

**TRACK LEASE AND OPERATING AGREEMENT**

**OKLAHOMA CITY--- SAPULPA RAIL LINE**

**NOVEMBER 10, 2012**

**STILLWATER CENTRAL RAILROAD INC.**

**TRACK LEASE AND OPERATING AGREEMENT  
(OKLAHOMA CITY-SAPULPA RAIL LINE)**

**PARTIES**

THIS TRACK LEASE AND OPERATING AGREEMENT (“Agreement”) dated as of January 1, 2013 (“Amended Commencement Date”), by and between the STATE OF OKLAHOMA, acting through its administrative agency, OKLAHOMA DEPARTMENT OF TRANSPORTATION (“STATE”) and SOUTH KANSAS & OKLAHOMA RAILROAD a Kansas corporation (“RAILROAD”).

**RECITALS**

- A. STATE acquired a certain line of railroad, hereinafter described, in the State of Oklahoma, from the Burlington Northern Santa Fe Railway Company (“BNSF”) and previously leased the line to RAILROAD pursuant to a lease dated as of June 19, 1998 which was scheduled to expire as of July 1, 2013 (the “Original Lease”).
- B. STATE now desires to lease said line to RAILROAD for an additional five (5) year term for RAILROAD’s continued occupation, use, management, operation, maintenance and rehabilitation under the terms and conditions satisfactory to STATE and RAILROAD as hereinafter defined.
- C. RAILROAD desires to occupy, use, manage, maintain and rehabilitate said properties and line to operate rail freight and passenger service thereon, in accordance with the terms and conditions of this Agreement.
- D. In consideration of the foregoing and other good and valuable consideration, intending to be legally bound, the parties hereto enter into this Agreement setting forth the terms and conditions for RAILROAD’s occupation, use, management, operation, maintenance and rehabilitation of the aforesaid line of railroad.

**SECTION ONE**

**LEASED PROPERTIES**

Section 1.01 Upon the Amended Commencement Date, STATE agrees to let and demise to RAILROAD the Oklahoma City-Sapulpa Rail Line (“Leased Properties”), between Milepost

536.4 in Oklahoma City, Oklahoma, and Milepost 438.9 in Sapulpa, Oklahoma, consisting of all track structures and necessary rights-of-way and all appurtenances thereof and including but not necessarily limited to rail and fastenings, switches and frogs, ties, ballast, roadbed, embankment, other structures or things necessary for support of and entering into construction and operations thereof, hereinafter called "track".

Section 1.02 The Leased Properties shall include the property and line of railroad comprising the Oklahoma City-Sapulpa Rail Line acquired by STATE pursuant to an Agreement for Sale of Certain Assets, Rights and Obligations between STATE and BNSF dated February 12, 1998, a copy of which is attached hereto as Exhibit A ("the Sale Agreement"), and pursuant to a Rail Corridor Real Estate Donation Contract between STATE and BNSF dated February 12, 1998, (the "Donation Contract"), a copy of which is attached as Exhibit B, and which has previously been operated pursuant to the Original Lease.

## **SECTION TWO**

### **LEASE TERM**

Section 2.01 Unless this Agreement is terminated earlier in accordance with Section 13 hereof, RAILROAD shall have and hold the Leased Properties unto itself, its successors and assigns for a term beginning on the Amended Commencement Date hereof and extending through December 31, 2017("Initial Term").

Section 2.02 This Agreement shall be renewable for successive terms of five (5) years subsequent to the Initial Term, if RAILROAD notifies STATE of its desire to renew not less than nine (9) months prior to the end of the Initial Term and RAILROAD is not in breach of this Agreement, and STATE does not reject the notice within thirty (30) days after receipt, and the parties reach mutual agreement on terms under the following procedures. During the three (3) month period immediately following expiration of the thirty (30) day rejection period, STATE shall negotiate exclusively with RAILROAD to establish contractual arrangements for the subsequent five (5) year term. If STATE and RAILROAD are unable to reach and enter into a new agreement during said three (3) month period, STATE, may, at its sole option, seek agreement with other parties, including RAILROAD, for lease or sale of the Leased Properties. If STATE and RAILROAD do not enter into a new agreement or an extension of this Agreement

by the end of the Initial Term or any subsequent term, RAILROAD shall vacate the Leased Properties in accordance with Section 13.03 hereof.

### **SECTION THREE**

#### **LEASE RENTAL**

Section 3.01 Beginning on the Amended Commencement Date, RAILROAD agrees to pay rent to STATE for the use of the Leased Properties at the rate of twelve percent (12%) of Gross Revenues generated from rail operations (both freight and passenger) on the Leased Properties or derived directly from other uses of the Leased Properties not requiring a related investment by RAILROAD. "Gross Revenues" for this purpose shall include, without limitations, passenger fares, freight allowances, customer switching charges, demurrage (net of car-hire expenses), property lease income, car storage income, and charges for late payment by customers. Rent shall be calculated annually in accordance with generally accepted accounting principles and confirmed in RAILROAD's annual report. Rent shall be considered delinquent if not paid within thirty (30) days of the date payment is due to the STATE. If RAILROAD fails to pay any installment of rent and such payment shall become delinquent, and such delinquency continues for ten (10) days, simple interest at the rate of ten percent (10%) per year shall be added to any such overdue installment from the due date to the date of payment.

Section 3.02 Unless another date is agreed to in writing by STATE and RAILROAD, rent shall be due to STATE sixty (60) days after each annual anniversary date of the Amended Commencement Date.

### **SECTION FOUR**

#### **RAIL SERVICE**

Section 4.01 Throughout the term of this Agreement, RAILROAD agrees to operate rail freight service on the Leased Properties as necessary to accommodate the reasonable needs of its customers consistent with prudent business practices in the railroad industry. RAILROAD shall operate all rail freight service with its own employees and with its own or leased locomotives and other equipment, unless otherwise agreed to in writing by STATE.

Section 4.02 RAILROAD will obtain authority to operate on the Leased Properties for the Term of this Agreement as described in Section 17.01.

Section 4.03 It is the intent of the parties hereto that RAILROAD shall exercise its best efforts to provide competitive interline rail freight service on the Leased Properties. In that regard, RAILROAD agrees to establish appropriate tariff and service arrangements applicable to all customers and commodities via any and all connecting carriers, except as may be limited by Section 2(a)(7) of the Sale Agreement.

Section 4.04 To better serve customers by the Leased Properties, RAILROAD agrees to base a regional headquarters for the operation of rail properties owned by STATE by RAILROAD and its Oklahoma affiliates in or near Oklahoma City.

## **SECTION FIVE PASSENGER SERVICE**

Section 5.01 RAILROAD agrees to use reasonable efforts to develop, together with local government, civic and nonprofit groups, passenger excursion train service between Oklahoma City and Sapulpa, provided that such excursion service shall not unreasonably interfere with rail freight service. RAILROAD shall make sufficient equipment at reasonable rates available for passenger train service.

Section 5.02 RAILROAD acknowledges that one of the goals of the STATE's acquisition of the Leased Properties is to allow for the establishment of regular and continuing passenger service for the public, and RAILROAD agrees to cooperate fully with STATE's efforts to establish such service.

Section 5.03 STATE may at any time designate RAILROAD, a state agency or authority, or any other operator ("Regular Service Passenger Operator") to provide such service over all or part of the Leased Properties, and may establish stations therefor at such locations as STATE determines, provided that any passenger operations do not unreasonably interfere with the RAILROAD's rail freight service.

Section 5.04 RAILROAD shall enter into an agreement with Regular Service Passenger Operator governing the terms and conditions, including compensation, of such use. The

provisions shall not be inconsistent with the terms of this Agreement. The provisions of the agreement shall be subject to the consent of the STATE. In the event that RAILROAD and Regular Service Passenger Operator cannot agree on any provisions of the agreement between them, then the dispute will be referred to STATE which shall in its sole discretion, establish the appropriate provisions. Payments for use of Leased Properties for passenger service under this Section shall accrue to RAILROAD, and will constitute gross revenues under Section 3.01.

Section 5.05 Regular Service Passenger Operator shall agree to assume all of the obligations of a Passenger Operator under the Sale Agreement with respect to its operations.

## **SECTION SIX RIGHTS OF RAILROAD**

Section 6.01 Subject to compliance with the provisions of Sections 4.01, 4.02 and 5.01, RAILROAD hereby acquires the right to provide and operate rail freight and passenger excursion service on Leased Properties.

Section 6.02 Upon the commencement of rail freight service, RAILROAD hereby acquires the right to manage the Leased Properties and agrees to do so in a prudent, fair, equitable and businesslike manner, considering the interests of both parties and the public interest, and subject to the rights of Passenger Operator described in Section 5 hereof and the retained rights of BNSF under the Sale Agreement. All revenues and expenses therefrom shall accrue to RAILROAD.

Section 6.03 Upon the commencement of rail freight service, RAILROAD hereby acquires the right to promote the use of the Leased Properties for lawful non-railroad purposes, consistent with STATE's right, title and interest and the public interest in the Leased Properties, subject to STATE's approval of any such use which requires material construction or modification, and consistent with BNSF's retained rights with respect to the Leased Properties.

Section 6.04 In conjunction with its transportation activities, RAILROAD hereby acquires the right, subject to STATE's written concurrence, to remove, replace or relay elements of the track or structure in the interest of cost and/or operating efficiency, provided that a continuous and useful transportation facility is maintained. Proceeds from any salvaged material shall be paid to STATE together with the next annual rental payment paid under Section 3.02, or such later date

as the STATE may agree to in writing, if not used by RAILROAD for purchase of material in support of maintenance or rehabilitation of the Leased Properties. Improvements made by RAILROAD to the right-of-way, track and related structures as part of any rehabilitation project or through normal maintenance, whether treated as capital expenditures or operating expenses under STB accounting rules, shall become the property of STATE.

## **SECTION SEVEN CONSTRUCTION AND MAINTENANCE**

Section 7.01 RAILROAD shall be responsible for the completion of any pending public works projects at the time RAILROAD commences rail operations.

Section 7.02 RAILROAD shall, during the term of this Agreement and at its sole cost and expense, maintain the Leased Properties, from the Amended Commencement Date through the termination of this Agreement, in at least Federal Railroad Administration ("FRA") Class 2 track condition.

Section 7.03 STATE may, in its sole discretion, fund any upgrade of the Leased Properties to a higher FRA Class than set forth in Section 7.02. In such event, RAILROAD shall maintain the Leased Properties in such higher FRA Class from the completion of the upgrade through the termination of this Agreement, provided, that if the Leased Properties are upgraded to FRA Class 4 or higher, then RAILROAD shall not be required to maintain the Leased Properties in higher than FRA Class 3, unless RAILROAD, in its reasonable discretion determines there is adequate Gross Revenues to maintain the Leased Properties to the higher FRA Class.

Section 7.04 On or before the Amended Commencement Date, and on or before each successive annual anniversary of the Amended Commencement Date, RAILROAD shall prepare and submit for STATE's approval a detailed maintenance program covering RAILROAD's maintenance activities for that year. Unless the STATE agrees in writing otherwise, the maintenance program shall include, but not be limited to, a cross-tie replacement schedule of at least 10,000 per year, a surfacing and alignment schedule covering at least 10 miles annually, and addressing highway grade crossing improvements, grade crossing surface and signal warning devices, bridges, culverts and other structures (including the removal of debris from all bridge piers, pilings and abutments), right of way clearance and vegetation control, and sub-roadbed.

RAILROAD agrees that grade crossing surfaces and grade crossing warning devices will be given a high priority in RAILROAD's maintenance program, and shall renew grade crossings as needed. Compliance with the maintenance program by RAILROAD shall not supersede RAILROAD's independent obligations under Section 7.02.

Section 7.05 The parties shall, at least once annually, jointly inspect the Leased Properties to determine whether they have been maintained in accordance with this Agreement.

Section 7.06 If STATE and RAILROAD disagree concerning the condition of the Leased Properties or any determination by RAILROAD of the appropriate level of maintenance, it is agreed by and between the parties that an inspection by a qualified representative of the FRA shall be arranged and such representative shall inspect those segments or portions of track in dispute and his findings in this regard shall be binding upon the parties.

Section 7.07 Nothing herein shall preclude RAILROAD, at its sole cost and expense, from maintaining the Leased Properties to a standard higher than the minimum herein stipulated.

## **SECTION EIGHT**

### **INDUSTRIAL SPUR CONSTRUCTION AND MAINTENANCE**

Section 8.01 Subject to the provisions of Section 8.02 hereof, the costs of materials and construction for new industrial spurs shall be borne by the industry or industries involved. That portion of any such spur which is located upon the Leased Properties shall become the property of the STATE. Plans and specifications for any new industrial spur shall be approved by STATE prior to the beginning of construction.

Section 8.02 At RAILROAD's option, an industry may recover material and construction costs for that portion of a spur located upon the Leased Properties pursuant to an Agreement with RAILROAD providing for such cost recovery based upon a rebate of a reasonable percentage of rail freight charges over a period not to exceed five (5) years. In calculating the rent due each year, RAILROAD may deduct any amounts so refunded from its revenues for such period.



**SECTION NINE**  
**CONTROL OF RAIL OPERATIONS**

Section 9.01 RAILROAD shall have management and control of the operation and maintenance of the Leased Properties and shall control the admission and exit of engines and trains and the movement of the same thereover. Cars, trains and employees, while on the Leased Properties, shall be subject to the rules, timetables, regulations and orders of RAILROAD then in effect. All operating personnel of RAILROAD, prior to operating any locomotive or other track mounted equipment, shall be qualified in accordance with applicable FRA rules and regulations.

Section 9.02 All rules, timetables, regulations and orders governing operations on and along the Leased Properties shall be promulgated by RAILROAD from time to time, and shall be fair, reasonable, uniform and in compliance with all Federal and State laws, rules and regulations. If requested by STATE, a copy of all such rules, timetables, regulations and orders shall be provided to STATE. Rates, tariffs and other commercial arrangements shall be subject only to such Federal or State regulations as may exist covering railroads generally, there being no intent by this Agreement to create any unique regulations.

Section 9.03 Notwithstanding the foregoing, scheduled passenger trains shall be given priority in dispatching.

Section 9.04 BNSF has retained an option for trackage rights over the Leased Properties under Section 1(b)(2)(C) of the Sale Agreement. RAILROAD may enter into a separate agreement with BNSF governing the retained trackage rights, provided that if no such agreement is entered into, the provisions of Section 1(b)(2)(C) of the Sale Agreement will govern such trackage rights. BNSF has also retained the right to use tracks in the vicinity of Midwest City under Section 1(b)(2)(D) of the Sale Agreement that are to be constructed by an affiliate of RAILROAD under a separate agreement with STATE.

Section 9.05 RAILROAD may, with the written consent of STATE, allow use of the Leased Properties by other railroads for rail freight and passenger excursion operations and may enter into agreements with other railroads for such use. Payments for such use shall accrue to RAILROAD, and will constitute Gross Revenues under Section 3.01.

Section 9.06 With respect to the line to be operated hereunder and to the extent received by STATE from BNSF, RAILROAD acknowledges that STATE, pursuant to the Original Lease provided RAILROAD copies of all available track and signal maps, structural, bridge and other drawings and plans, files related to maintenance history, customer data and any other data related to the continued operation and maintenance of the Leased Properties.

## **SECTION TEN INSURANCE AND INDEMNIFICATION**

Section 10.01 RAILROAD shall secure and maintain in effect at all times during the term of this Agreement insurance policy or policies which shall provide coverage of the types and in amounts not less than the following:

Railroad Liability Insurance, including public liability, personal injury and property damage, Federal Employers Liability Act liability, bill of lading and foreign rolling stock liability and contractual liability

Limits: not less than \$50,000,000 per occurrence in connection with passenger rail service, and \$50,000,000 per occurrence in connection with rail freight service

Such insurance and policies shall satisfy the other requirements specified in Section 16(a) of the Sale Agreement. Additionally, such policy or policies may contain deductible provisions no greater than \$500,000 for any single accident (or occurrence.) Such policy or policies shall be issued by a reputable insurance company authorized to do business in the State of Oklahoma or authorized to issue policies effective in the State of Oklahoma or shall be issued through Lloyd's of London. STATE shall be named as an additional insured under all such policies. Certificates of insurance shall be delivered to STATE on or before the Amended Commencement Date as proof of compliance with this paragraph. The certificates shall provide that they shall not be terminated, cancelled or materially modified without ten (10) days written notice to STATE.

Section 10.02 RAILROAD agrees, and shall require all persons entering upon or performing work on the Leased Properties under any agreement with RAILROAD (including any other railroads allowed on the Leased Properties under Section 9.05) ("contractors") to agree to hold

harmless and indemnify STATE, its officers, agents, servants and employees from and against any liability, loss, claim or expense for bodily injury or death to any persons or damage to any property (including property of or under the control of STATE) arising out of any act of omission of such contractor on or in connection with the Leased Properties, irrespective of the fault, failure or negligence (other than sole negligence) of STATE. RAILROAD shall also require any such person to secure and maintain in effect at all times during the performance of such work on the Leased Properties a contractual liability insurance policy insuring such person against liability under this Section 10.02. RAILROAD shall provide to STATE a copy of all such policies or certificates of such insurance upon request.

Section 10.03 RAILROAD shall hold harmless and indemnify STATE, its officers, agents, servants, and employees, against any liability, loss, claim or expense STATE incurs under Section 6 of the Sale Agreement that relates to or arises out of the acts or omissions of RAILROAD as the Freight Operator and/or Passenger Operator thereunder.

Section 10.04 RAILROAD shall hold harmless and indemnify STATE, its officers, agents, servants, and employees, against any liability, loss, claim, or expense for damage to property (including property of or under control of RAILROAD or STATE) or for personal injury or death if such property damage, personal injury or death shall arise out of any act of omission of RAILROAD in its performance of its rights, responsibilities and duties under this Agreement, or of the rights, responsibilities and duties of the Freight and Passenger Operators under the Sale Agreement and Donation Contract, irrespective of the fault, failure or negligence (other than sole negligence) of STATE in the performance of its rights, responsibilities and duties under this Agreement, the Sale Agreement or the Donation Contract. This Section 10.04 is intended solely to define the rights and duties of the parties as between themselves for the occurrences described in this Section, and RAILROAD shall not by reason of this Section, become liable to any other party. RAILROAD shall secure and maintain in effect at all times during the term of this Agreement a contractual liability insurance policy insuring RAILROAD against liability under this Section 10.04, and shall provide to STATE, on or before the Amended Commencement Date, a copy of such insurance policy or a certificate of such insurance.

Section 10.05 RAILROAD shall indemnify, defend, save and hold harmless the STATE, its officers, agents, servants and employees against any claim or action in law or in equity for any

loss, expenses, or damages to property (including but not limited to property of or under control of RAILROAD or STATE), or for personal injury to or the death of any person resulting from any release of any hazardous substance or waste where such release shall arise out of any act or omission of RAILROAD, its employees, contractors, sub-lessees, permittee, licensees or invitees, in its performance of its rights, responsibilities and duties under this Agreement, including any liabilities of STATE to BNSF under the Sale Agreement and the Donation Agreement that would result from such releases. In the event any hazardous substance or waste release occurs during RAILROAD's occupation of the Leased Properties, RAILROAD shall be solely responsible for all contamination cleanup and disposal costs that may be incurred as a result of said release. RAILROAD shall secure, and maintain in effect at all times during the term of the Agreement, public liability insurance policies which shall provide coverage of not less than \$5,000,000 for injury or death of one or more persons in any hazardous substance or waste release, and for property damage, including but not limited to the costs of testing for monitoring, removal, containment, treatment, detoxification or neutralization of contaminated materials. STATE shall be named as an additional insured under all such policies. Certificates of insurance shall be delivered to STATE on or before the Amended Commencement Date as proof of compliance with the terms of this provision. The certificates shall provide that the policies of Insurance shall not be terminated, cancelled or otherwise materially modified without a minimum of ten (10) days written notice to the STATE.

**SECTION ELEVEN**  
**EASEMENTS, LEASES AND LICENSES**

Section 11.01 Effective upon the Amended Commencement Date hereof, all easements, leases, licenses or other agreements ("occupation agreements") affecting the occupation or use of the Leased Properties, except as reserved by the BNSF as set forth in the Sales Agreement and Donation Contract, shall be marketed and administered by RAILROAD; provided, no final occupation agreement shall be delivered by RAILROAD until said occupation agreement has been approved and executed by STATE. RAILROAD shall base charges for occupation agreements covering the use of portions of the Leased Properties by third parties on appropriate local fair market values and shall assess them in a consistent, nondiscriminatory manner. RAILROAD's standard form of occupation agreements, including the methodology to be used

for determining charges and calculating periodic adjustments to such charges, shall be approved by STATE prior to use and shall be utilized by RAILROAD for all occupation agreements, including renewals of those occupation agreements in existence on the Commencement Date. All income derived therefrom shall accrue to RAILROAD and shall be included in "revenues" under Section 3.

Section 11.02 The provisions of Section 11.01 notwithstanding, STATE reserves the exclusive right to grant easements for public road crossings. RAILROAD shall not be required to share in the cost and expense of providing the physical public road crossing surface or any associated warning devices on any such easement granted by STATE unless agreed to, in advance and in writing by RAILROAD and STATE. After installation, RAILROAD shall maintain such crossings and associated warning devices.

## **SECTION TWELVE MEDIATION AND CONCILIATION**

Section 12.01 Any dispute or difference of opinion arising between the parties hereto, or the failure of the parties hereto to agree as to matters arising out of this Agreement shall, at the request of either party, be handled in Oklahoma City under procedures of mediation and conciliation under the auspices of a mediator selected by agreement of the parties. If the parties hereto are unable to agree upon the person to be appointed as mediator within thirty (30) days of a request for mediation by either party, said parties shall request the appointment of a mediator by the American Arbitration Association in Oklahoma City. Each party hereto shall bear its own legal fees, costs and expenses, including without limitation, the cost of its expert witnesses. The fees and expenses of any mediator incurred in performing the duties hereunder shall be shared equally by said parties.

## **SECTION THIRTEEN EVENTS OF DEFAULT**

Section 13.01 The following shall be Events of Default:

- (a) Failure by RAILROAD to make payments of rent when due, and such failure continues for thirty (30) days following written demand therefor.

- (b) Failure by RAILROAD to maintain the Leased Premises as required hereunder, and such failure continues for thirty (30) days following written demand therefor.
- (c) The filing of a petition for bankruptcy, reorganization or arrangement of RAILROAD pursuant to the Bankruptcy Reform Act or any similar proceeding, and such petition is not dismissed within thirty (30) days.
- (d) Either party breaches any provisions of the Agreement and fails to act to cure such breach within ninety (90) days after written notice of such breach from the other party.
- (e) Upon the expiration of ninety (90) days written notice that either party has been prevented from fulfilling its obligations under this Agreement as a result of legislative, judicial or other governmental action.

#### **SECTION FOURTEEN TERMINATION**

Section 14.01 This Agreement shall terminate upon the occurrence of the following:

- (a) Upon the expiration of the Initial or renewal term, or
- (b) Upon the expiration of ten (10) days written notice given by the non-defaulting party upon any occurrence of default as provided for in Section 13 hereof, or
- (c) At any time by written mutual agreement of the parties hereto.

Section 14.02 In the event of termination as provided in Section 14.01, RAILROAD shall continue to pay rent in income earned through the date of termination, with the final payment of rent due within ninety (90) days after termination. RAILROAD shall not be entitled to recover any rent paid prior to such termination, provided, however, the RAILROAD shall be entitled to recover any overpayment of rent which is supported by a final accounting report. No equity in title of the Leases Properties shall be deemed to have been accumulated by RAILROAD.

Section 14.03 Subject to the requirements of law, in the event of any termination of this Agreement, RAILROAD shall vacate the Leased Properties in an orderly manner, and shall deliver (and assign as necessary) to STATE all occupation agreements, track and signal maps, structural, bridges and other drawings and plans, files related to maintenance history, customer data and any other data related to the continued operation and maintenance of the Leased

Properties. Upon any termination resulting from an Event of Default by RAILROAD, STATE at any time thereafter may re-enter and take possession of the Leased Properties by affording written notice to RAILROAD specifying such Event of Default and that this Agreement has terminated. RAILROAD hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and RAILROAD hereby waives any and all rights of redemption or re-entry or repossession there may be under law which arises out of this Agreement and the enforcement of the provisions hereof by STATE. The terms "enter", "re-enter", "entry", and "re-entry" as used in this Agreement are not restricted to their technical legal meanings.

Section 14.04 In the event of any termination of this Agreement, at its sole cost and expense, RAILROAD will promptly seek any necessary authority or exemption to discontinue rail service from the Surface Transportation Board or other government authority. If RAILROAD fails to do so, RAILROAD hereby grants a power of attorney to STATE to seek such authority or exemption in the name of and on behalf of RAILROAD, and RAILROAD shall reimburse STATE for all costs (including filing fees and attorneys' fees) incurred by STATE. RAILROAD shall not oppose the efforts of any successor rail carrier designated by STATE to operate the Leased Properties to obtain authority from the STB or other government to provide service over the Leased Properties.

Section 14.05 All accrued obligations shall survive the termination of this Agreement. Further, the indemnifications set forth in Section Nine shall survive termination of this Agreement.

## **SECTION FIFTEEN**

### **AUDITS**

Section 15.01 RAILROAD understands and agrees that its financial and other records pertaining to RAILROAD's use, management and occupation of the Leased Properties are subject to State and/or Federal audit and that all such records are to be prepared in accordance with generally accepted accounting principles and maintained in auditable condition for a period of not less than three (3) years after preparation of the records. RAILROAD warrants and agrees to make all such records available to STATE, at the offices of RAILROAD within fifteen (15) days after

RAILROAD's receipt of STATE's request to audit such records. The STATE's right to audit RAILROAD's records shall survive termination of this Agreement for a period of one (1) year.

## SECTION SIXTEEN

### TAXES

Section 16.01 Railroad properties owned by STATE are currently exempt from *ad valorem* taxation of real property under the Oklahoma Constitution. In the event the Oklahoma Constitution is amended or lawfully construed to permit real property *ad valorem* taxes to be assessed by any taxing jurisdiction authorized to assess and/or collect *ad valorem* taxes against the Oklahoma Properties, including right-of-way and other lands and improvements thereto, RAILROAD shall bear the burden of taxes.

Section 16.02 Nothing herein shall be construed to relieve RAILROAD from any liability to pay taxes assessed against its motive power, rolling stock or other equipment, or any other personal property owned by RAILROAD.

## SECTION SEVENTEEN

### COMPLIANCE WITH LAW

Section 17.01 RAILROAD agrees to secure all necessary governmental authority, including from the Surface Transportation Board, for its operation on the Leased Properties during the Term of this Agreement. RAILROAD will provide copies of all filings to the STATE for review and comment, and will coordinate all filings with any filings to be made by STATE.

Section 17.02 To the extent it has not already done so under the Original Lease, RAILROAD agrees to file a petition with the FRA under 49 CFR §213.5(c) and §237.3(b) to recognize RAILROAD as the party responsible for compliance with FRA's track safety standards and bridge safety standards. RAILROAD will provide copies of all filings to the STATE for review and comment.

Section 17.03 RAILROAD agrees to comply with all provisions of law and regulations applicable to it and to the Leased Properties, including without limitation regulations promulgated by the FRA, and RAILROAD will not knowingly do, or permit to be done, upon or about the Leased Properties, anything forbidden by such law or regulations.



## **SECTION EIGHTEEN**

### **FORCE MAJEURE**

Section 18.01 RAILROAD shall have no obligation to operate over any portion of the Leased Properties during any period when it is prevented or hindered from operating by acts of God, public authority, strikes, riots, labor disputes, or any other cause beyond its control

## **SECTION NINETEEN**

### **DEFEASANCE**

Section 19.01 RAILROAD shall not make any use of the Leased Properties inconsistent with STATE's right, title and interest therein and which may cause the right to use and occupy the Leased Properties to revert to any party other than the STATE. So long as the Leased Properties are sufficient to permit RAILROAD to operate a continuous line of railroad between the termini described in Section 1.01, this Agreement shall not be affected by any determination, whether by judicial order, decree or otherwise, that ownership of any portion of the Leased Properties is vested in a person other than STATE, and there shall be no abatement of rent on account of such determination.

## **SECTION TWENTY**

### **REPRESENTATIONS AND WARRANTIES**

Section 20.01 STATE represents and warrants that:

- (a) It has full statutory power and authority to enter into this Agreement and to carry out the obligations of STATE hereunder.
- (b) Its execution of and performance under this Agreement does not knowingly violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

Section 20.02 RAILROAD represents and warrants that:

- (a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Kansas and is lawfully authorized to do business in the State of Oklahoma.

(b) It has full power and authority to enter into this Agreement and to carry out its obligations hereunder.

Section 20.03 RAILROAD shall make to BNSF the representations and warranties required under Section 4(c) of the Sale Agreement.

**SECTION TWENTY-ONE  
MISCELLANEOUS PROVISIONS**

Section 21.01 Compliance with Sale Agreement. RAILROAD agrees to be governed by, assume and fulfill all of the provisions of the Sale Agreement that related to the Freight and Passenger Operators of the Leased Properties, including without limitation, Section 1(b)(2)(C) and (D), 2(a)(7), 3, 4(c), 6(c)(2), 6(d)(3) and (4), 12, 16(a), 17 and 18(a), and to conduct operations on the Leased Properties in accordance with the terms and conditions thereof.

Section 21.02 Entire Agreement. This Agreement expresses the entire agreement between the parties and supersedes all prior oral and written agreements, commitments, or understanding with respect to the matters provided for herein, and no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

Section 21.03 Notices. All notices, demands, requests or other communications which may be or are required to be given, served or sent by either party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent:

(a) If intended for STATE, by mailing registered or certified mail, return receipt requested, with postage prepared, addressed to STATE at:

State of Oklahoma  
Office of Rail Programs  
Department of Transportation  
200 Northeast 21<sup>st</sup> Street  
Oklahoma City, OK 73105

(b) If intended for RAILROAD, by mailing registered or certified mail, return receipt requested, with postage prepared, addressed to RAILROAD at:

Vice President of Sales & Marketing  
South Kansas & Oklahoma Railroad  
315 W. 3<sup>rd</sup> Street  
Pittsburg, KS 66762

Each notice, demand, request or communication which shall be mailed by registered or certified mail to either party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation.

Section 21.04        Binding Effect. This Agreement shall be binding upon and insure to the benefit of STATE and RAILROAD, and shall be binding upon the successors and assigns of RAILROAD, subject to the limitations hereinafter set forth. RAILROAD may not assign its rights under this Agreement or any interest therein, or attempt to have any other person, firm or corporation assume its rights or obligations under this Agreement, without the prior written consent of STATE.

Section 21.05        Severability. If any provisions, clause or paragraph of this Agreement or any document incorporated by reference shall be determined invalid by a court of competent jurisdictions, such determination shall not affect the other provisions, clauses or paragraphs of this Agreement which are not affected by the determination. The provisions, clauses or paragraphs of this Agreement and any documents incorporated by reference are declared severable.

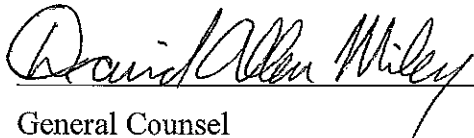
Section 21.06        Cumulative Remedies; No Waiver. No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and concurrent to the extent permitted by law, and shall be in addition to any other remedy referred to above or otherwise available to STATE at law or in equity. No failure or delay on the part of STATE to exercise any right or remedy hereunder shall operate as a waiver thereof. No express or implied waiver by STATE of any default or breach shall constitute a waiver of any other or subsequent default or breach by RAILROAD.

Section 21.07      Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Oklahoma. RAILROAD's operations under this Agreement shall also comply with the applicable provisions of Federal law and the applicable rules, regulations and policies of any agency thereof.

Section 21.08      Non-Collusion. The officer or duly authorized agent of RAILROAD which has executed this Agreement on behalf of RAILROAD warrants and affirms that he is fully aware of the facts and circumstances surrounding the making of this Agreement and has been personally and directly involved in the proceedings leading to the procurement of this Agreement, and neither RAILROAD nor anyone subject to RAILROAD's direction or control has paid, given, donated or agreed to pay, give or donate any money or other thing of value, either directly or indirectly, to any officer or employee of STATE in procuring this Agreement.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf on the 6<sup>TH</sup> day of November, 2012, effective as of the 1<sup>st</sup> day of January, 2013.

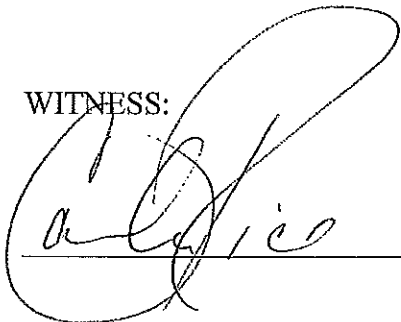
APPROVED AS TO FORM  
AND LEGALITY

  
General Counsel

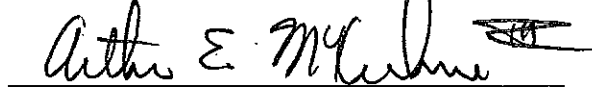
STATE OF OKLAHOMA  
DEPARTMENT OF TRANSPORTATION

  
Director *of Engineering*

WITNESS:

  
\_\_\_\_\_

SOUTH KANSAS & OKLAHOMA  
RAILROAD

  
Name: Arthur E. McKechnie III  
Title: Executive Vice President