

AGREEMENT FOR SALE TO THE STATE OF OKLAHOMA
OF THE BLACKWELL SUBDIVISION
OF
CENTRAL KANSAS RAILWAY, L.L.C.

AGREEMENT FOR
SALE OF CERTAIN ASSETS, RIGHTS,
AND OBLIGATIONS
OF
CENTRAL KANSAS RAILWAY, L.L.C.
TO
THE OKLAHOMA DEPARTMENT OF TRANSPORTATION
ON BEHALF OF
THE STATE OF OKLAHOMA

This AGREEMENT is entered into as of this 26th day of June, 1997, between Central Kansas Railway, L.L.C. ("Seller") and the Oklahoma Department of Transportation on behalf of the State of Oklahoma ("State").

WHEREAS, Seller desires to sell or otherwise convey to State or its designee, on the terms and conditions set forth in this AGREEMENT, certain of Seller's interests in substantially all of Seller's Blackwell Subdivision between Wellington, Kansas and Blackwell, Oklahoma, as defined in Attachments A to the Quitclaim Deeds attached as Exhibit A to this Agreement (the "Rail Line"), the rail freight transportation business Seller conducts on the Rail Line, and certain other rights, obligations, and assets as specified in this Agreement; and

WHEREAS, State desires to purchase or receive, pursuant to the terms and conditions set forth in this Agreement, Seller's interest in the Rail Line, the rail freight transportation business which Seller conducts on the Rail Line, and certain other assets, rights, and obligations as specified in this Agreement.

NOW THEREFORE, State and Seller agree as follows:

1. Description of Business Conveyed

(a) Seller shall convey to State on the date of Closing, subject to the terms and conditions set forth in this Agreement and the terms, conditions, reservations, and exceptions set forth in the Quitclaim Deeds conveying this property, all of Seller's interest in (a) Seller's rail line between Milepost 0.0 at or near Wellington, Kansas and Milepost 34.3 at or near Blackwell, Oklahoma. These conveyances are expressly subject to Seller's retained interests, as specified in detail in the Quitclaim Deeds, for (i) a nonexclusive, permanent easement for the construction, maintenance and operation of one or more existing or future pipelines or fiber optics communication lines, facilities and appurtenances in, under, across, along or through all or any

portion of the Rail Line; (ii) mineral rights and related permanent access easements; and (iii) water rights and related permanent access, construction, maintenance and water pipeline rights.

(b) Seller shall convey to State or its designee on the date of Closing, the rail freight transportation business which Seller conducts on the Rail Line, subject to the terms and conditions set forth in this Agreement, in the Quitclaim Deeds or in any agreement signed by Seller to State in accordance with the terms of this Agreement.

(c) Seller shall convey to State or its designee, on the date of Closing, by a Bill of Sale or Bills of Sale identical in form to the Bills of Sale set forth in the attached Exhibit B, all of Seller's interest of all rail, ties, spikes, tie plate, rail anchors, bridged, culverts, signaling equipment and other supporting structures, ballast, track materials and supplies (excluding any vehicles, maintenance equipment on wheels, radios, or computer equipment) that, on the date of this Agreement, are not improvements that constitute the Rail Line, but which are then present on the real property comprising the Rail Line. Seller agrees not to remove any such personal property between the date of this Agreement and the date of Closing. This conveyance shall be subject to the terms and conditions set forth in this Agreement and in any agreement assigned by Seller to State in accordance with the terms of this Agreement.

(d) Seller shall assign to State or its designee, on the date of Closing, subject to all terms and conditions set forth in this Agreement, all assignable rights and obligations of Seller to the extent that they are related to the Rail Line. The rights and obligations to be assigned are listed on the attached Exhibit C. On the date of Closing, State or its designee shall accept the assignment of all such rights and obligations, as of the date of Closing, in accordance with their terms and the terms of this Agreement. Seller shall reserve all rights set forth in any agreement identified in Exhibit C to the extent those rights related to one or more other rail lines or property of Seller. If any contract is related to the Rail Line and inadvertently is not identified in Exhibit C, it is the intent of Seller and State that such contract(s) be deemed to have been assigned by Seller to State or its designee, in whole or in part as appropriate, effective on the date of Closing. Seller shall promptly provide to State a copy of any such contracts(s) immediately upon locating it. State shall make no claim against Seller arising out of any failure to obtain a consent to assignment from any party to an agreement assigned by Seller to State, in whole or in part. It is the intent of both Seller and State that all assignment of rights and obligations related to the Rail Line shall be effective on the date of Closing, whether any consents to such assignments then have been obtained.

2. Consideration for the Sale

(a) In consideration for Seller's conveyance by sale of its interest in the Rail Line, and conveyance of other rights, interests, and obligations described in Section 1 above, and in agreement that the total value of the assets to be sold is SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00), State agrees to all of the following:

- (1) To accept all transferred real and personal property "AS IS, WHERE IS" and "with all faults" except for the specific representations and warranties set forth in this Agreement.
- (2) To pay on the date of Closing a purchase price of SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00), by State warrant.
- (3) To pay in addition to the purchase price all costs of Closing (except Seller's costs of preparation of documents to be delivered at Closing). This includes, but is not limited to, recording fees and sales taxes associated with this Agreement or any of the conveyances governed by this Agreement.

3. Governmental Approval

State represents that State is not a carrier within the meaning of the Interstate Commerce Commission Termination Act of 1996 ("ICCTA"). Promptly following execution of this Agreement, State, at its sole expense, shall prepare and file such documents as may be required to secure approval, or exemption from approval, of this transaction by the Surface Transportation Board ("STB"), as appropriate. State shall permit Seller to review prior to filing all documents proposed by State to be filed with the STB, or any court, to secure legal approval or exemption of this transaction. Seller shall cooperate with State regarding any information or documents needed by the State to effect the filing.

4. Representations and Warranties

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

- (1) Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Kansas, and is qualified to do business 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 actions of Seller, and no further corporate proceedings of Seller are required to complete the transaction 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 Articles of Organization of Seller which prohibits the execution of this Agreement or consummation of the transaction 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, so that no party has a valid claim on this basis for any finder's fee, brokerage commission or other similar payment in connection with the transaction 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 has paid in full or is agreeable to paying in full as finally determined, all taxes, interest, penalties, assessments or deficiencies which are due for the period up to the date of Closing and Seller has made all withholding of tax which are required to be made under all applicable regulations of the United States, the State of Oklahoma, and local governments in the State of 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 assets comprising the Rail Line or Seller's rights to conduct rail freight transportation operations over the Rail Line as Seller now conducts those operations on the date of this Agreement, the result of which foreseeably would materially adversely State's ability to conduct rail freight transportation operations over the Rail Line on the Rail Line following the date of Closing;
- (9) With the exception of a letter dated August 6, 1996, from the Oklahoma Department of Environmental Quality attached as Exhibit D concerning an alleged zinc pollution matter near Blackwell, Seller has received no written notice of

any pending civil, criminal or administrative actions regarding any hazardous or toxic substance on or adjacent to the Rail Line;

- (10) The physical condition of the Rail Line will be sufficient to enable State to conduct rail freight transportation operations over the Rail Line on the day following the date of Closing only;
- (11) No representation or warranty by Seller in this Agreement contains any untrue statement of material fact nor omits 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 and as of the date of Closing, except where specifically noted to be as of the date of Closing only:

- (1) State is a validly existing agency of the State of Oklahoma and has all requisite authority to purchase Seller's properties and Seller's rights and properties which are conveyed to State by this Agreement, to enter into this Agreement, to conduct rail freight transportation business on the Rail Line and to perform all of Buyer's obligations under this Agreement;
- (2) The execution of this Agreement and consummation of the transaction which is a part of this Agreement have been duly authorized by the State of Oklahoma and immediately upon execution of this Agreement by State's authorized representative, all of State's obligations set forth in or referenced in this Agreement shall constitute legal, valid, and binding obligations of State, or State's successors or assignees, which obligations are enforceable in accordance with their terms against State or its successors or assignees.
- (3) There is no provision in the Oklahoma Constitution, statutes, regulations or case law which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement.
- (4) As of the date of Closing only, State shall have obtained all legal authority which is necessary to enable State to lawfully conduct rail freight transportation operations over the Rail Line as a common carrier commencing at 12:01 a.m. on the day following the date of Closing;
- (5) The negotiations related to this Agreement have been handled by State on its own behalf, without intervention of any agent or party, and in such a 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 the transaction included in this Agreement; and

- (6) No representation or warranty by State in this Agreement contains any untrue statement of material fact that is necessary to make any representations or warranty not materially misleading.

5. Inspection and Condition of Rail Line

(a) By signing this Agreement, State acknowledges that State has inspected the Rail Line and acknowledges no representation has been made by Seller to State concerning the state or condition of the Rail Line or the age of any improvements on the Rail Line. State further acknowledges that it has not relied upon any statement of Seller, oral or in writing, as an inducement to entering into this Agreement. Finally, State acknowledges the sole consideration for execution of this Agreement is set forth in this Agreement.

(b) SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE RAIL LINE, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE RAIL LINE OR THE CONFORMITY OF THE RAIL LINE TO THEIR INTENDED USES. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) REGARDING THE DESIGN, CONDITION, QUALITY, SAFETY MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE RAIL LINE OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. SELLER OFFERS, AND STATE ACCEPTS, THE RAIL LINE IN "AS IS, WHERE IS" AND WITH "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON SELLER'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE RAIL LINE IN ACCORDANCE WITH SECTION (4)(a)(10) OF THIS AGREEMENT.

6. Liability and Indemnity

(a) Cooperation and Defense. State and Seller agree that they will cooperate as necessary in the defense of any claim, demand, investigation or litigation arising out of Seller's or State's operation of the Rail Line.

(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 any violation of law or regulation, any damages to property, the environment or to natural resources, any bodily injury or death to any person or the breach of any contract. "Losses" shall include, but not be limited to, all costs of claims, activities in response to enforcement, damages, judgements, awards, orders, decrees, payments, fines, penalties, assessments, court costs, and attorney, consultant and expert witness fees.

(c) General Liability and Indemnity.

(1) Seller's General Liability and Indemnity. Except as provided in Section 6(d) below, Seller shall be responsible for, and shall indemnify, defend, and hold harmless State against all Losses (except as limited by clause (iii) below) which: (i) arise out of Seller's ownerships or operation of the Rail Line on or prior to the Closing date; (ii) result from any breach by Seller of any of its representations or warranties set forth in Section 4(a) of this Agreement or any failure by Seller to perform any of its obligations under this Agreement; and (iii) result from claims of third parties caused by Seller's performance or nonperformance or State's nonperformance or misperformance after the date of Closing, under any material contract, lease, permit, easement or commitment related to the Rail Line where that contract, lease, permit, easement or commitment is not identified in this Agreement or on Exhibit C and is not known at that time to State.

(2) State's General Liability. Except as provided in Section 6(d) below, and further except for Losses resulting from one or more of Seller's representations or warranties set forth in this Agreement containing any untrue or materially misleading statement of a material fact, or omitting any material fact that is necessary to prevent the representation or warranty from being materially misleading, State shall be responsible for all Losses which (i) arise out of State's ownership or operation of the Rail Line after 12:01 a.m. on the day following the date of Closing; (ii) result from any breach by State of any of its representations or warranties set forth in Section 4(b) of this Agreement or any failure by State to perform any of its obligations under this Agreement; of (iii) result from claims by third parties caused by State's nonperformance or misperformance after the date of Closing under any material contract, lease permit, license, easement or commitment either as identified on Exhibit C or State has specified having knowledge of it.

(d) Environmental Liability and Indemnity

(1) State Accepts the Rail Line "As Is, Where Is". State acknowledges that Seller has provided full access to inspect the Rail Line and related rail corridor. State further acknowledges that Seller makes only those representation or warranties to State concerning the existence of any hazardous or toxic substance on or near the Rail Line or compliance of the Rail Line and related rail corridor with any statutes, ordinances, rules, regulations, orders or decisions regarding hazardous or

toxic substances on or near the Rail Line and related rail corridor which are expressly stated in Section 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 State against Losses incurred due to any claim, demand or litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any of the following: (i) any chemical, material or substance that is now or at the time in question was regulated or governed by any law, the release of which creates any liability under any applicable law; (ii) any other material which, when released, would cause significant ecological damaged located on or near the Rail Line and the related corridor where such losses:

- (a) were caused by hazardous materials being present on or near the Rail Line or related corridor on or prior to the Closing date;
- (b) Result from any written claim made by a party other than State ("Claims") that is delivered to Seller following the Closing date.

(3) State's Environmental Liability. As part of the consideration for this Agreement, and notwithstanding any other liability or indemnification provision in this Agreement, State shall be responsible for Losses incurred due to any claim, demand, or litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any hazardous materials located on or near the Rail Line or related corridor where such Losses were caused by hazardous materials first being released, stored, or otherwise introduced to the property after the Closing date.

(4) Arbitration or Allocation of Liability Between Seller and State. Any dispute between State and Seller as to allocation between Losses for which both Seller and State are responsible under the terms of this Section 6 shall be settled by binding arbitration.

(5) State To Comply With Hazardous Materials Laws. State agrees to comply with all federal, state and local laws, regulations and rules concerning handling and disposal of hazardous materials.

(6) Liability Remedies and Obligations Are Exclusive. State and Seller agree that the remedies and obligations set forth in this Section 6 shall be exclusive remedies and obligations of each one to the other respecting to any Losses relating to the

release or existence of hazardous materials on or near the Rail Line or related rail corridor.

(e) Seller to Deliver Property Records to Buyer. Seller shall deliver to State, on or soon after the Closing date, originals or copies of whatever records, prints, archival information or other evidence Seller locates in a reasonable search of Seller's records which bears on the use of, maintenance or title to property comprising the Rail Line during the time the Rail Line was operated by Seller as a common carrier line of railroad.

7. Assignment

Any assignee, including any successor in interest, of State's or Seller's rights under or property acquired by this Agreement shall assume in writing all of State's or Seller's continuing and existing or thereafter arising obligations under this Agreement and under any then effective contract assigned by Seller to State, 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.

8. Obligations are Continuing

The representations, warranties and obligations of State and Seller in this Agreement are continuing and survive the Closing. Terms on continuing obligations in this Agreement are subject to amendment only by a written contract signed by both State and Seller or their respective successor or assignees.

9. Liens and Encumbrances

At the time of Closing, there shall be no liens of any nature against the Rail Line or related rail corridor.

10. Closing

(a) The closing of this transaction shall occur on July 7, 1997 or a later date mutually acceptable to the parties ("Closing").

(b) At Closing, Seller shall deliver to State a sufficient number of original counterparts of executed Quitclaim Deeds to the Rail Line, in the same form as the Quitclaim Deeds attached to this Agreement as Schedule A, Exhibit A, to enable State to file an appropriate original Quitclaim Deed in each county by which the property comprising the Rail Line is located and executed Bills of Sale in the forms as the Bill of Sale attached to this Agreement as Exhibit B.

(c) At Closing, State shall deliver to Seller a warrant from the State of Oklahoma in the amount of SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) as set forth in Section 2 of this Agreement.

11. Proration

Prepaid rentals, utilities, and other income or fees attributable to the Rail Line and transferred to State under the terms of this Agreement, shall be prorated between Seller and State in such a manner as to allocate to Seller all income, taxes and expenses attributable on or prior to the Closing date, and to allocate to State all income, taxes, and expenses attributable after the Closing date. Payment settling in full all prorated items shall be made no later than sixty (60) days following the Closing date.

12. Transfer of Operation

All rail operations on the Rail Line shall be transferred from Seller to State at 12:01 a.m. on the day following the Closing date.

13. Transfer of Liabilities

For the period before and including the day of Closing, Seller shall be responsible for: (a) all common carrier rail operations on the Rail Line; (b) any freight loss claims attributable to rail operations over the Rail Line; and (c) all car hire and car mileage allowance payments relating to rail operations over the Rail Line. At and after 12:01 a.m. on the day following the date of Closing, State or its operator shall be responsible for: (a) all common carrier rail operations, including car supply, on the Rail Line; and (b) any freight loss and damage claims attribute to rail operations over the Rail Line.

14. Applicable Law

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

15. Effect of Waiver

Any waiver by either Seller or State or failure of either Seller or State to insist upon full and complete performance by Seller or State of its obligations set forth in this Agreement, shall not constitute a waiver or release of such party's rights to insist upon full and complete performance of any other obligations of this Agreement or a waiver or release of such other 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 only by written agreement signed by the parties.

16. 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 postage prepaid mailer, return receipt requested, addressed as follows:

Seller: Mr. James Merritt
President
Central Kansas Railway, L.L.C.
1825 West Harry Street
Wichita, Kansas 67213

State: State of Oklahoma
Department of Transportation
200 N.E. 21st Street
Oklahoma City, Oklahoma 73105
Attn: Director

17. Entire Agreement

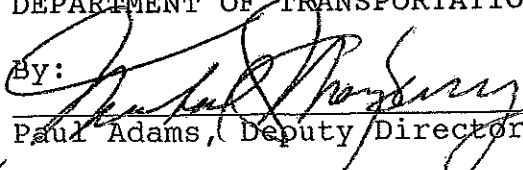
This document, together with all Exhibit attached to it, constitutes the entire Agreement between Seller and State. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged into this Agreement. The headings 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 Seller or State. All rights and obligations of Seller and State set forth in this Agreement or in any Exhibit to it are integral parts of this Agreement. The consideration inducing Seller and State to enter into this Agreement includes all of the commitments by Seller to State and from State to Seller as set forth in this Agreement and the Exhibits.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Agreement as of this 21st day of June, 1997.

APPROVED AS TO FORM
AND LEGALITY


General Counsel

STATE OF OKLAHOMA
DEPARTMENT OF TRANSPORTATION

BY: 
Paul Adams, Deputy Director

Attest:

Map Carter

Attest:

W. J. Allen

CENTRAL KANSAS RAILWAY, L.L.C.

By:

James R. Merritt
James R. Merritt, President