appropriate, the cost of this insurance. Buyer, Passenger Operator and Freight Operator acknowledge that the purchase of insurance as required by this Paragraph shall not in any way limit the liability of Buyer, Passenger Operator and Freight Operator to Seller as set forth herein.

17. Selection of Freight Operator and Passenger Operator.

The selection of the Passenger Operator and the Freight Operator shall be in the sole discretion of Buyer, except that Seller shall retain the right to approve or disapprove the identity of any Freight Operator over the Oklahoma City-Sapulpa Rail Line who is not an agency of the State of Oklahoma, subject to the condition that any such disapproval by Seller shall not be unreasonable. Buyer may select one or more Freight Operators and one or more Passenger Operators. The obligations of Freight Operator and Passenger Operator hereunder shall apply to each and every Freight Operator and Passenger Operator selected by Buyer.

18. Authority to Establish Through Routes and Offer Through Rates.

(a) Except as set forth in Paragraph 18(b), Buyer will require Freight Operator to agree with Seller that, for 99 years following the date of Closing, Seller shall have the exclusive authority to establish through routes and offer through freight transportation rates for interline freight

transportation services involving both Freight Operator and Seller, with interchange between Freight Operator and Seller at Pawnee Junction, Oklahoma City or Sapulpa, Oklahoma. Seller shall specify junctions and routes for all such traffic, effective the day following the commencement of operations by Freight Operator. For this same 99 year period, Freight Operator automatically concurs in all such through rates, and all existing rates, established by Seller, whether for present or future freight traffic, so long as Freight Operator shall receive for transporting the traffic the division of revenues that is set forth in Paragraph 19 of this Agreement. Seller cannot obligate Freight Operator to any new penalties or special services that are not set forth in current contracts being assigned to Freight Operator effective the date of exercise of the applicable option, without the prior written consent of Freight Operator.

(b) For 99 years following the date of Closing, Seller grants to Freight Operator of the Oklahoma City - Sapulpa Rail Line the authority to establish through routes and offer through freight transportation rates for interline freight transportation services involving both Freight Operator and Seller as described in, and subject to the requirements of, Paragraph 2(a)(8). For this same 99 year period, Seller will automatically concur in all such through rates established by Freight Operator, as applicable, whether for present or future freight traffic, so long as Seller shall receive for transporting the traffic the division of revenues that is set forth in Paragraph 2(a)(8) of this Agreement.

19. Divisions of Revenue.

(a) Buyer will require Freight Operator to agree with Seller that, for so long as Seller establishes through freight transportation rates for interline freight transportation service involving

Freight Operator and Seller, the through revenue accruing on all existing and future carload traffic movements originating or terminating on or along the Rail Lines, and interchanged between Freight Operator and Seller at Pawnee Junction, Oklahoma City, or Sapulpa, Oklahoma, shall be divided between Freight Operator and Seller so that Freight Operator receives the following revenue for each such carload handled by Freight Operator:

A.	Carload handled on the Oklahoma City-Sapulpa Rail Line	\$ 325.00
B.	Carload handled on the Pawnee-Stillwater Rail Line	
	First 2,000 carloads annually	\$ 350.00
	2,001st - 3,000th carload annually	\$ 300.00
	Each carload over 3,000 carloads annually	\$ 165.00
	Additional compensation for each carload during only the first three years of operations by Freight Operator	\$ 10.00

(b) For 25 years following the date of Closing, the divisions set forth in Paragraph 19(a) shall be adjusted annually, commencing as of January 1, 1999, based on 50% of the increase or decrease between the fourth calendar quarter of 1998 compared to the fourth quarter of 1997, in the Rail Cost Adjustment Factor, unadjusted for productivity (or, if it ceases to be used, some similar rail cost index), and thereafter as of each January, based on 50% of the increase or decrease in the Rail Cost Adjustment Factor in the fourth calendar quarter of that calendar year, compared to the fourth calendar quarter of the prior year, provided that in no event shall the divisions ever be below those set forth in Paragraph 19(a). At any time on or after January 1, 2004, if this index does not

adequately allow Freight Operator to recover its reasonable cost increases, then Freight Operator and Seller shall meet to determine whether to adjust the division received by Freight Operator, and if they cannot agree, a panel of three arbitrators experienced in railroad commercial transactions and acceptable to both Seller and such party shall determine in accordance with the commercial arbitration rules of the American Arbitration Association whether an additional increase is appropriate and what that increase shall be. Similarly, after January 1, 2004, if this index overstates the reasonable cost increases of Freight Operator or understates the reasonable cost reductions per car of Freight Operator, then Freight Operator and Seller shall meet to determine whether to adjust the division received by Freight Operator and if they cannot agree, a panel of three arbitrators acceptable to both parties shall determine in accordance with the commercial arbitration rules of the American Arbitration Association whether a reduction is appropriate and what that reduction shall be. Any decision of an arbitrator with respect to these issues shall be binding on both Freight Operator and Seller. After January 1, 2024, further changes in the divisions of Freight Operator shall be subject to mutual agreement between Freight Operator and Seller.

(c) Nothing in this Agreement shall preclude Seller and Freight Operator from negotiating and mutually agreeing to different divisions than those specified in this Paragraph. Divisions of revenue shall be paid to Freight Operator only where Seller is entitled to earn linehaul revenues for a shipment. Freight Operator shall not impose any surcharge on any traffic without Seller's prior written consent.

20. Time is of the Essence.

Time is of the essence in this Agreement.



21. Transfer of Operations.

All rail freight operations on the Rail Lines shall be transferred from Seller to Freight Operator at 12:01 a.m. on the day following the date of exercise of the applicable option. Freight Operator shall be entitled to fifty percent of its division of revenues as set forth in Paragraph 19(a) for all loaded cars on the Rail Lines on the date of exercise of the applicable option.

22. Collection of Revenues.

(a) Seller shall submit freight bills or interline settlements for, and shall collect, all revenues due for movements over the Rail Lines of all carloads moved over and off of the Rail Lines on or before the date of exercise of the applicable option. Seller shall assess and collect all charges due for all switching services performed on the Rail Lines on or before the date of exercise of the applicable option. Seller shall assess and collect all demurrage and miscellaneous charges relating to car supply and other services performed on the Rail Lines on or before the date of exercise of the applicable option.

(b) Except as otherwise provided by freight transportation contracts or Paragraph 21 of this Agreement, all carloads moved over the Rail Lines which are interchanged between Freight Operator and Seller at either Sapulpa, Pawnee Junction or Oklahoma City after 12:01 a.m. on the day following the date of exercise of the applicable option shall be settled between Freight Operator and Seller on the basis of a modified junction settlement plan, with Seller paying division of revenue payments for each carload to Freight Operator on a bi-weekly basis, by ACH wire transfer of funds, within no more than two weeks following the date on which Seller receives documentation from Freight Operator reporting handling of the carload on the Rail Lines by Freight Operator. Seller

shall submit freight bills for, and shall collect all revenues due for, all carloads originating or terminating on the Rail Lines and interchanged between Seller and Freight Operator, including all prepaid shipments that originate on the Rail Lines, and all collect shipments that terminate on the Rail Lines, except for shipments where Seller does not receive line haul revenues. Seller has the right to grant, or refuse to grant, credit to any customer on the Rail Lines concerning rail transportation of any such carloads consistent with its general credit policies. Freight Operator shall assess and collect all charges due for all switching services performed on the Rail Lines at and after 12:01 a.m. on the day following the date of exercise of the applicable option. Freight Operator shall assess and collect all demurrage and miscellaneous charges relating to car supply and other services performed on the Rail Lines at and after 12:01 a.m. on the day following the date of exercise of the applicable option.

23. Transfer of Liabilities; Payment of Charges.

For the period before and including the date of exercise of the applicable option, Seller shall be responsible for: (a) all common carrier rail freight operations, including car supply, on the Rail Lines; (b) any freight loss and damage claims attributable to rail operations over the Rail Lines; and (c) all car accounting and all car hire and car mileage allowance payments relating to rail operations over the Rail Lines. At and after 12:01 a.m. on the day following the date of exercise of the applicable option, Freight Operator shall be responsible for: (d) all common carrier rail freight operations, including car supply, on the Rail Lines (subject to the provisions of Paragraph 15); (e) any freight loss and damage claims attributable to rail operations over the Rail Lines; and (f) all car

accounting and all car hire and car mileage allowance payments relating to rail operations over the Rail Lines (subject to the per diem relief specified in Paragraph 16 of this Agreement).

24. Electronic Data Interchange.

Within six months following the date of the date of exercise of the applicable option, Freight Operator must have the ability to send and receive electronically waybills, advanced consists, and bills of lading; as well as Train II reports and passing/placement reports for performance purposes. Transaction reporting should be at industry standard levels or one level behind.

25. Assignment of Freight Transportation Contracts.

The parties agree that, notwithstanding any other provision of this Agreement, the only freight transportation contracts to be assigned by this Agreement are: (a) freight transportation contracts that apply to traffic moving to or from facilities on or along the Rail Lines; or (b) freight transportation contracts with or involving shippers or receivers that have facilities on or along the Rail Lines, and which would apply to rail transportation of one or more carloads to or from a facility on or along the Rail Lines. Seller agrees to send on the date of exercise of the applicable option, to each shipper (or consignee), and each railroad, who is a party to any freight transportation contract involving any existing or potential rail transportation movement to or from any rail origin or destination on the Rail Lines subject to that Rail Freight Service Easement, a Notice of Assignment, advising those parties of the following: (i) the occurrence of this sale; (ii) the fact that all rates and service (and in the case of other railroads, revenue divisions) terms in each such contract will remain

the same; and (iii) the fact that Freight Operator will replace Seller as the party responsible for all rail service to be performed over all or any portion of the Rail Lines under each such contract.

26. Applicable Law.

This agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma.

27. Effect of Waiver.

Any waiver by either Buyer or Seller, or failure of either Buyer or Seller to insist upon full and complete performance by Seller or Buyer of its obligations set forth in this Agreement, shall not constitute a waiver or release of such party's right to insist upon full and complete performance of any other obligations in this Agreement, or a waiver or release of such party's right to insist upon full and complete performance of the obligations that were waived or not enforced for periods prior to, or following, the waiver or failure to insist upon full and complete performance. This Agreement shall be amended or modified only by written agreement signed by the parties hereto.

28. Notices.

All notices and other communications under this Agreement shall be in writing and deemed properly served if delivered by hand to the party addressed or, if mailed, when received by the United States Postal Service in registered or certified mail, postage prepaid, or, if sent by a national overnight service, when received by the carrier service in a prepaid mailer, return receipt requested, addressed as follows:

**Seller:** Mr. Jerome M. Johnson  
Assistant Vice President  
Asset Planning & Rationalization  
The Burlington Northern and Santa Fe Railway Company  
2650 Lou Menk Drive  
Fort Worth, Texas 76131

**Buyer:** Mr. Joe R. Kyle, Jr.  
Manager, Office of Rail Programs  
Oklahoma Department of Transportation  
200 N.E. 21st St.  
Oklahoma City, Oklahoma 73105

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

**29. Entire Agreement; Integration of Agreement.**

This document, together with all Exhibits attached hereto, constitutes the entire agreement between Buyer and Seller relating to this transaction. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein, provided that the foregoing shall not apply to the Donation Agreement or any agreement or document executed or delivered pursuant to the Donation Agreement. 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 Buyer or Seller. All rights and obligations of Buyer and Seller set forth in this Agreement, or in any Exhibit attached hereto, are integral parts of this Agreement. The consideration inducing Buyer and Seller to enter into this Agreement includes all of the commitments by Buyer to Seller, and by Seller to Buyer, as set forth in this Agreement, including terms set forth in the Exhibits attached hereto.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this agreement as of this 12 day of February, 1998.

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

STATE OF OKLAHOMA, acting through  
OKLAHOMA DEPARTMENT OF  
TRANSPORTATION

By: Douglas J. Babb  
Senior Vice President

By: Neal G. McCald  
Title: Secretary of Transportation

Reviewed and Approved as to Form  
and Legality  
By: [Signature] 2/11/98  
ASN Ken Council Date