1267846

RECEIVED
MAY 03 2013
ECEJ

BNSF RAILWAY

Brooke Kuhl
General Attorney

BNSF Railway Company

201 West Railroad Ave., Suite 300
Missoula, MT 59801
406-274-7085 Direct
817-352-2398 Fax
Brooke.Kuhl@bnsf.com

May 2, 2013

VIA FEDERAL EXPRESS

Ms. Sharon Abendschan (8ENF-RC)
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

RE: **BNSF RAILWAY'S RESPONSE TO EPA REQUEST FOR INFORMATION PURSUANT TO 104(e) OF CERCLA FOR THE SMURFIT-STONE MILL SITE (SSID #A804)**

Dear Ms. Abendschan:

BNSF Railway Company ("BNSF") received an April 3, 2013 information request pursuant to CERCLA § 104(e) (the "Request") from the United States Environmental Protection Agency Region 8 ("EPA") addressed to Matthew Rose and received April 5, 2013, regarding the Smurfit-Stone Mill (located near Frenchtown, Montana in Missoula County). BNSF has searched its records and provides this response pursuant to CERCLA § 104(e).

In the spirit of cooperation and openness, BNSF has diligently searched (and continues to search) its files for documents and information potentially responsive to the Request and provides this response to EPA's Request. At this time we are providing maps of the area, with BNSF's right of way outlined on the maps, and various deeds. We are also providing documents relating to BNSF's corporate history. We are continuing to search archived records for any additional responsive information. If you do not require further response, I would appreciate your letting us know so that we can stop incurring costs to extract the information.

BNSF reserves the right to supplement or amend this response if additional responsive information or documents are discovered. Nothing in this response should be construed as an admission of any liability or responsibility on the part of BNSF regarding or for any site or any costs incurred by EPA or any other party. BNSF reserves all defenses and rights available to it under the law. In providing this response, BNSF does not waive, and reserves for later assertion, any objections, including but not limited to objections that the Request is overly broad, vague, ambiguous, unduly burdensome, calls for a legal conclusion, exceeds the scope of EPA's statutory authority, seeks information protected by the attorney-client privilege or work-product

doctrine or other applicable privileges or exemptions from disclosure, or calls for information that is a matter of public record or equally available to EPA. BNSF reserves the right to assert further objections to the Request should BNSF discover additional grounds for objection.

Subject to the objections outlined above, this response constitutes BNSF's good-faith effort to respond to the Request. If EPA is or becomes aware of relevant and responsive information or documents not previously provided to BNSF and not identified or disclosed in this response, BNSF requests that EPA provide the information or documents because those documents may aid BNSF in locating any additional information or documents responsive to the Request.

Please contact me if you have any questions regarding the responses provided to the Request.

Sincerely,

Brooke Kuhl

Brooke Kuhl

ENCLOSURES

cc: Mark Engdahl

BNSF's RESPONSE TO EPA's REQUEST

1) **Identify the person(s) answering these questions by providing their name, address, and telephone number.**

In searching for records responsive to EPA's request and in responding to these requests, BNSF consulted the following individuals:

1. Brooke Kuhl
   General Attorney
   BNSF Railway Company
   201 West Railroad Street, Missoula, MT 59801
   (406) 543-0019

2. Mark Engdahl
   Manager of Environmental Remediation
   BNSF Railway Company
   800 N. Last Chance Gulch, Suite 101, Helena, MT 59601
   (406) 256-4048

3. Jennifer Sheetz
   Paralegal Environmental Department
   BNSF Railway Company
   2500 Lou Menk Drive, AOB-3, Fort Worth, Texas 76131
   (817) 352-4304

4. Chris M. Randall
   Director Shortline Market Development
   BNSF Railway Company
   2500 Lou Menk Drive –AOB 1; Fort Worth, Texas 76131
   (817) 352-6132

5. John Karl
   Regional Manager Economic Development
   BNSF Railway Company
   2500 Lou Menk Drive – MOB-2; Fort Worth, Texas 76131
   (817) 867-0779

6. Lorrie Branson
   Corporate General Counsel
   BNSF Railway Company
   2500 Lou Menk Drive, AOB-3; Fort Worth, Texas 76131
   (817) 352-2098

7. Peter Lee
   General Counsel
   BNSF Railway Company
   2500 Lou Menk Drive, AOB-3
   Fort Worth, Texas 76131
   (817) 352-2364

8. Bryan L. Evans
   Controller
   BNSF Railway Company
   2500 Lou Menk Drive, AOB-3; Fort Worth, Texas 76131
   (817) 352-2428

9. Robert Beine
   Controller
   BNSF Railway Company
   PO Box 1738; Topeka, Kansas 76131
   (785) 435-2943

10. Dan L. Reid
    Technology Services
    BNSF Railway Company
    PO Box 1738; Topeka, Kansas 76131
    (785) 435-2031

11. Tony W. Allen
    Controller
    BNSF Railway Company
    176 East 5th Street; St. Paul, MN 55101
    (651) 298-7461

12. Joyce Thompson
    Controller
    BNSF Railway Company
    176 East 5th Street; St. Paul, MN 55101
    (651) 298-7390

13. Jennifer Dombkowski
    Industrial Products
    BNSF Railway Company
    2500 Lou Menk Drive; Fort Worth, Texas 76131
    (817) 593-1134

14. Scott Cole
    Controller
    BNSF Railway Company
    PO Box 1738 Topeka, Kansas 76131
    (785) 676-3903

15. Aeva L Vazquez
    Assistant Manager Accounts Receivable
    BNSF Railway Company
    PO Box 1738; Topeka, Kansas 76131
    (785) 676-7007

16. Dan McCaskill
    Manager Industrial Hygiene
    BNSF Railway Company
    2500 Lou Menk Drive; Fort Worth, Texas 76131
    (817) 352-1633

17. Dwayne Curbow
    Director Facility Engineering
    BNSF Railway Company
    4515 Kansas Avenue; Kansas City, Kansas 66106
    (913) 551-4139

18. Trent Hudak
    Director Engineering Services
    BNSF Railway Company
    4515 Kansas Avenue; Kansas City, Kansas 66106
    (913) 551-4435

19. Jim Goff
    Manager Field Engineering & Design
    BNSF Railway Company
    4515 Kansas Avenue; Kansas City, Kansas 66106
    (913) 551-4418

20. Arthur Charrow
    General Director Maintenance Planning
    BNSF Railway Company
    2500 Lou Menk Drive; Fort Worth, Texas 76131
    (817) 352-1935

21. Thomas Schmidt
    Director Engineering Services
    BNSF Railway Company
    4515 Kansas Avenue; Kansas City, Kansas 66106
    (913) 551-4330

22. Gunnar Rasmussen
    Manager Information Resources
    BNSF Railway Company
    2500 Lou Menk Drive
    Fort Worth, TX 76131
    (817) 352-1548

23. Haydar Tamimi
    Records Manager
    BNSF Railway Company
    2500 Lou Menk Drive
    Fort Worth, TX 76131
    (817) 352-0447

24. Abel Hernandez
    Associate Manager
    Title & Escrow Services
    Jones Lang LaSalle Americas, Inc.
    4300 Amon Carter Blvd., Suite 100
    Fort Worth, TX 76155
    (817) 230-2600

25. Angela Sester
    Bartlett & West
    Rail Division
    1207 SW Executive Dr.
    Topeka, KS 66615
    (888) 200-6464

These individuals may be contacted through counsel, Brooke Kuhl.

2) Identify the person(s) whom you wish to receive all further communications from the EPA relating to the Site.

Answer: Mark Engdahl
Manager of Environmental Remediation
BNSF Railway Company
800 N. Last Chance Gulch, Suite 101, Helena, MT 59601
(406) 256-4048

And

Brooke Kuhl
General Attorney
BNSF Railway Company
201 West Railroad Street
Missoula, MT 59801
(406) 543-0019

3) **For each and every question contained herein, identify all persons consulted in the preparation of the answer.**

Answer: This is incorporated in the following responses.

4) **For each and every question contained herein, identify documents consulted, examined, or referred to in the preparation of the answer or that contains information responsive to the question and provide accurate copies of all such documents.**

Answer: BNSF has diligently searched its records for responsive documents and has located none other than those referenced in response to Request Nos. 5 and 6.

5) **Describe the relationship among Northern Pacific Railway Company, Burlington Northern Railroad, and BNSF Railway as it relates to the Site. Provide copies of all documents related to each relationship, including, but not limited to, merger agreements, purchase agreements, property transfer documents and assumptions of liability.**

Answer: On July 2, 1864, President Abraham Lincoln signed an Act of Congress creating the Northern Pacific Railroad Company. The Burlington Northern Railroad Company (then Burlington Northern Inc.) was established on March 2, 1970, emerging from the combination of the Great Northern Railway Company, the Northern Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Company. Through a holding company reorganization in 1981, Burlington Northern Inc.'s name changed to Burlington Northern Railroad Company and it became a wholly-owned subsidiary of Burlington Northern Inc. (previously known as Burlington Northern Holding Company). In 1996, Burlington Northern Inc. merged with and into Santa Fe Pacific Corporation. In 1996, The Atchison, Topeka and Santa Fe Railway Company merged with and into the Company, then known as Burlington Northern Railroad Company, and the Company changed its name to The Burlington Northern and Santa Fe Railway Company. In 1998, Santa Fe Pacific Corporation merged with and into the Company. On January 20, 2005, the Company changed its name from "The Burlington Northern and Santa Fe Railway Company" to its current name, BNSF Railway Company. The Company has all property, rights, privileges, powers and

franchises of the corporations merged into it and all debts, liabilities and duties of the respective corporations.

See also the attached documents.

In preparing this response, BNSF consulted the individuals listed at numbers 1, 3 and 6 in response to Request No. 1 above.

6) **Describe Respondent's activities at the Site including the following and provide copies of all documents relating to such activities:**
   a. **The date Respondent acquired any portion of the Site;**
   b. **The entity from which Respondent acquired any portion of the Site.**
   c. **A description of Respondent's operations at the Site;**
   d. **Any changes Respondent made to the Site including any demolition or improvements;**
   e. **The activities taken upon cessation of operations at the Site;**
   f. **The date Respondent transferred all or a portion of the Site, and the entity to which the Site was transferred.**

Answer: Copies of the deeds and other documents referenced below along with maps and industrial track agreements are being produced in connection with these responses.

(a) Please see attached deeds: NP – 497, NP-498, NP-500, and NP-542 which are responsive to this request showing the property acquired by Northern Pacific Railway

Map TI-M.0507 is attached and shows the property discussed in NP-498, NP-500 and NP-542.

On or about January 8, 1957, Missoula County conveyed to Northern Pacific Railway company an easement to "construct, operate and maintain a spur track and to pass and repass with its locomotives and cars over and upon that portion of the Missoula County highway (Mullan Road) and highway right of way in the West Half Southwest Quarter Northeast Quarter (W1/2SW1/4NE1/4), Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian Missoula County, Montana." (NP –497).

Parcel 11 of the subject property, shown orange on the attached print, was acquired by deed (NP 498) on or about February 18, 1957 from Philias Lacasse and Florida Lacasse to the Northern Pacific Railway Company.

Parcel 12 of the subject property, shown yellow on the attached print, was acquired on or about July 16, 1957 by deed (NP 500) from Henry Kramer and Margaret Kramer to the Northern Pacific Railway Company.

Parcel 15 of the subject property, shown green on the attached print, was acquired by reversionary deed (NP 542) dated October 4, 1967 from Hoerner-Waldorf Corporation of Montana to the Northern Pacific Railway Company.

On or about October 17, 1961, Waldorf-Hoerner Paper Products Company, Inc. granted to Northern Pacific Railway Company an easement for spur track (NP-520).

BNSF never acquired an interest to the Chicago, Milwaukee St. Paul and Pacific Railroad track that also adjoins or runs through the Site.

In preparing this response, BNSF consulted the individuals listed at numbers 1, 3 4, 24, and 25 in response to Request No. 1 above.

(b) Please see attached deeds: NP-497, NP-498, NP-500, and NP-542and the response to (a) above which are responsive to this request showing the property acquired by Northern Pacific Railway

In preparing this response, BNSF consulted the individuals listed at numbers 1, 3 4, 24, and 25 in response to Request No. 1 above.

(c) BNSF's predecessors operations at the Site would have been limited to that of a common carrier and would have included inbound delivery of wood products (logs, wood chips, scrap paper and the like) and other materials used in the Mill's operations and outbound delivery of paper products manufactured by the Mill.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

(d) The entire track property owned by BNSF was leased to Montana Rail Link (MRL) in 1987.

BNSF has undertaken no demolition or improvements at the site and has no information regarding any demolition or improvements undertaken by its predecessors.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

(e) The entire track property owned by BNSF was leased to Montana Rail Link (MRL) in 1987.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

(f) On or about October 4, 1967 (NP 542) Hoerner-Waldorf Corporation of Montana executed an indenture intended, in part, to cancel an easement (NP 520) Waldorf-Hoerner Paper Products Company, Inc. had granted to Northern Pacific Railway Company on or about October 17, 1961. See NP 542.

On or about August 8, 1978 (S-3856), Burlington Northern Inc. conveyed to Hoerner-Waldorf Division, Champion International Corporation the property described as:

> Those certain tracts or strips of land 17 feet in width, being 8 ½ feet on each side of the center line of the certain spur tracks or sidings which are now located and constructed across the premises of the Burlington Northern Inc., described as follows:
>
> Portions of the Southwest Quarter Northeast Quarter (SW¼ NE¼), Southeast Quarter Northwest Quarter (SE¼ NW¼) and Northeast Quarter Northwest Quarter (NE¼ NW¼) of Section 24, Township 14 North, Range 21 West, Montana Principal Meridian, Missoula County, Montana

The entire track property owned by BNSF was leased to Montana Rail Link (MRL) in 1987.

In preparing this response, BNSF consulted the individuals listed at numbers 1, 3 4, 24, and 25 in response to Request No. 1 above.

7) **Provide copies of all documents regarding environmental conditions at the Site including, but not limited to, any sampling information, solid and hazardous waste management plans, and any known releases of hazardous substances.**

Answer: BNSF is aware of no documents regarding environmental conditions at the Site other than those available through the Montana Department of Environmental Quality and the EPA.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

8) **Describe all waste materials that resulted from Respondent's activities at the Site. Describe the location and method of storing waste. Identify any hazardous substances contained in such wastes and provide copies of any and all documents that describe any analysis of such wastes and the results of the analysis.**

Answer: BNSF's predecessors' operations, those of a common carrier, did not result in any known waste materials at the Site. BNSF did not store any waste at the Site.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

9) **Provide copies of any and all permits issued by State or Federal agencies related to your activities at the Site.**

Answer: BNSF is not aware of any permits issued by State or Federal agencies related to its predecessors' operations, as a common carrier, at the Site.
In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

10) **Identify companies or individuals that Respondent hired to perform work at the Site. Provide all documentation, including contracts, pertaining to this work. Include information about the purpose of and documentation related to Respondent's contracts at the Site.**

Answer: The entire track property owned by BNSF was leased to Montana Rail Link (MRL) in 1987.

BNSF has no information regarding predecessors' "work at the Site" if any.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

11) **If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Question contained herein or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.**

Answer: BNSF knows of none.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

BNSF's Response to EPA's 104(e) Request
Re: Frenchtown Mill
5/1/2013

BURLINGTON NORTHERN RAILROAD CO.
DOCKET NUMBER 10437.01

OFFICE OF SECRETARY
ST. PAUL, MINNESOTA

SUPPLEMENTAL AGREEMENT, made this 16th day of December, 1983, between BURLINGTON NORTHERN RAILROAD COMPANY (formerly Burlington Northern Inc.), a Delaware corporation, hereinafter called "Railroad", and CHAMPION INTERNATIONAL CORPORATION, hereinafter called "Industry".

WHEREAS, the parties hereto are parties to an industrial track agreement dated April 6, 1979 providing for the construction, maintenance, operation and ownership of certain trackage as SCHILLING, MONTANA, as shown on the print attached thereto, dated November 6, 1978, marked Exhibit "A", and made a part thereof; and

WHEREAS, the aforesaid print dated November 6, 1978 does not show crossing colored red, signals colored green and location of said trackage as the same is now constructed, the location thereof being shown in solid and dashed blue on the print dated March 1, 1983 attached hereto, marked Exhibit "A", and made a part hereof, and it is desired by the parties hereto to substitute said print dated March 1, 1983 for the print dated November 6, 1983 in the aforesaid agreement.

WHEREAS, Section 2 of said April 6, 1979 agreement does not provide for maintenance of crossing and signals as shown on the print dated March 1, 1983 attached hereto, and it is the desire of the parties hereto that Section 2 of said April 6, 1979 agreement be deleted therefrom and the following Section 2 substituted therefor;

Section 2.(a) Railroad will maintain track shown solid blue on Exhibit "A" at its expense and will maintain signals colored green on Exhibit "A" at expense of Industry.

Industry will, at its own expense, maintain track shown in dashed blue and crossing colored red.

Maintenance for the purpose of this agreement shall include responsibility to provide proper drainage and to keep the track free and clear of snow, ice, weeds and other obstacles and debris and to provide a safe workway for Railroad.

(b) Railroad will own the track shown solid blue on Exhibit "A" and Industry will own the track shown dashed blue, crossing colored red and signals colored green on Exhibit "A".

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation or necessary because of any other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing or maintaining the track or any facilities extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over the track.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

(c) Railroad shall, at the sole cost and expense of Industry, furnish necessary labor and materials to maintain said signals and will make from time to time the necessary changes and additions thereto which Railroad deems necessary or as may be required by public authority. In maintaining said signals only the usual customary maintenance and repairs will be performed by Railroad, the same as is done at similar installations at other locations on the line of Railroad. In the event said signals are partially or wholly destroyed and their replacement value, or cost of repair, cannot be recovered from the persons responsible for such destruction, the cost of repair of the signals, or the cost of installation of new signals, shall be borne by Industry.

The annual maintenance of the signal installation colored green on said Exhibit "A" consists of 10 A.A.R. Units and the 1982 maintenance cost is at a rate of $112.00 per unit for a total annual maintenance cost of $1,120.00 for said signal installation.

The annual maintenance cost per A.A.R. Unit shall be, from time to time, adjusted upwards or downwards, as the case may be, in accordance with the Annual Index of Railroad Material Prices, Wage Rates and Supplements Combined, as published by the Association of American Railroads for the Western District (the "Annual Index"). Railroad shall bill Industry annually, on or about July 1, for the current year's cost of maintenance of said signals on the basis of maintenance costs per A.A.R. Unit based on the previous year's Annual Index.

All maintenance, improvements, additions and betterments performed or made by Railroad pursuant to this agreement shall comply with all applicable laws, rules, regualtions, orders and statutes of all city, county, state and federal authorities having jurisdiction and shall be done or made in a good and workmanlike manner and shall be fit for the particular purpose intended.

(d) Industry further agrees to indemnify, save harmless and defend Railroad from and against any and all claims, suits, losses, damages or expenses on account of injury to or death of employees of Railroad from any cause whatsoever, while engaged in the maintenance, repair, renewal or removal of said signals, or while making additions or betterments thereto, or changes therein, even though such injury or death may be due wholly or in part to the negligence of the employees of Railroad.

Industry hereby indemnifies and holds harmless Railroad from and against any and all liability for loss of or damage to the property of the parties hereto or of any other persons and from injuries to or death of employees of the parties hereto, or of any other persons, arising or growing out of the operations of its trains at and over said crossing protected by said signals, in the event of the failure of said signals to operate properly. Industry shall indemnify and hold harmless and defend Railroad from and against any claims, suits, losses, damages or expenses for loss of or damage to any and all property to whomsoever belonging, and for injuries to or death of any and all persons caused by the presence of said signals or their failure to operate properly.

NOW THEREFORE, the parties hereto agree that print dated March 1, 1983 hereto attached shall be and is hereby substituted for the print dated November 6, 1978 attached to and made a part of said agreement dated April 6, 1979;

Section 2 of said agreement dated April 6, 1979 is hereby stricken and the new Section 2 herein stated is substituted therefor.

Except as hereby modified, supplemented and amended, said agreement dated April 6, 1979 shall be and remain in full force and effect between the parties hereto in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers thereunto duly authorized the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By _____

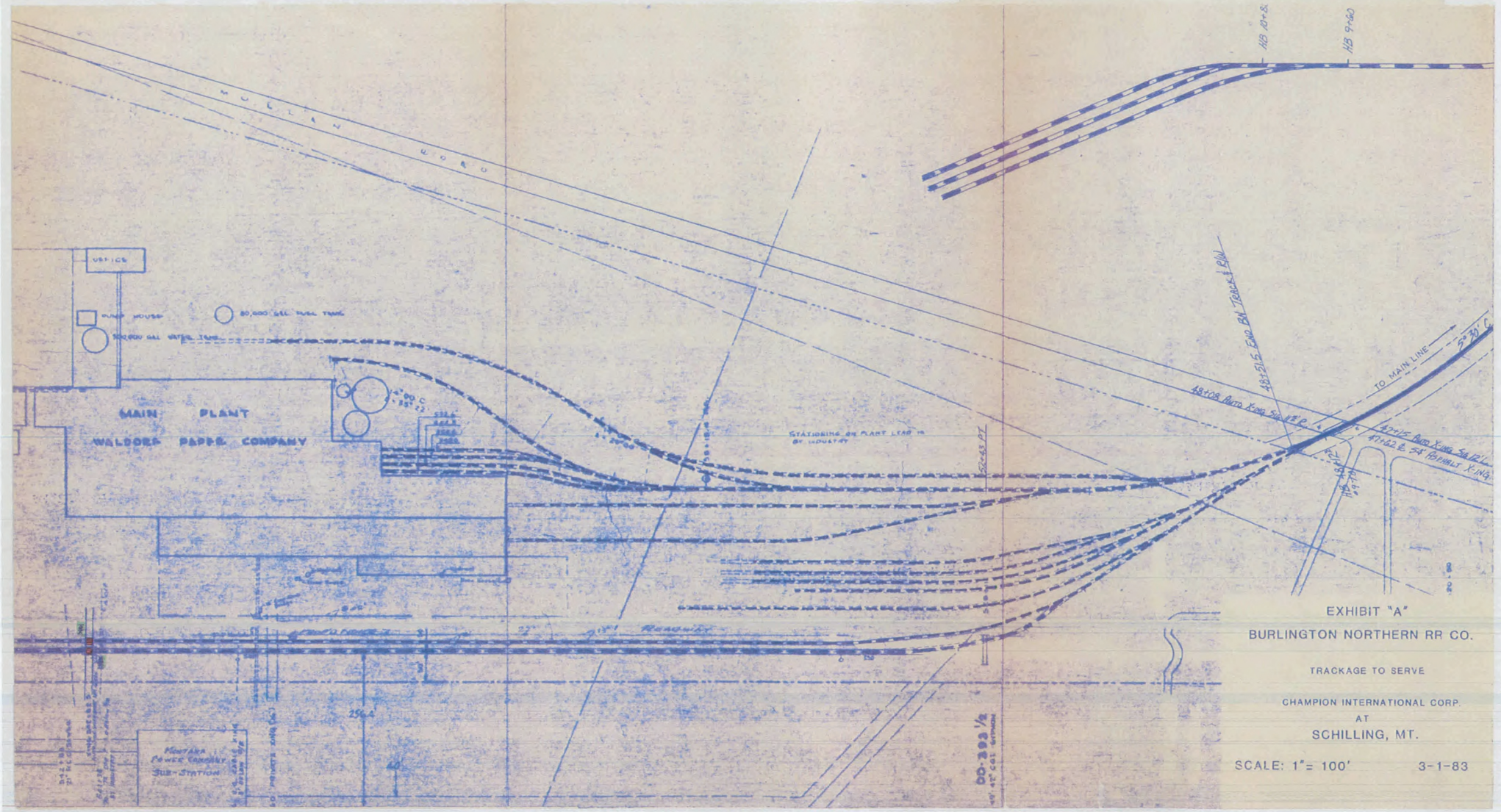
Title: General Manager Industrial Trackage

CHAMPION INTERNATIONAL CORPORATION

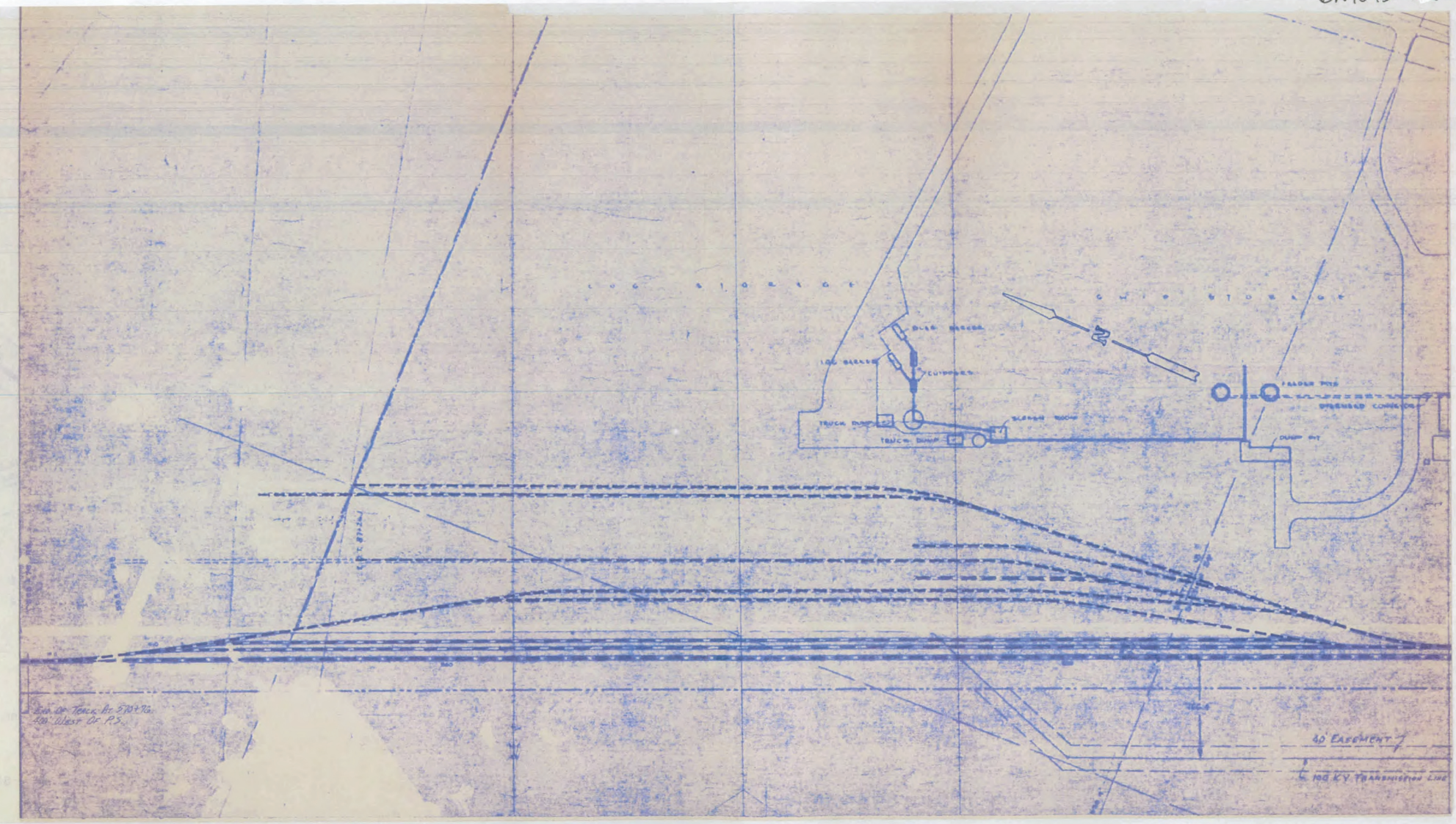
By _____

Title: Howard J. Gidez - Vice President
Purchasing & Transportation

BN 10437.01 (1/2)



BN10437-01 (2/2)



BN10437.02

ASSIGNMENT

AGREEMENT, made this 26th day of February, 1986, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (formerly Burlington Northern Inc.), hereinafter called "Railroad", HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, hereinafter called "Assignor", STONE BROWN PAPERS, INC., Doing Business As STONE CONTAINER CORPORATION, hereinafter called "Assignee", whose billing address for the purpose of this agreement is 360 North Michigan Avenue, Chicago, Illinois 60601.

WHEREAS, Railroad and Assignor are parties to an industrial track agreement dated April 6, 1979 as supplemented by agreement dated December 16, 1983 providing for the continued maintenance, operation and ownership of industrial trackage at Schilling, Montana, said trackage being located as more particularly described in said agreement; and

WHEREAS, Assignor now desires to sell, assign, transfer and set over its rights under and by virtue of said industrial track agreement dated April 6, 1979 as supplemented by agreement dated December 16, 1983 to Assignee.

NOW THEREFORE, in consideration of the mutual covenants herein contained it is agreed between the parties as follows:

1. For a valuable consideration, the receipt whereof is hereby acknowledged, Assignor hereby sells, assigns, transfers and sets over to Assignee all of Assignor's right, title and interest in and to said trackage and in and under said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983.

2. Railroad agrees and consents to the transfer of said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983 and all rights thereunder from Assignor to Assignee.

3. In consideration of said assignment and the consent of the Railroad thereto, Assignee assumes and agrees to perform and be bound by all of the obligations imposed upon Assignor by said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983.

4. Said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983 as hereby assigned shall remain in full force and effect in accordance with its terms between Railroad and Assignee.

5. This agreement shall be effective as of the date of Closing Under the Asset Purchase Agreement between Champion International Corporation and Stone Container Corporation dated October 1, 1985.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

BY _____
General Manager Industrial Trackage

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

BY _____
Title: Vice President

STONE BROWN PAPERS, INC., Doing Business As STONE CONTAINER CORPORATION

BY _____
Title:

BURLINGTON NORTHERN INC.
DOCUMENT NO. BN 104-7
OFFICE OF SECRETARY
ST. PAUL, MINNESOTA

BURLINGTON NORTHERN INC.

INDUSTRIAL TRACK AGREEMENT
(When No New Construction Is Involved)

Parties

AGREEMENT made this 6th day of April, 1979, between BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Railroad", and HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, a New York corporation, hereinafter called "Industry", whose billing address for the purpose of this agreement is Drawer D, Missoula, Montana 59801.

Location

WHEREAS, Industry desires the continued maintenance and operation of trackage hereinafter called "track" located at Schilling, Montana shown ~~between the letters~~ colored solid and dashed blue, on the plat hereto attached dated November 6, 1978, marked Exhibit "A", and by this reference made a part hereof.

NOW THEREFORE, the parties hereto agree to the continued maintenance and operation of said track on the following terms and conditions:

Right of Way

Section 1. Industry shall first procure without expense to Railroad all necessary right of way and all necessary public authority and permission for the continued maintenance and operation of the track.

Industry further agrees that said track shall be maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad rather than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of the compliance with or violation of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

Maintenance, Operation and Ownership

Section 2. (a) Railroad will maintain track ~~between the letters~~ colored solid blue on Exhibit "A" at its expense ~~and will maintain track between the letters on Exhibit "A" at expense of Industry.~~

Industry will, at its own expense, maintain track ~~between the letters~~ colored dashed blue on Exhibit "A".

(b) Railroad will own the track ~~between the letters~~ colored solid blue on Exhibit "A" and Industry will own the track ~~between the letters~~ colored dashed blue on Exhibit "A". Connecting track colored solid green on Exhibit "A" is owned and will be maintained by others

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation, or necessary because of any other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing or maintaining the track or any facilities extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over the track.

Approved as to form
Asst. Gen. Counsel
Law Dept. B.N.I.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

Definition of Cost

Section 3. "Cost" for the purpose of this agreement shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used.

Right of Railroad to Use

Section 4. Railroad shall have the right to use and extend said track and construct spur tracks therefrom for the accommodation of the business of Railroad or the business of other parties, provided such use or extension does not unduly interfere with the use of said track by Industry.

Clearances

Section 5. Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this Section. Industry agrees to indemnify Railroad and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

Should either, or both, the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Industry hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Railroad from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Railroad's operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Industry contained in this Section 5 or of Railroad's right to recover for such damages to property or injury to or death of persons that may result therefrom.

Public Assessments

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of maintaining and operating said track.

Liability

Section 7. Industry agrees to indemnify and hold harmless Railroad for loss, damage, injury or death from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

In the event Industry permits a party or parties, hereinafter called "Permittee", other than Railroad to use said track for receiving, forwarding or storing shipments, Railroad hereby consents to such use, and in such case Industry hereby agrees to indemnify and hold harmless Railroad from and against any and all loss, damage, injury or death, resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of the parties hereto and said Permittee, and to the person or property of any person or corporation while on or near said track.

Assignment

Section 8. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; however, Industry shall not assign this agreement without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

Right to Disconnect Track

Section 9. Railroad shall be privileged to terminate this agreement and discontinue the maintenance and operation of said track, and to remove its ownership, in the event of any of the following contingencies, viz.:

(a) Industry ceases for a continuous period of one (1) year the doing of business in an active and substantial way at the industry or establishment served.

(b) Railroad is authorized by competent public authority to abandon its line to which track is connected.

(c) Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

No recourse or claim will exist in favor of or be asserted by Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this Section of this agreement.

Removal of Track

Section 10. Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track owned by Industry and to pay to Industry the salvage value of the usable material so removed, less cost of recovering it. If the cost of removing or recovering said track exceeds the salvage value thereof, Industry shall pay Railroad the difference.

Joint Use by Other Railroads

Section 11. This agreement is also made for the benefit of such other railroads which, either by prior understandings or agreements with the Railroad have the right to use the track, or which shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

Section 12. It is mutually agreed by and between Burlington Northern Inc. and Hoerner Waldorf Division, Champion International Corporation (successor in interest to Hoerner Waldorf Corporation) that the certain agreement dated December 13, 1971 covering the continued maintenance, operation and ownership of industrial trackage at Schilling, Montana, shall be and the same is hereby terminated as of the date hereof; provided, however, that such termination shall not affect or impair any right or obligation of either party to said agreement which accrued prior to said termination date.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

BURLINGTON NORTHERN INC.

By J. C. Kennedy
Vice President

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

By [illegible]
Title Vice President

FORM 60045 2-75

BN10437 (1/2)

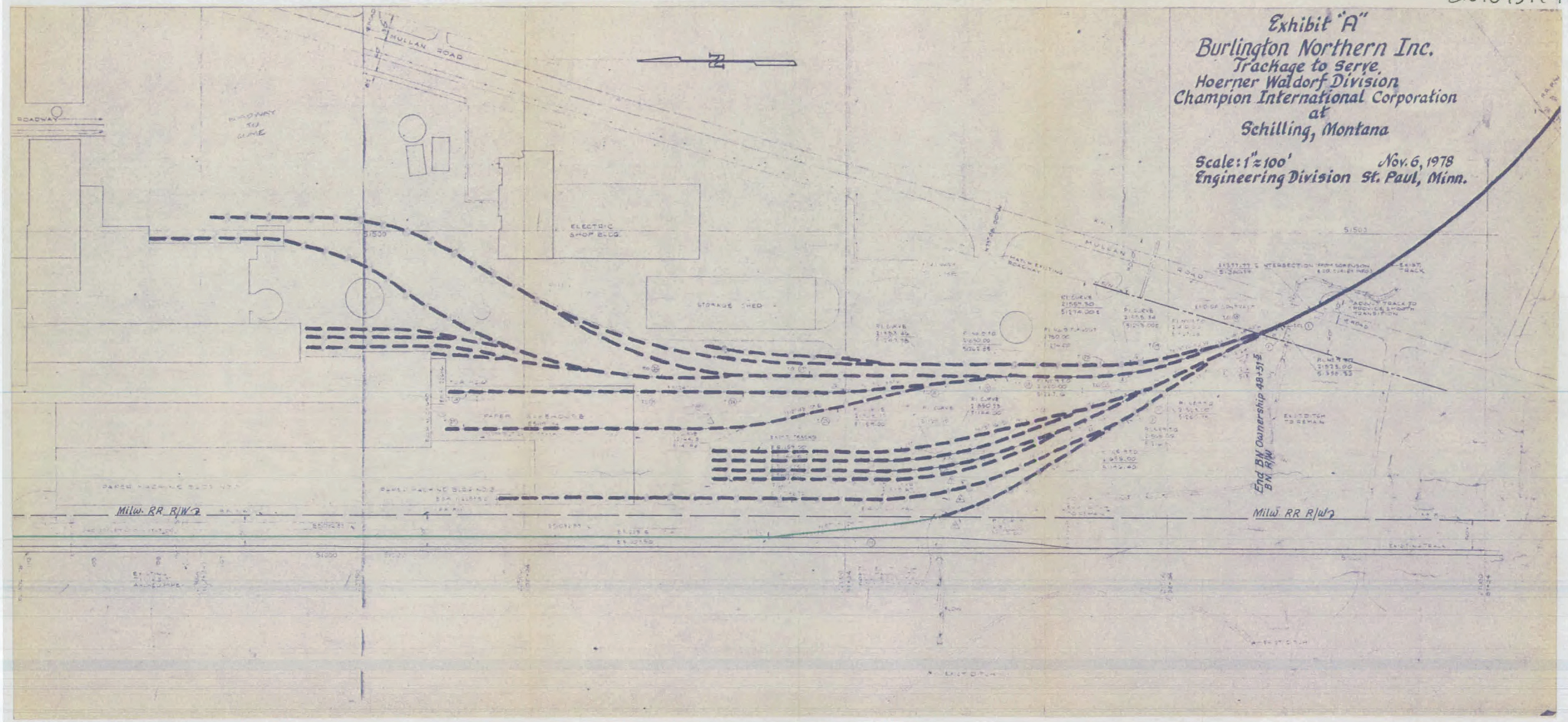
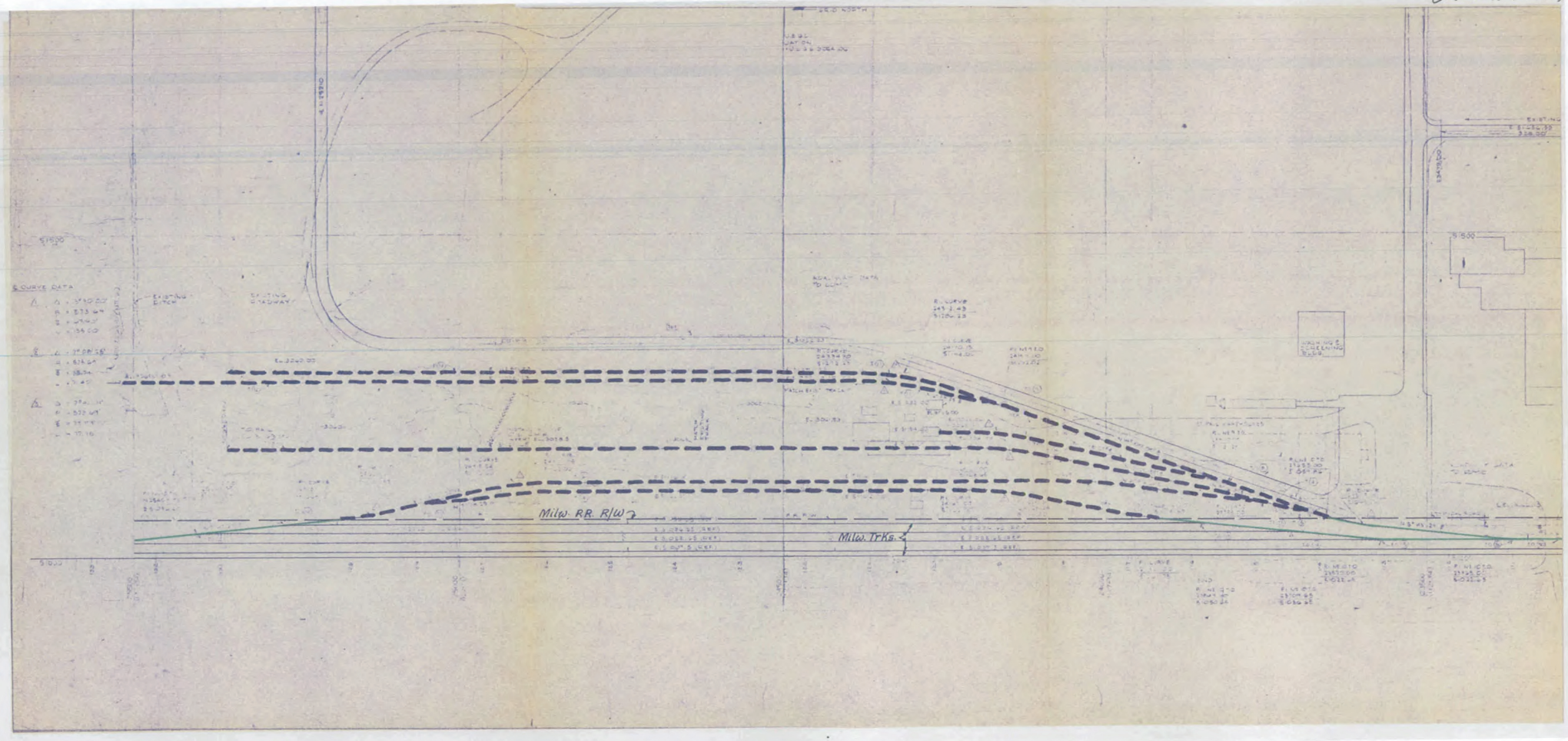


Exhibit "A"
Burlington Northern Inc.
Trackage to Serve
Hoerner Waldorf Division
Champion International Corporation
at
Schilling, Montana
Scale: 1" = 100'
Nov. 6, 1978
Engineering Division St. Paul, Minn.
HULLAN ROAD
ROADWAY TO LAKE
ELECTRIC SHOP BLDG.
STORAGE SHED
PAPER WAREHOUSE
End BN Ownership 48+51.5
BN R/W
Milw. RR R/W
Milw. RR R/W

BN 10437 (2/2)



BN/0438.01

ASSIGNMENT

AGREEMENT, made this 26th day of February, 1986, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (formerly Burlington Northern, Inc.), hereinafter called "Railroad", HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, hereinafter called "Assignor", STONE BROWN PAPERS, INC., Doing Business As STONE CONTAINER CORPORATION, hereinafter called "Assignee", whose billing address for the purpose of this agreement is 360 North Michigan Avenue, Chicago, Illinois 60601.

WHEREAS, Railroad and Assignor are parties to an industrial track agreement dated April 3, 1979 providing for the construction, maintenance, operation and ownership of industrial trackage at Schilling, Montana, said trackage being located as more particularly described in said agreement; and

WHEREAS, Assignor now desires to sell, assign, transfer and set over its rights under and by virtue of said industrial track agreement dated April 3, 1979 to Assignee.

NOW THEREFORE, in consideration of the mutual covenants herein contained it is agreed between the parties as follows:

1. For a valuable consideration, the receipt whereof is hereby acknowledged, Assignor hereby sells, assigns, transfers and sets over to Assignee all of Assignor's right, title and interest in and to said trackage and in and under said agreement of April 3, 1979.

2. Railroad agrees and consents to the transfer of said agreement of April 3, 1979 and all rights thereunder from Assignor to Assignee.

3. In consideration of said assignment and the consent of the Railroad thereto, Assignee assumes and agrees to perform and be bound by all of the obligations imposed upon Assignor by said agreement of April 3, 1979.

4. Said agreement of April 3, 1979 as hereby assigned shall remain in full force and effect in accordance with its terms between Railroad and Assignee.

5. This agreement shall be effective as of the date of Closing Under the Asset Purchase Agreement between Champion International Corporation and Stone Container Corporation dated October 1, 1985.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

BY _____
General Manager Industrial Trackage

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

BY _____
Title: Vice President

STONE BROWN PAPERS, INC., Doing Business As STONE CONTAINER CORPORATION

BY _____
Title: Vice President

BURLINGTON NORTHERN INC.

BURLINGTON NORTHERN INC.
DOCKET NO. BN 10438
OFFICE OF SECRETARY
ST. PAUL, MINNESOTA

INDUSTRIAL TRACK AGREEMENT

Parties

AGREEMENT, made this 3rd day of April 19 79 between BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Railroad", and HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, a New York corporation, hereinafter called "Industry", whose billing address for the purpose of this agreement is Drawer D, Missoula, Montana 59801

Location

WHEREAS, Industry desires the construction, maintenance and operation of trackage hereinafter called "track" to be located at Schilling, Montana, shown colored solid and dashed blue, ~~shown between the letters~~ dashed orange and walkway colored green, on the plat hereto attached dated December 26, 1978, marked Exhibit "A", and by this reference made a part hereof.

NOW THEREFORE, the parties hereto agree to the construction, maintenance and operation of said track on the following terms and conditions:

Right of Way

Section 1. Industry shall first procure without expense to Railroad all necessary right of way and all necessary public authority and permission for the construction, maintenance and operation of the track.

Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad rather than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of the compliance with or violation of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

Construction, Maintenance, Operation and Ownership

Section 2. (a) Industry, at its own expense, will perform or will arrange for all grading and provide necessary drainage for that portion of track which is located off Railroad property. ~~Grading and drainage work on Railroad property will be performed by Railroad/Industry at Industry's expense.~~

(b) Railroad will construct track from point of switch to point of clearance (14 feet from center to center of tracks) ~~between the letters.~~ colored solid blue on Exhibit "A" for the agreed amount of $ 17,109.00 and from point of clearance to right of way ~~and between the letters~~ colored dashed orange and walkway colored green on Exhibit "A" for the agreed amount of $ 4,150.00 all at expense of Industry. ~~Industry shall also pay to Railroad the agreed amount of $ _____ for cost of grading and drainage work performed by Railroad~~. Industry, before any construction is begun, shall pay to Railroad such agreed amounts. Industry will, at its expense, construct track colored dashed blue on Exhibit "A".

(c) Cost of construction of track from point of switch to point of clearance ~~between the letters~~ colored solid blue on Exhibit "A", paid for by Industry in the first instance in the amount of $ 17,109.00 is subject to refund by Railroad to Industry or any assignee of Industry at the rate of $ 20.00 for each car of freight delivered on or shipped from track on which Railroad receives road-haul revenue in excess of $150.00 during the period of five (5) years after the date of completion of track, unless the total of such refund payments shall sooner equal said amount. Industry or its assignee shall submit a list of such cars to Railroad's Director A.F.E. Accounting, 176 East Fifth Street, Saint Paul, Minnesota 55101, upon each six (6) month anniversary of this agreement, and a settlement shall be made promptly after verification of such lists by said Director. Such lists shall show car numbers, waybill numbers and dates, points of origin and destination.

Approved as to form
Asst. Gen. Counsel
Law Dept. B.N.I.

(d) Railroad will maintain track ~~between the letters.~~ colored solid blue on Exhibit "A" at its expense and will maintain track ~~between the letters.~~ colored dashed orange on Exhibit "A" at expense of Industry.

Industry will, at its own expense, maintain track ~~between the letters.~~ colored dashed blue on Exhibit "A".

(e) Railroad will own the track ~~between the letters~~ colored solid blue on Exhibit "A" and Industry will own the track ~~between the letters~~ colored dashed orange and dashed blu on Exhibit "A".

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation, or necessary because of any other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing or maintaining the track or any facilities extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over the track.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

Definition of Cost

Section 3. "Cost" for the purpose of this agreement shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used.

Right of Railroad to Use

Section 4. Railroad shall have the right to use and extend said track and construct spur tracks therefrom for the accommodation of the business of Railroad or the business of other parties, provided such use or extension does not unduly interfere with the use of said track by Industry.

Clearances

Section 5. Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this Section. Industry agrees to indemnify Railroad and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

Should either, or both, the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Industry hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Railroad from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Railroad's operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Industry contained in this Section 5 or of Railroad's right to recover for such damages to property or injury to or death of persons that may result therefrom.

Public Assessments

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining and operating said track.

Liability

Section 7. Industry agrees to indemnify and hold harmless Railroad for loss, damage, injury or death from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

In the event Industry permits a party or parties, hereinafter called "Permittee", other than Railroad to use said track for receiving, forwarding or storing shipments, Railroad hereby consents to such use, and in such case Industry hereby agrees to indemnify and hold harmless Railroad from and against any and all loss, damage, injury or death, resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of the parties hereto and said Permittee, and to the person or property of any other person or corporation while on or near said track.

Assignment

Section 8. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; however, Industry shall not assign this agreement without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

Right to Disconnect Track

Section 9. Railroad shall be privileged to terminate this agreement and discontinue the maintenance and operation of said track, and to remove its turnout connection, in the event of any of the following contingencies, viz.:

(a) Industry ceases for a continuous period of one (1) year the doing of business in an active and substantial way at the industry or establishment served.

(b) Railroad is authorized by competent public authority to abandon its line to which track is connected.

(c) Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

No recourse or claim will exist in favor of or be asserted by Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this Section of this agreement.

Removal of Track

Section 10. Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track owned by Industry and to pay to Industry the salvage value of the usable material so removed, less cost of recovering it. If the cost of removing or recovering said track exceeds the salvage value thereof, Industry shall pay Railroad the difference.

Joint use by Other Railroads

Section 11. This agreement is also made for the benefit of such other railroads which, either by prior understandings or agreements with the Railroad have the right to use the track, or which shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

BURLINGTON NORTHERN INC.

By J. C. Kennedy
Vice President

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

By R. Springer
(Title) Vice President

FORM 60007 2-75

BN10438

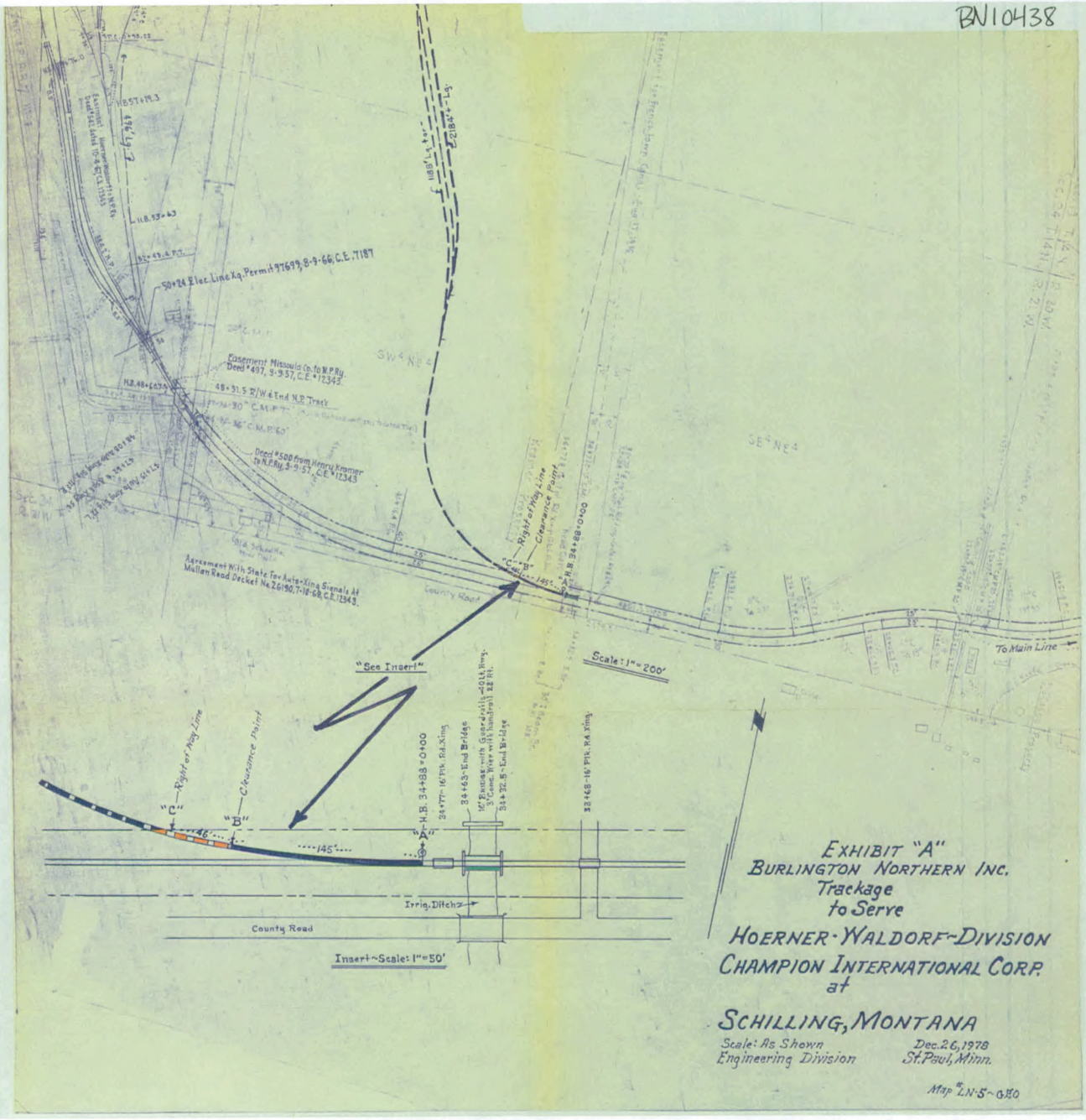


EXHIBIT "A"
BURLINGTON NORTHERN INC.
Trackage
to Serve
HOERNER-WALDORF-DIVISION
CHAMPION INTERNATIONAL CORP.
at
SCHILLING, MONTANA

Scale: As Shown
Engineering Division

Dec. 26, 1978
St. Paul, Minn.

Map #LN-5-6.#0

Schilling, Mont.
9-1

BURLINGTON NORTHERN INC.
DOCKET NO. BN 518
OFFICE OF SECRETARY
ST. PAUL, MINNESOTA

BURLINGTON NORTHERN INC.

INDUSTRIAL TRACK AGREEMENT

Parties

AGREEMENT, made this 7 day of DECEMBER 19 70, between BURLINGTON NORTHERN INC., a corporation hereinafter called "Railroad", and HOERNER-WALDORF CORPORATION, a Deleware Corporation, hereinafter called "Industry"

Location

WHEREAS, Industry desires the construction, maintenance and operation of trackage hereinafter called "track" to be located at Schilling, Montana, shown between the letters A and B, on the plat hereto attached, marked Exhibit "A", and by this reference made a part hereof.

NOW therefore, the parties hereto agree to the construction, maintenance and operation of said track on the following terms and conditions:

Right of Way

Section 1. Industry shall first procure and furnish without expense to Railroad all necessary right of way, including all necessary public authority and permission for the construction, maintenance and operation of the track.

Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad rather than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of compliance with or violation of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

Construction, Ownership and Maintenance

Section 2. (a) Industry, at its own expense, will do all grading and provide necessary drainage for that portion of track which is located off Railroad property, unless by prior understanding Railroad does the work, which, in such event, will be at expense of Industry.

(b) Railroad will construct track ~~from point of switch to point of clearance (14 feet from center to center of tracks)~~ between the letters A and B on Exhibit "A" for the agreed amount of Nine Thousand Two Hundred Ninety-five Dollars ($ 9,295.00) ~~and from point of clearance to end between the letters _____ on Exhibit "A" for the agreed amount of _____ Dollars ($ _____)~~ ~~all~~ at expense of Industry. Industry, before any construction is begun, shall pay to Railroad such agreed amounts.

~~(c) Cost of construction of track from point of switch to point of clearance between the letters _____ on Exhibit "A", paid for by Industry in the first instance in the amount of _____ Dollars ($ _____)~~ is subject to refund from the general funds of Railroad to Industry ~~at the~~ rate of Ten and No/100 Dollars ($10.00) for each car of carload freight delivered on or ~~shipped from~~ track on which Railroad receives road-haul revenue in excess of Fifty and No/100 Dollars ($50.00) during the period of five (5) years after the date of completion of track, unless the total of such refund payments shall sooner equal said amount. Industry shall submit a list of such cars to Railroad's Director Disbursement Accounting, 176 East Fifth Street, Saint Paul, Minnesota, 55101, upon each six (6) month anniversary of this agreement, and a settlement shall be made promptly after verification of such lists by said Director. Such lists shall show car numbers, waybill numbers and ~~dates, points of origin and destination.~~

(d) Railroad will maintain track between the letters A and B ~~on Exhibit "A" at its expense and will maintain track between the letters _____~~ on Exhibit "A" at expense of Industry.

(e) ~~Railroad will own the track between the letters _____ on Exhibit "A" and~~ Industry will own the track between the letters A and B on Exhibit "A".

Industry shall pay for all present and future changes in or additions to Railroad's line made necessary by the construction and continued existence and operation of the track.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, done by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Should Industry do any work of construction, maintenance, or of additions and betterments, it shall do such work in substantial and workmanlike manner, and in accordance with Railroad's standards. If Industry fails to properly maintain the track or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over it.

Definition of Cost

Section 3. "Cost" for the purpose of this agreement shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used. Rental for equipment shall be on a non-profit basis to Railroad.

Right of Railroad to Use

~~Section 4. Railroad shall have the right to use and extend said track and construct spur tracks therefrom for~~ the accommodation of the business of Railroad or the business of other parties, ~~provided such use or extension~~ does not unduly interfere with the use of said track ~~by Industry.~~ In case the track is regularly used by or is extended for the accommodation of another industry, it is agreed that Railroad may fix the terms upon which ~~such new industry shall share in the cost of construction and maintenance of the track used in common.~~

Clearances

Section 5. Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. Industry agrees to indemnify Railroad and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any covenant contained in this agreement.

Public Assessments

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining, and operating said track.

Liability

Section 7. Industry agrees to indemnify and hold harmless Railroad for loss, damage or injury from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about said track, and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

Assignment

Section 8. Industry shall not assign this agreement or any interest therein without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

Right to Disconnect Track

Section 9. Railroad shall be privileged to discontinue the maintenance and operation of said track, ~~and to remove its turnout connection~~ in the event Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

Removal of Track

~~Section 10. Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way~~ that part of the track originally paid for by Industry ~~and to pay to Industry~~ the salvage value of the usable ~~material so removed, less cost of recovering it.~~

Joint Use by Other Railroads

Section 11. This agreement is also made for the benefit of such other railroads who, either by prior understandings or agreements with the Railroad have the right to use the track, or who shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

BURLINGTON NORTHERN INC.

By _____
Vice President

HOERNER-WALDORF CORPORATION

By _____
Title Vice Pres

Form 60007 6-70

BN518

REFERENCE NOT PRESENT IN FILE

○ Page	____ of ____
○ Pages	____ thru ____
○ Appendix	____
○ Appendices	____ thru ____
☑ Exhibit	A
○ Other	

Imaging Services

AGREEMENT

MADE BETWEEN

BURLINGTON NORTHERN RAILROAD COMPANY

AND

MONTANA RAIL LINK, INC.

Dated as of July 21, 1987

TABLE OF CONTENTS

Section		Page
1.	Definitions	2
2.	Branch Lines	5
	A. Purchased Lines	5
	B. Conveyancing Instruments	6
	C. Drummond-Philipsburg Line	9
	D. Mortgage Releases	10
	E. Indemnification and Allocation of Liabilities	11
3.	Main Lines	11
	A. Leased Premises	11
	B. BN Rights	12
	C. Rental	14
	D. Taxes and Other Charges	14
	E. Rail Service Use	16
	F. Environmental Liability	17
	G. Taking	17
	H. Sublease/Assignment	18
	I. Default	19
	J. Transfers in Event of Default	20
	K. Validity of Escrowed Documents and Execution of Additional Documents	21
	L. Lease Subject to BN Mortgages	22
	M. Title to Leased Premises	22
	N. Maintenance	23
	O. Discontinuance	27
	P. Adjustments to Rental	28
	Q. Records	28
	R. Indemnification and Allocation of Liabilities	28
	S. Purchase Option	29
	T. Recordation	32
	U. Financial Statements	32
	V. Insurance	32
4.	Purchase and Sale of Other Properties	34
	A. Livingston Shop Complex	34
	B. Excluded Trackage	36
	C. Equipment	36
	D. Discontinued Branch Lines	37
5.	Property Related and Joint Facility Agreements	37
	A.1. Administration Before Transfer	37
	A.2. Administration After Transfer	38
	B. Joint Facility Agreements	39
6.	Locomotive Transportation	40

KR
RS

7. Rail Freight Service..... 40
A. Interchange/Trackage Rights Agreements... 40
B. Division and Rates..... 42
C. Run Through Agreement..... 42
D. Rail Service..... 42
E. Agreements as Condition Subsequent..... 43

8. Equipment..... 44
A. Responsibility for Equipment..... 44
B. Car Repair Agreement..... 44
C. Line-Haul Carrier..... 45
D. Diesel Locomotive Fuel..... 45

9. Governmental Approvals..... 47
A. Government Approval as Condition Subsequent..... 47
B. Acceptability of Approvals..... 48
C. Labor Protection..... 48

10. Representations and Warranties of BN..... 49
A. Organization, Standing and Qualification. 49
B. Authority, Execution and Delivery..... 49
C. Material Data..... 49
D. Absence of Undisclosed Liabilities..... 53
E. Contracts and Commitments..... 54
F. Maintenance of Property by BN..... 54
G. Ability to Operate..... 55
H. Remedies for Breach..... 55
I. Survival of Remedies..... 57

11. Representations and Warranties of MRL..... 58
A. Organization, Standing and Qualification. 58
B. Authority..... 58
C. Corporate or Other Proceedings..... 58
D. Enforceable Against MRL..... 58
E. MRL is a Non-Carrier..... 58
F. Survival of Remedies..... 59

12. Transfer..... 59
A. Conditions of Closing..... 59
B. Transfer Date..... 60

13. Payment of Purchase Price..... 60

14. Right of First Refusal..... 61

15. Notices..... 62

16. Governing Law..... 63

17. Amendment..... 63

18. Interpretation..... 63

19. Arbitration..... 65

20. Effectiveness..... 67

21. Changed Circumstances..... 68

22. Additional Real Property..... 69

KR
DJB

Lease. The agreement for lease of certain main line properties set forth in Section 3. of this Agreement.

Leased Premises or Premises. Those properties leased to MRL as described in and pursuant to Section 3. of this Agreement.

Section 3. Main Lines

A. Leased Premises. At Transfer, BN agrees to lease to MRL and MRL agrees to lease from BN, on the terms and conditions set forth in this Section, for a term commencing on the Transfer Date and terminating on December 31, 2047 ("Term"), the rail line between Huntley, Montana, at M.P. 209.91 and West Helena, Montana, at M.P. 2.95 Main Track 1 and M.P. 5.02 Main Track 2 and the rail line between Phosphate, Montana, at M.P. 52.94 (Spokane 2nd Subdivision) and Sand Point, Idaho at M.P. 2.79 (Spokane 5th Subdivision), and the rail line between De Smet, Montana, at M.P. 0.0 and Paradise, Montana, at M.P. 64.27 (Spokane 5th Subdivision), including the track, track material, wires, pipes, conduits, poles, guys, bridges, switches, buildings, culverts, signals, scales and related structures, all ancillary and directly contiguous rail operating yards (including the Laurel Yard), facilities, plants, and appurtenances, but excluding there-

from: (1) the rail welding plant, automobile loading/unloading facility, and the DEC Computer in Laurel Yard; (2) all "non-essential" right of way and station grounds to be agreed upon by the parties; (3) the Intermodal Hub facility at Missoula; (4) the granite quarry and stockpile of ballast located at McQuarry Station east of Missoula near M.P. 106.4; (5) the Intermodal Hub facility at Billings and the Yellowstone Division office facility, fixtures and equipment at Billings; and (6) BN's microwave and communication equipment and facilities located on, along or adjacent to the Leased Premises (the "Excluded Properties"). Attached are Exhibit B-1 showing the Premises between Huntley and West Helena outlined in red, Exhibit B-2 showing the Premises between Phosphate and Sand Point outlined in red and Exhibit B-3 showing the Premises between De Smet and Paradise outlined in red (hereinafter together called the "Leased Premises"). Attached as Exhibits B-4 through B-9 are prints showing the Excluded Properties outlined in green. BN does not warrant its quality of title to the Premises nor undertake to defend MRL in the peaceable possession or use thereof, and no covenant of quiet enjoyment is made.

B. <u>BN Rights</u>. BN reserves unto itself and others, the right of access (but not including the right to operate trains or other vehicles or rolling stock on the trackage leased to MRL) to any BN property adjoining the Leased Premises, and the right to construct, relocate, maintain and

rights and remedies under the BN Mortgages and in equity or at law.

L. Lease Subject to BN Mortgages. This Lease shall not effect an assignment to MRL of BN's rights or obligations under the BN Mortgages, except such obligations as may relate to the continued maintenance and operation of the Premises for railroad purposes which obligations will be satisfied by compliance with this Agreement, and MRL understands that any right to cure a BN default or exercise other privileges under the BN Mortgages may be granted to MRL, if at all, at the sole discretion of the Trustees.

M. Title to Leased Premises. Title to the Leased Premises (including without limitation all fixtures, facilities and buildings) and to any and all additions, betterments and improvements to and of the Premises, whether made by BN or by MRL, shall remain the property of BN as lessor and shall not be removed by MRL, subject to Subsections N and S. MRL shall, if the purchase option set forth in Subsection S is not exercised, surrender possession of the Premises, as improved, to BN on Lease expiration or termination, free of any liens or encumbrances, not existing on the Transfer Date, and created or permitted by or through MRL without BN's written consent, and in at least as good a condition as pertained on the Transfer Date of this Agreement, in accordance with the obligations set forth in Subsection N. Should MRL, having not exercised its purchase option in accordance with its terms, fail to surrender possession of the Premises as

required (unless prohibited from surrendering possession by law or order of court or agency of competent jurisdiction), MRL shall pay to BN, as rental during any such hold-over period, to compensate BN partially for the loss of use of the Premises and disruption of operations, a sum equal to one hundred twenty-five percent (125%) of the rental rate specified in Section 3.C., payable weekly in arrears, and MRL shall be deemed a tenant at sufferance only. Payment of such rental is not BN's exclusive remedy and shall not relieve MRL from the consequences of breach of its said obligation to surrender possession.

N. Maintenance. MRL has inspected to its satisfaction the Premises and accepts them AS IS as of the date of execution of this Agreement. MRL shall repair, manage, and maintain the Premises in compliance with this Subsection, so as to accommodate continuous and uninterrupted train operations.

To comply with this Subsection N, MRL covenants to perform Maintenance of Leased Premises in a manner such that at all times Leased Premises shall meet the "Standard of Maintenance" applicable to the particular type or kind of rail facility or structure set forth hereinafter. BN agrees to deliver to MRL at Transfer the Leased Premises in not less than the FRA Track Safety Standards classes and maintenance condition that such lines exist in as of the date hereof.

MRL agrees that the Standard of Maintenance for the mainline trackage and all track structures, switches, track materials, and roadbed related thereto shall be a standard of

maintenance which allows said mainline at all times during this Agreement to meet the various classes of FRA Track Safety Standards permitting train operations at the timetable speeds and pursuant to the general orders existing over the Leased Premises on the date of Transfer. The Standard of Maintenance for all other trackage, track structures, switches, and all related track materials, structures and roadbed shall be the condition described in the report of the joint inspection of the parties. There shall be attached hereto at Transfer as Exhibit D an excerpt from the current timetable and the general orders which indicate the operating speeds currently in effect over the Leased Premises. BN shall remove prior to Transfer all temporary conditions requiring restrictions on operations not contained in Exhibit D.

MRL may identify from time to time to BN trackage or other structures which it wishes to maintain at less than the designated Standard of Maintenance applicable to such facility or structure. Upon such notice, BN shall determine whether it is willing to permit MRL to maintain such facility or structure in less than the applicable Standard of Maintenance. Unless a written waiver of the applicable Standard of Maintenance is granted by BN with respect to any particular facility or structure, the Leased Premises shall be maintained to the designated Standard of Maintenance at all times during the Term.

The parties agree to make an annual joint inspection of the Leased Premises to determine whether during the course of the year all facilities were maintained in accordance with the applicable Standard of Maintenance. Such inspection shall include an annual inspection of the mainline track by Sperry car provided by BN at BN's sole expense and at such reasonable time as BN shall select. In the event that as a result of the joint inspection of the Leased Premises or the Sperry car inspection, BN believes that any facility, structure, or other portion of the Leased Premises fails to meet the appropriate Standard of Maintenance, BN shall so advise MRL of the steps necessary in BN's judgment to bring the facility into a condition meeting the applicable Standard of Maintenance. Thereafter, MRL shall have a reasonable period of time, such time to be mutually agreed upon, within which to take corrective action to bring the alleged non-complying facility into the applicable Standard of Maintenance. In the event MRL shall not take such corrective action within a reasonable period of time, BN shall have the right, after reasonable notice, to take such corrective action at BN's sole expense. BN may deduct all of such expense from the per car allowances owed to MRL under the Rate and Allowance Agreement provided that, if the matter is submitted to arbitration pursuant to Section 19. hereof, until such arbitration is completed BN may deduct only one-half of such amount. If requested, the arbitrators shall decide whether and to

what extent BN or MRL is to bear the expense of taking such action.

MRL agrees to maintain adequate maintenance records for the Leased Premises during the Term to permit a determination of the existing maintenance level for the Leased Premises at any given point in time. The parties understand and agree that such records shall include track profiles which shall be based upon BN's track profiles for the Leased Premises which BN shall provide to MRL at Transfer, inspection reports, reports of materials removed, scrapped, redeployed or installed new and other such maintenance records. Prior to the end of each Agreement Year, other than the first Agreement Year, MRL agrees to submit to BN its proposed maintenance plan for the upcoming Agreement Year. In addition, prior to the end of every third Agreement Year over the Term, MRL will submit to BN a ten-year capital and maintenance plan for the Leased Premises.

MRL agrees that it shall not remove any of the existing Leased Premises and replace same with materials of inferior quality without the advance consent of BN. BN's consent to remove track materials or other parts of the Leased Premises in the course of MRL's performance of ordinary and routine Maintenance shall not be necessary when any materials removed from the Leased Premises are to be, and in fact are, soon after replaced by materials of equal or superior quality, in which event MRL may retain and dispose of for its own account any materials so removed.

MRL agrees to comply with all laws, ordinances, rules, regulations, final orders and decrees applicable to the Leased Premises and Maintenance thereof and shall indemnify, defend, protect and hold harmless BN from and against any fines or penalties levied against MRL or BN as a result of MRL's noncompliance with said laws, ordinances, rules, regulations, final orders and decrees.

NOTICE OF LEASE

NOTICE IS HEREBY GIVEN that on the 30th day of October, 1987, Burlington Northern Railroad Company, Lessor, and Montana Rail Link, Inc. Lessee, entered into a Lease for the following described premises:

> The rail line between Huntley, Montana, at M.P. 209.91 and West Helena, Montana, at M.P. 2.95 Main Track 1 and M.P. 5.02 Main Track 2 and the rail line between Phosphate, Montana, at M.P. 52.94 (Spokane 2nd Subdivision) and Sand Point, Idaho at M.P. 2.79 (Spokane 5th Subdivision), and the rail line between De Smet, Montana, at M.P. 0.00 and Paradise, Montana, at M.P. 64.27 (Spokane 5th Subdivision), including the track, track material, wires, pipes, conduits, poles, guys, bridges, switches, buildings, culverts, signals, scales and related structures, all ancillary and directly continguous rail operating yards (including the Laurel Yard), facilities, plants, and appurtenances, but excluding therefrom: (1) the rail welding plant, automobile loading/unloading facility, and the DEC Computer in Laurel Yard; (2) all "non-essential" right of way and station grounds to be agreed upon by the parties; (3) the Intermodal Hub facility at Missoula; (4) the granite quarry and stockpile of ballast located at McQuarry Station east of Missoula near M.P. 106.4; (5) the Intermodal Hub facility at Billings and the Yellowstone Division office facility, fixtures and equipment at Billings, and (6) BN's microwave and communication equipment and facilities located on, along or adjacent to the Leased Premises (the "Excluded Properties").

The Lease between the parties is on terms and conditions as more specifically set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hand on the 30th day of October, 1987.

BURLINGTON NORTHERN RAILROAD COMPANY

By Doris W. Gaskin Jr.
Its:

MONTANA RAIL LINK, INC.

By
Its: VP

STATE OF ~~MONTANA~~ TEXAS)
:ss
County of ~~Missoula~~ Tarrant)

On the 30th day of October, before me, a notary public for the State of ~~Montana~~ Texas, personally appeared DARIUS W. GASKINS JR, on behalf of Burlington Northern Railroad Company, and known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Julie A. Moberly
Notary Public for the State of ~~Montana~~ Texas
(SEAL) Residing at Ft. Worth TX
My Commission Expires:

JULIE A. MOBERLY
Notary Public, State of Texas
My Commission Expires 11-9-07

STATE OF ~~MONTANA~~ TEXAS)
:ss
County of ~~Missoula~~ Tarrant)

On the 30th day of October, before me, a notary public for the State of ~~Montana~~ Texas, personally appeared DOEN PARKINSON, on behalf of Montana Rail Link, Inc., and known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Julie A. Moberly
Notary Public for the State of ~~Montana~~ Texas
(SEAL) Residing at Ft. Worth, TX
My Commission Expires:

JULIE A. MOBERLY
Notary Public, State of Texas
My Commission Expires 11-9-07

EASEMENT FOR RAILWAY RIGHT OF WAY

KNOW ALL MEN That Missoula County, a municipal corporation, of the State of Montana, in consideration of One and no/100 Dollar ($1.00) to it in hand paid, the receipt of which is hereby acknowledged, and the benefits to accrue to it by reason of the construction and operation of the railroad of the grantee herein, does hereby grant to Northern Pacific Railway Company, a corporation, its successors and assigns, a permanent and perpetual right, privilege and easement to construct, operate and maintain a spur track and to pass and repass with its locomotives and cars over and upon that portion of the Missoula County highway (Mullan Road) and highway right of way in the West Half Southwest Quarter Northeast Quarter ($W\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$), Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian Missoula County, Montana, lying between two lines concentric with and distant respectively 25 feet northeasterly and southwesterly, measured radially, from the center line of that certain spur track to be located and constructed across said highway and highway right of way.

Approved as to form
By
Attorney

For a more particular description, and as explanatory hereof, reference is made to the attached plat marked Exhibit "A", which is made a part hereof and shows by red color the strip of land above-described.

Description Approved
Industrial Agt

Dated this 8th day of January, 1957.

MISSOULA COUNTY,
A Municipal Corporation

By
Chairman of the Board of County Commissioners

Commissioner

Commissioner

ATTEST
Joe D Brown
County Clerk
By Evelyn Lind, Deputy

STATE OF MONTANA)
:ss
County of Missoula)

On this 8th day of January, 1957, before me Norval Thompson a Notary Public for the State of Montana, personally appeared R.G. Ostergren, J. J. Howe & H. W. Stoutenburg members of the Board of County Commissioners, known to me to be the Chairman and Commissioners of the Board of County Commissioners of Missoula County, Montana, who being duly sworn did say that the foregoing instrument was signed and sealed in behalf of said County by authority of its Board of County Commissioners and Joe D. Brown, the County Clerk in and for said County, acknowledged said instrument to be the free act and deed of said Board.

Norval Thompson
Notary Public for the State of Montana
Residing at Missoula, Montana
My commission expires August 1 1957

Deed Ex # 729

142988

I received and filed this instrument for record on the 18 day of Apr 1957 at 2:20 o'clock P M and it is recorded in vol 200 of Real Record of the County of Missoula State of Montana on page 35
Fee 2.00
Paid
Return to N.P. Ry. Co
Address G.F.C. Grounds Mgr and Development
Witness my hand EVELYN LIND County Recorder
By Rose Davies Deputy

BN-00008

OVERSIZED
DOCUMENT NOT
SCANNED

BOOK 199 PAGE 385

THIS INDENTURE, Made the 18th day of February, 1957, between PHILIAS LACASSE and FLORIDA LACASSE, his wife, of Missoula, Montana, the parties of the First Part; and NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, the party of the Second Part;

WITNESSETH, That the said parties of the First Part, for and in consideration of the sum of Four Thousand and no/100 Dollars ($4,000.00) lawful money of the United States of America to them in hand paid by said party of the Second Part, the receipt whereof is hereby acknowledged; do by these presents grant, bargain, sell, convey, warrant and confirm unto the said party of the Second Part, and to its successors and assigns forever, the hereinafter described real estate, situated in the County of Missoula and State of Montana, to-wit:

Form Approved By [illegible] Attorney

Description Approved [illegible] Industrial Agt

A strip of land fifty (50) feet wide, being twenty-five (25) feet wide on each side of the center line of that certain spur track located and constructed across that portion of the South Half of the Northwest Quarter (S½NW¼) of Section Nineteen (19), Township Fourteen (14) North, Range Twenty (20) West, Montana Principal Meridian, lying westerly of the one hundred (100) foot wide right of way for the main line of the Northern Pacific Railway Company.

TOGETHER, with all and singular the hereinbefore described premises together with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the First Part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging, TO HAVE AND TO HOLD, all and singular the above mentioned and described premises unto the said party of the Second Part, and to its successors and assigns forever.

And the said parties of the First Part, and their heirs, do hereby covenant that they will forever WARRANT AND DEFEND all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said party of the Second Part its successors and assigns, against the acts and deeds of the said parties of the First Part, and all and every person and persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said parties of the First Part have hereunto set their hands and seals the day and year first hereinbefore written.

Signed, Sealed and Delivered in the Presence of:

Philias Lacasse

Florida Lacasse

STATE OF MONTANA)
:ss
County of Missoula)

On this 18th day of February, 1957, before me, Edward T. Dressman, a Notary Public for the State of Montana, personally appeared Philias Lacasse and Florida Lacasse known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

Edward T. Dressman

NOTARY PUBLIC for the State of Montana
Residing at Missoula, Montana
My commission expires June 25, 1958

BOOK 199 PAGE 386

142340

I received and filed this instrument for record on the 22 day of March 1957 at 8:00 o'clock A M. and it is recorded in Vol. 199 of Deed Records of the County of Missoula, State of Montana, on page 385.
Witness my hand
EVELYN LIND, County Recorder
By [illegible] Deputy
Fee $ 2.00 Paid
Return to P. O. Box [illegible] Missoula, Mont.
Address [illegible] St. Paul, Minn.

INDUSTRIAL DEVELOPMENT DEPARTMENT

Warranty DEED.

Dated July 16, 1957

From Henry Kramer etux

To N. P. Ry. Co.

Description 50 ft. strip of land across portion of S½ NE¼ Sec. 24, T. 14 N. R. 21 W. M.P.M. Schilling, Mont.

Noted on Title Plat No. 6.2 K-1 DBA 9-6-57

Noted on Track Profile M. P.

Noted on Station Plat

R. of W. Change Memo No. 159 1957

Corres. File No. 22975

A Voucher $4000.00

B Contract dated Oct. 15, 1956

Abstract of Title

C Opinion on Title

Report of Negotiations

Release of Mortgage

File 4434

Coeur d'Alene Branch Deed No. 500

BN-00010

BOOK 201 PAGE 588

THIS INDENTURE, Made the 16th day of JULY, A.D., 1957, BETWEEN HENRY KRAMER and MARGARET KRAMER, his wife, of Missoula, Montana, the parties of the First Part; and NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, the party of the Second Part;

WITNESSETH, That the said parties of the First Part, for and in consideration of the sum of Four Thousand and no/100 Dollars ($4,000.00) lawful money of the United States of America to them in hand paid by said party of the Second Part, the receipt whereof is hereby acknowledged; do by these presents grant, bargain, sell, convey, warrant and confirm unto the said party of the Second Part, and to its successors and assigns forever, the hereinafter described real estate, situated in the County of Missoula and State of Montana, to-wit:

Approved as to form
By HBR
Attorney

Description Approved
Industrial Agt.

A strip of land fifty (50) feet wide, being twenty-five (25) feet wide on each side of the center line of that certain spur track located and constructed across that portion of the South Half Northeast Quarter (S½NE¼), Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian, lying easterly of the right of way for Mullan Road.

TOGETHER, with all and singular the hereinbefore described premises together with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the First Part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging, TO HAVE AND TO HOLD, all and singular the above mentioned and described premises unto the said party of the Second Part, and to its successors and assigns forever.

And the said parties of the First Part, and their heirs, do hereby covenant that they will forever warrant and defend all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said party of the Second Part, its successors and assigns, against the acts and deeds of the said parties of the First Part, and all and every person and persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said parties of the First Part have hereunto set their hands and seals the day and year first hereinbefore written.

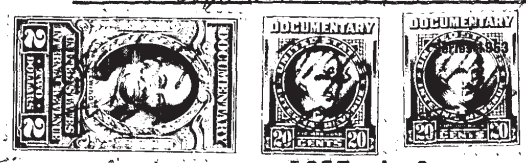
Signed, Sealed and Delivered in the Presence of:

Dorothy Vander Pas

Earnest P. Dussault

Henry Kramer

Margaret Kramer



STATE OF MONTANA)
: ss
County of Missoula)

On this 16th day of JULY in the year 1957, before me EDWARD T. DUSSAULT a Notary Public for the State of Montana personally appeared HENRY KRAMER & MARGARET KRAMER, his wife known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

NOTARY PUBLIC for the State of Montana
Residing at Missoula, Montana
My commission expires June 25, 1958.

Earnest P. Dussault

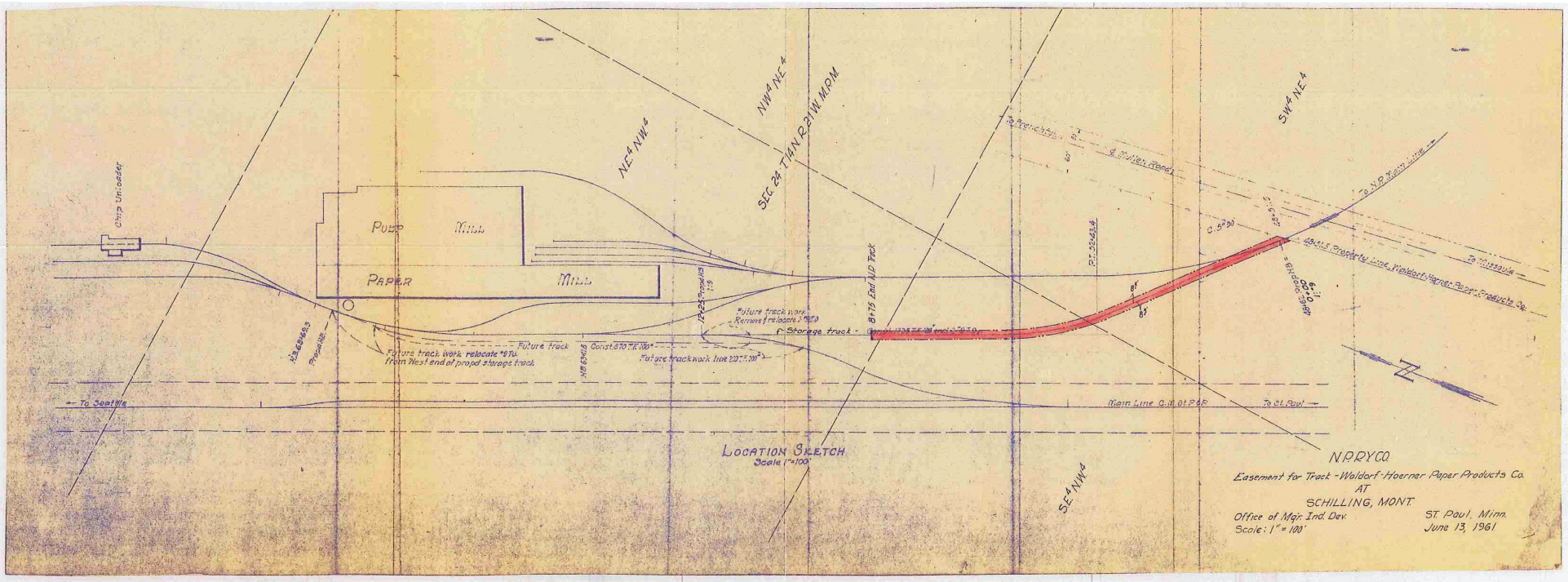
145505 ✓✓

I received and filed this instrument for record on the 12 day of Aug. 1957 at 8:32 o'clock A.M. and it is recorded in vol. 201 of Deed Records of the County of Missoula, State of Montana, on page 588. Fee 1.00

Paid ..... Return to N.P. Railway Co. Witness my hand, EVELYN LIND, County Recorder

Address St. Paul, Minn. By Rose Lewis Deputy

attention: F.C. Lemp, Mgr. Industrial Development.


Chip Unloader
Pulp Mill
Paper Mill
NE¼ NW¼
NW¼ NE¼
Sec. 24 T14N R21W M.P.M.
SW¼ NE¼
SE¼ NW¼
Future track
Future track work relocate 4 Tu. from West end of propd storage track
Future track work
Remove & relocate 1 Tu
Storage track
Future track work line
8+75 End N.P. Track
Pt. 32+43.4
To Missoula
To N.P. Main Line
Main Line C.M.St.P.&P.
To St. Paul
To Seattle
Location Sketch
Scale 1" = 100'
N.P. RY. CO.
Easement for Track - Waldorf-Hoerner Paper Products Co.
AT
SCHILLING, MONT.
Office of Mgr. Ind. Dev.
Scale: 1" = 100'
St. Paul, Minn.
June 13, 1961

BN-00011

NP 520

EASEMENT FOR SPUR TRACK UNDER AGREEMENT R W14 500—C-H

This Indenture, made this 17th day of October A. D. 1961 between WALDORF-HOERNER PAPER PRODUCTS COMPANY, INC. a Delaware corporation party of the first part, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation under the laws of the state of Wisconsin, having its principal place of business at St. Paul, Minnesota, party of the second part,

WITNESSETH:

For and in consideration of the sum of one dollar to it paid, the receipt whereof is hereby acknowledged, and in performance of the agreement between Waldorf-Hoerner Paper Products Company, Inc. and the Northern Pacific Railway Company dated June 13, 1961, the party of the first part has GRANTED, and by these presents does GRANT, to the party of the second part, its successors and assigns, the following described premises, situate in the County of Missoula and State of Montana to-wit:

That certain tract or strip of land 17 feet in width, being 8½ feet on each side of the center line of the certain spur track or siding which is now located or may be located and constructed across the premises of the party of the first part, described as follows:

Portions of the Southwest Quarter Northeast Quarter (SW¼NE¼), Southeast Quarter Northwest Quarter (SE¼NW¼) and Northeast Quarter Northwest Quarter (NE¼NW¼) of Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian.

For a more particular description, and as explanatory hereof, reference is made to the attached plat, which is hereby made a part of this indenture and shows colored red the strip above described.

To Have and to Hold said premises unto the party of the second part, its successors and assigns, according to the conditions in said agreement stated.

Provided that should the party of the second part cease to use said premises for railway purposes, and remove its rails therefrom, the same shall revert to the party of the first part.

The party of the second part shall have the right to enter upon the lands of the party of the first part adjoining said premises for the purpose of constructing, maintaining and operating said track or tracks.

In Witness Whereof, the party of the first part has executed these presents the day and year first above written.

WITNESSES:

Elgar Flint

Joellyn Gray

WALDORF-HOERNER PAPER PRODUCTS COMPANY, INC.

By [signature] (Seal)
Title:

By W. C. Holz (Seal)
Title:

BN-00012

STATE OF ..... }ss.
County of ..... }

I, ..., a Notary Public do hereby certify that on this ..... day of ..... 19 ..., personally appeared before me ..... to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as ..... free and voluntary act and deed for the uses and purposes therein mentioned.

Give under my hand and official seal this ..... day of ..... 19 ....

.....
Notary Public, ... County, ...
My Commission expires .....

STATE OF Montana }ss.
County of Missoula }

On this 17th day of October in the year 19.61, before me the undersigned a Notary Public, personally appeared N.H. Sandberg and W.C. Hodge to me known to be the President and Asst Secretary respectively, of the Lessee Company, the corporation which executed the foregoing instrument, and who being duly sworn did say, that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corportion by authority of its Board of Directors, and the said President and Asst Secretary acknowledged said instrument to be the free act and deed of said corporation.

Given under my hand and official seal this 17th day of October 19.61.

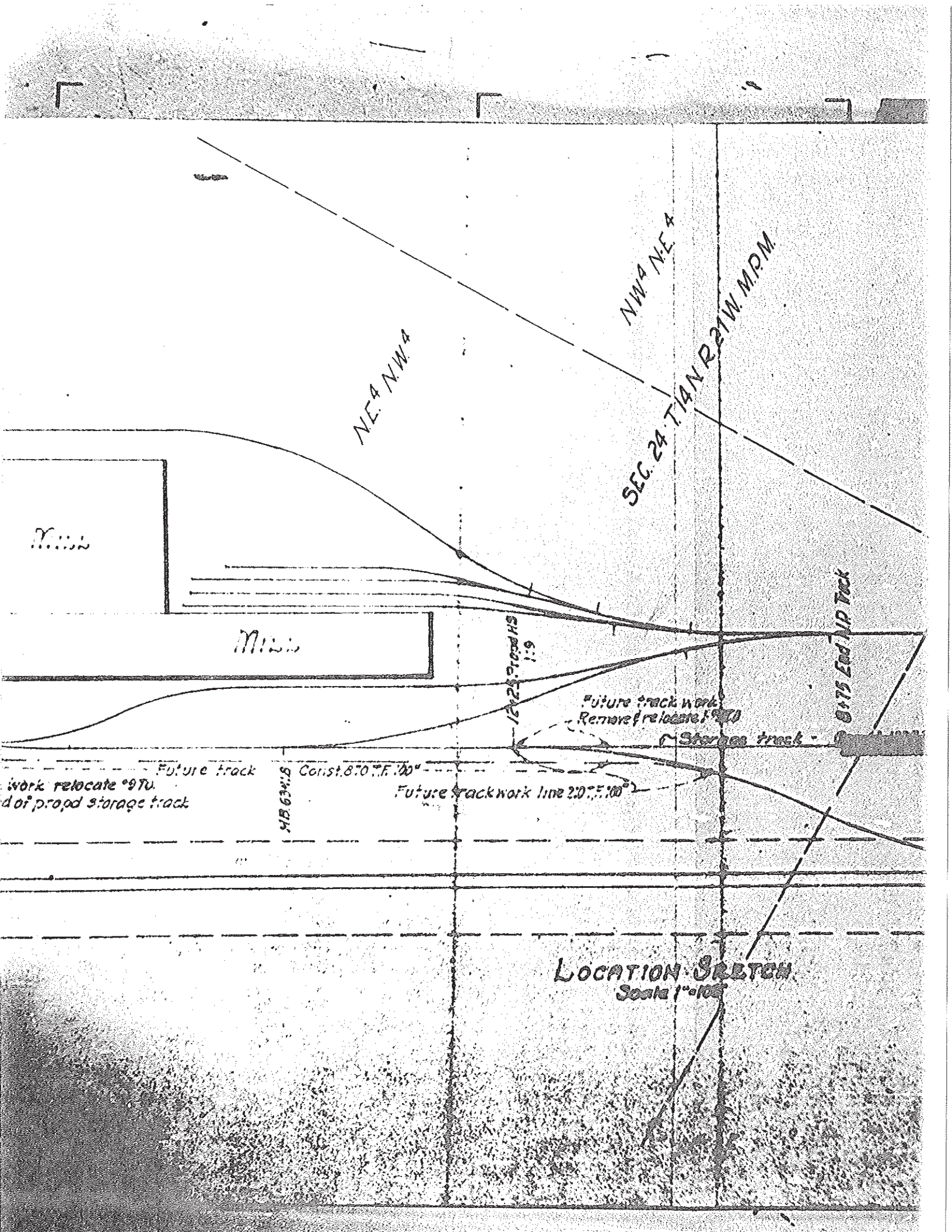
Vern Evans Jones
Notary Public, Missoula County, Montana
My Commission expires Aug. 10, 1962

EVAN JONES NOTARIAL SEAL STATE OF MONTANA

19[illegible] Deed Bk. 10 25

I received and filed this instrument for record on the 23 day of Feb 1962 at 8:12 o'clock A.M. and it is recorded in Vol 223 of Deed Records of the County of Missoula, State of Montana, on page 384 Fee $2.00
Fee 4.00 Return to W. Railway Co. Witness my hand, MARTIN S. DEHNER, County Recorder
Address Properties Department By [illegible] Deputy
St. Paul, Minn.
Atta: F.C. Sempf.

Chip Unloader
Pulp Mill
Paper
Propane
Future track work relocate 9 RR
from West end of proposed storage track
Future tr
STATE OF
County of
ss.


NE 4 NW 4
NW 4 NE 4
SEC. 24 T14N R21W M.P.M.
Mill
Mill
Future track work
Remove & relocate
Storage track
Future track
Const. 870 L.F. 20"
Future trackwork line 20 L.F. 100"
HB 634.8
Proposed HS
1:9
Bnd Up Track
LOCATION SKETCH
Scale 1" = 100'

W-15621

THIS INDENTURE, Made this 4th day of October, A D 1967, between HOERNER-WALDORF CORPORATION OF MONTANA, a Montana corporation, party of the first part, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation under the laws of the State of Wisconsin, having its principal place of business at St Paul, Minnesota, party of the second part,

WITNESSETH

For and in consideration of the sum of One Dollar ($1 00) to it paid, the receipt whereof is hereby acknowledged, the party of the first part has GRANTED, and by these presents does GRANT, to the party of the second part, its successors and assigns, the following described premises, situate in the County of Missoula and State of Montana, to-wit

> Those certain tracts or strips of land seventeen (17) feet in width, being eight and one-half (8-1/2) feet on each side of the center line of the certain spur tracks or sidings which are now located and constructed across the premises of the party of the first part, described as follows
>
> Portions of the Southwest Quarter Northeast Quarter (SW1/4 NE1/4), Southeast Quarter Northwest Quarter (SE1/4 NW1/4), and Northeast Quarter Northwest Quarter (NE1/4 NW1/4) of Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian, as shown colored RED on the map marked Exhibit "A" dated July 18, 1967, attached hereto and made a part hereof

NBK

This agreement supersedes and cancels that certain other easement agreement granted by Waldorf-Hoerner Paper Products Company, Inc , (predecessor in interest of Hoerner-Waldorf Corporation) to Northern Pacific Railway Company by instrument dated October 17, 1961, recorded in the office of the register of deeds, Missoula County, Montana on February 23, 1962 in Book 223, page 384, as Document No 190003, covering a portion of the premises hereinabove described

TO HAVE AND TO HOLD said premises unto the party of the second part, its successors and assigns, provided, however, that should the party of the second part cease to use said premises for railway purposes, and remove its rails therefrom, the same shall revert to the party of the first part

The party of the second part shall have the right to enter upon the lands of the party of the first part adjoining said premises for the purposes of constructing, maintaining and operating said track or tracks

IN WITNESS WHEREOF, the party of the first part has executed these presents the day and year first above written

WITNESSES

HOERNER-WALDORF CORPORATION OF MONTANA

By _____
Title _____

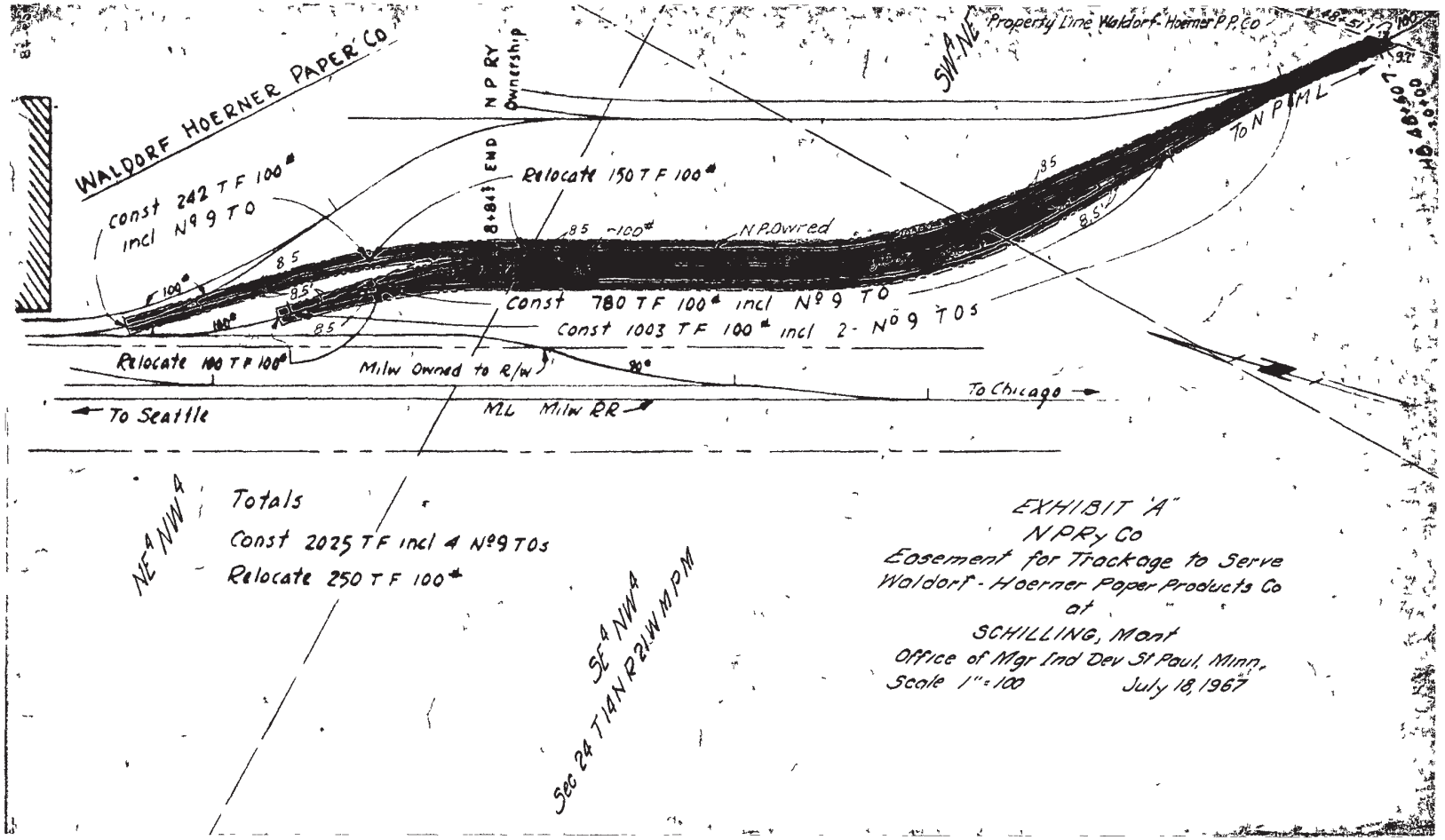
STATE OF Minnesota)
) ss
County of Ramsey)

On this 17th day of October in the year 1967, before me, Paul W Thorne, a Notary Public for the State of ~~Montana~~ Minnesota, personally appeared V D Shuck known to me to be the ~~President~~ Senior Vice President of the Hoerner-Waldorf Corporation of Montana, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year in this certificate first above written

PAUL W THORNE
Notary Public Ramsey County, Minn
My Commission Expires Sept 3 1968

Paul W Thorne


WALDORF HOERNER PAPER CO
N P RY Ownership
8+84 END
Property Line Waldorf-Hoerner P.P. Co
SW¼ NE¼
Const 242 T F 100#
incl Nº 9 T O
Relocate 150 T F 100#
N.P. Owned
Const 780 T F 100# incl Nº 9 T O
Const 1003 T F 100# incl 2 - Nº 9 T Os
Relocate 100 T F 100#
Milw Owned to R/W
To N P M L
To Chicago
To Seattle
M L Milw RR
NE¼ NW¼
Totals
Const 2025 T F incl 4 Nº 9 T Os
Relocate 250 T F 100#
SE¼ NW¼
Sec 24 T 14 N R 21 W M P M
EXHIBIT "A"
N P Ry Co
Easement for Trackage to Serve
Waldorf - Hoerner Paper Products Co
at
SCHILLING, Mont
Office of Mgr Ind Dev St Paul, Minn.
Scale 1" = 100
July 18, 1967

QUITCLAIM DEED

THIS INDENTURE, Made the 8th day of August in the year of our Lord one thousand nine hundred and seventy-eight, between BURLINGTON NORTHERN INC., a corporation organized and existing under the laws of the State of Delaware, successor in interest to Northern Pacific Railway Company, Grantor, and HOERNER-WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, Grantee,

WITNESSETH: That the said Grantor for and in consideration of the sum of One and no/100 Dollar ($1.00) and other good and valuable consideration, to it in hand paid by the said Grantee, the Receipt of Which is hereby acknowledged, does convey, remise, release and forever quitclaim unto the said Grantee, and to its successors and assigns, the following described real estate, to-wit:

Those certain tracts or strips of land 17 feet in width, being 8 1/2 feet on each side of the center line of the certain spur tracks or sidings which are now located and constructed across the premises of the Burlington Northern Inc., described as follows:

Approved as to form
Asst. Gen. Counsel
Law Dept. B.N.I.

Portions of the Southwest Quarter Northeast Quarter (SW1/4 NE1/4), Southeast Quarter Northwest Quarter (SE1/4 NW1/4) and Northeast Quarter Northwest Quarter (NE1/4 NW1/4) of Section 24, Township 14 North, Range 21 West, Montana Principal Meridian, Missoula County, Montana, as shown colored red on the map marked Exhibit "A" dated July 18, 1967, attached hereto and made a part hereof.

Together with all the tenements, hereditaments and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said Grantor, of, in or to the said premises and every part and parcel thereof.

APPROX. AREA 1.07AC.

TO HAVE AND TO HOLD, all and singular the said premises, with the appurtenances unto the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, said Grantor has caused its corporate name to be subscribed and its corporate seal to be affixed, by its proper officers, thereunto duly authorized, on this 8th day of August, A.D. 1978.

BURLINGTON NORTHERN INC.

BY /s/ J. C. Kenady
Vice President

(S E A L)

ATTEST:

BY /s/ F. A. Deming
Assistant Secretary

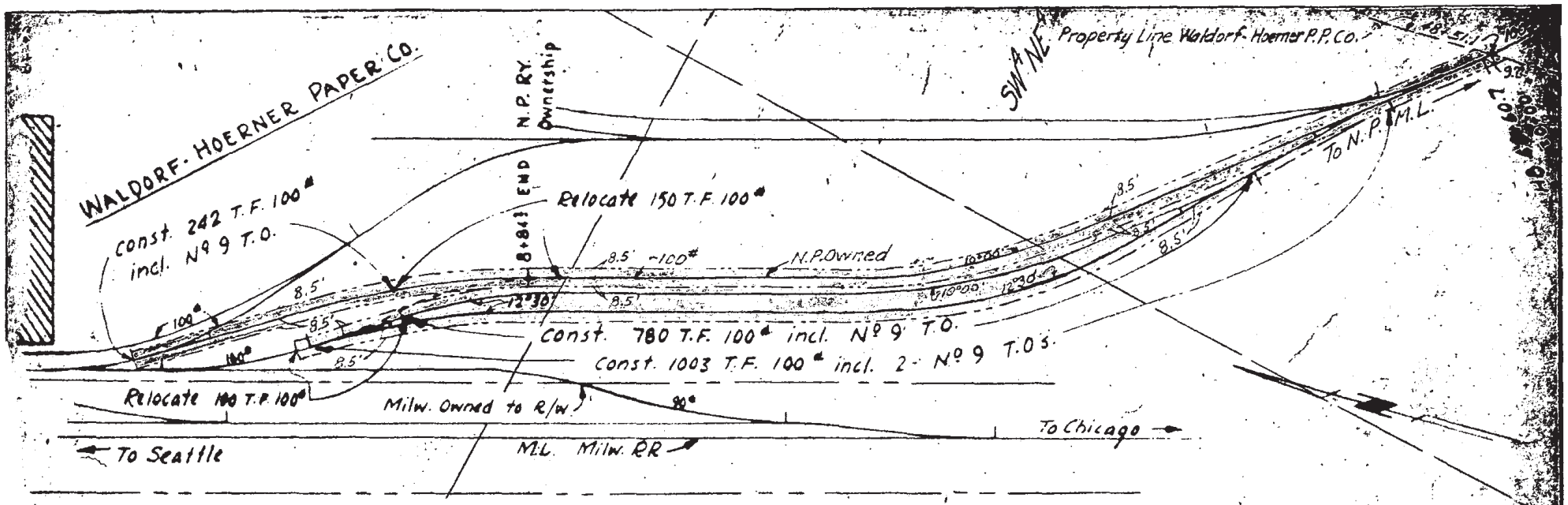
STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

On this 8th day of August in the year 1978, before me, a Notary Public, personally appeared J. C. KENADY known to me to be Vice President of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

/s/ R. H. Brokopp

R. H. BROKOPP
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires April 22, 1983

APPROVED
As To Form
Law Dept.
As To Property Interests
As To Description



NE¼ NW¼

Totals:

Const. 2025 T.F. incl. 4-Nº 9 T.O.s.

Relocate 250 T.F. 100#

SE¼ NW¼ Sec. 24 T.14N. R.21W. M.P.M.

EXHIBIT "A"
N.P.Ry. Co.
Easement for Trackage to Serve
Waldorf-Hoerner Paper Products Co.
at
SCHILLING, Mont
Office of Mgr. Ind. Dev. St. Paul, Minn.
Scale: 1" = 100' July 18, 1967

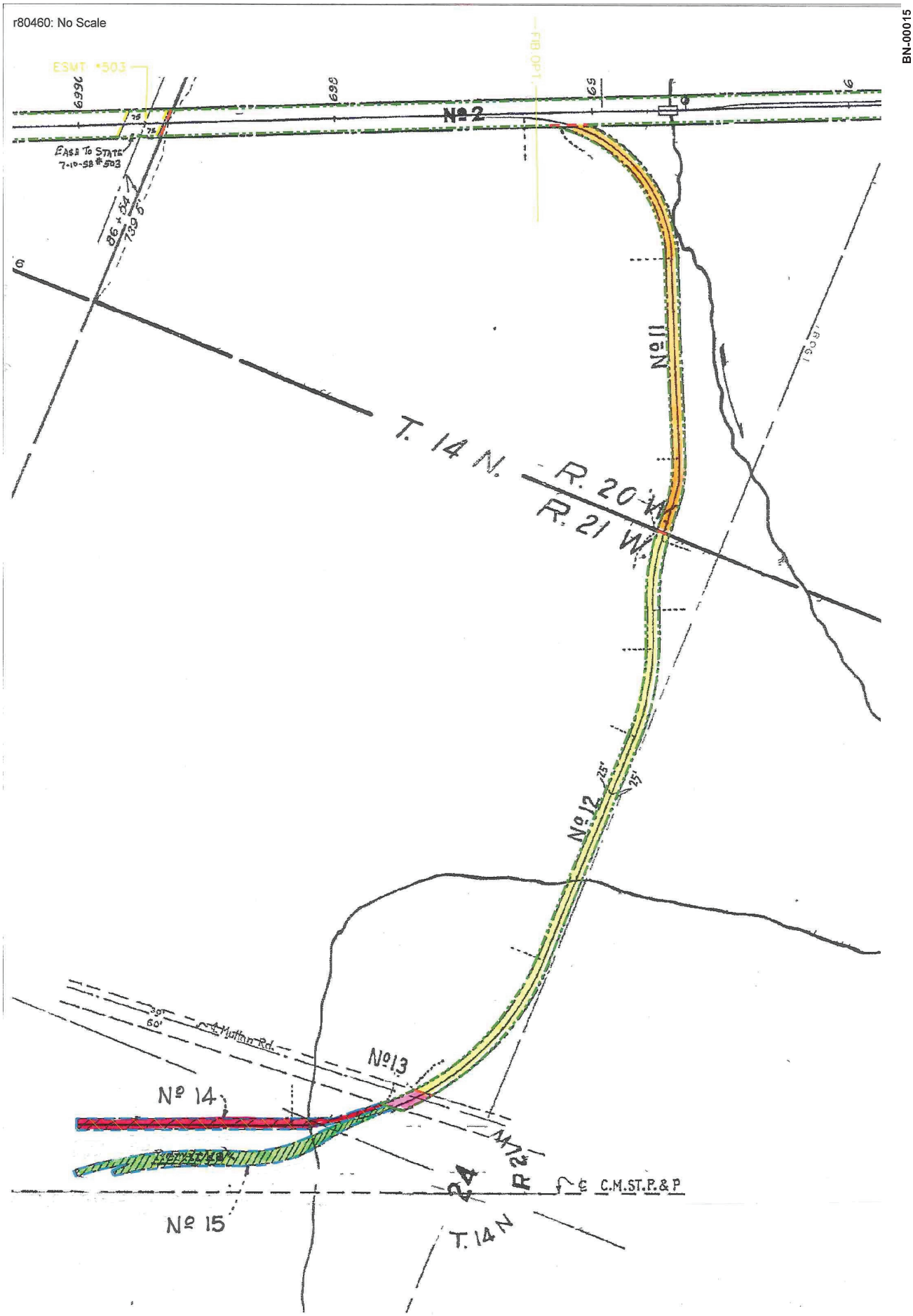
File	Station	County	State	Remarks	Sale No.
C.F. 22975 Pt. 2	Missoula	Missoula	Montana	Sale of land to Hoerner-Waldorf Division, Champion International Corporation.	S-3856

FORM 60078 2-74

A.F.E. _____ Property Management MAPS Book K-1 Pg. 6-2 Engineering _____ V. S 19

r80460: No Scale

BN-00015



Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY", A DELAWARE CORPORATION,

WITH AND INTO "BURLINGTON NORTHERN RAILROAD COMPANY" UNDER THE NAME OF "THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTIETH DAY OF DECEMBER, A.D. 1996, AT 9:01 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 1996.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

0561728 8100M

071100685

AUTHENTICATION: 6061949

DATE: 10-10-07

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:01 AM 12/30/1996
960387152 - 0561728

CERTIFICATE OF MERGER
MERGING
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
WITH AND INTO
BURLINGTON NORTHERN RAILROAD COMPANY

* * * * * * * *

Pursuant to Section 251
of the General Corporation
Law of the State of
Delaware

Pursuant to Section 251 of the General Corporation Law of the State of Delaware (the "General Corporation Law"), the undersigned corporation does hereby certify:

FIRST: The name and state of incorporation of each of the constituent corporations to the merger is as follows: Burlington Northern Railroad Company ("BNRR") is a Delaware corporation organized and existing under the General Corporation Law; and The Atchison, Topeka and Santa Fe Railway Company ("ATSF") is a Delaware corporation organized and existing under the General Corporation Law.

SECOND: An Agreement and Plan of Merger, dated December 30, 1996, between BNRR and ATSF has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 251 of the General Corporation Law.

THIRD: The name of the surviving corporation of the merger is Burlington Northern Railroad Company (the "Surviving Corporation"), and the name shall be changed to The Burlington Northern and Santa Fe Railway Company.

FOURTH: The Restated Certificate of Incorporation of the Surviving Corporation shall be amended in its entirety as of the Effective Time as set forth in Exhibit A hereto.

FIFTH: The executed Agreement and Plan of Merger is on file at an office of the Surviving Corporation, the address of which is 2650 Lou Menk Drive, Second Floor, Fort Worth, Texas 76131-2830.

SIXTH: A copy of the Agreement and Plan of Merger will be furnished, on request and without cost, to any stockholder of either of the constituent corporations.

SEVENTH: That this Certificate of Merger shall be effective on December 31, 1996 at 9:00 a.m. (Eastern Time).

IN WITNESS WHEREOF, the undersigned has executed this Certificate on this 30th day of December, 1996.

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____

Its: Chairman, President & Chief Executive Officer

Robert D. Krebs

EXHIBIT A

RESTATED CERTIFICATE OF INCORPORATION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

FIRST: The name of the Corporation is The Burlington Northern and Santa Fe Railway Company.

SECOND: The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("Delaware Law").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock, having a par value of $1.00 per share.

FIFTH: In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized:

1. To make, amend or repeal the By-Laws of the Corporation, subject to the power of the stockholders of the Corporation having voting power to amend or repeal By-Laws whether adopted by them or otherwise.

2. To remove at any time any officer elected or appointed by the Board of Directors by such vote of the Board of Directors as may be provided for in the By-Laws. Any other officer of the Corporation may be removed at any time by a vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the By-Laws or by a vote of the Board of Directors.

3. To establish bonus, profit, sharing, stock option, stock purchase, retirement or other types of incentive or compensation plans for the employees (including officers and directors) of the Corporation and to fix the terms of such plans and to determine, or

prescribe the method for determining, the persons to participate in any such plans and the amount of their respective participations.

4. To authorize, and to cause to be executed mortgages, pledges, liens and charges upon the real and personal property of the Corporation and to issue obligations secured thereby.

Both stockholders and directors shall have power to hold their meetings, and the Corporation may have one or more offices, within or without the State of Delaware, and the books of the Corporation may, subject to the laws of the State of Delaware, be kept outside of such State at such places as may be from time to time determined by the Board of Directors.

SEVENTH: (1) A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by Delaware Law.

(2) (a) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE SEVENTH shall also include the right to be paid by the Corporation the expenses incurred in connection with any such proceeding in advance of its final disposition of the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE SEVENTH shall be a contract right.

(b) The Corporation may, by action of its Board of Directors, provide indemnification to such of the directors, officers, employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

(3) The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under Delaware Law.

(4) The rights and authority conferred in this ARTICLE SEVENTH shall not be exclusive of any other right which any person may otherwise have or hereafter acquire.

(5) Neither the amendment nor repeal of this ARTICLE SEVENTH, nor the adoption of any provision of this Certificate of Incorporation or the By-laws of the Corporation, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall eliminate or reduce the effect of this ARTICLE SEVENTH in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

EIGHTH: The Corporation reserves the right to amend this Restated Certificate of Incorporation in any manner permitted by Delaware Law and, with the sole exception of those rights and powers conferred under the above ARTICLE SEVENTH, all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

State of Delaware

Office of Secretary of State.

I, **Eugene Bunting,** *Secretary of State of the State of Delaware,*

do hereby certify *that the above and foregoing is a true and correct copy of* Certificate of Agreemant of Merger of the "NORTHERN PACIFIC RAILWAY COMPANY", a corporation organized and existing under the laws of the State of Wisconsin, "GREAT NORTHERN RAILWAY COMPANY", a corporation organized and existing under the laws of the State of Minnesota, and the "PACIFIC COAST R.R. CO.", a corporation organized and existing udner the laws of the State of Washington, merging with and into the "GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.", a corporation organized and existing under the laws of the State of Delaware, under the name of"GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.", as received and filed in this office the second day of March, A.D. 1970, at 9:59 o'clock A.M.;

And I do hereby further certify that the aforesaid Corporation shall be governed by the laws of the State of Delaware.

In Testimony Whereof, *I have hereunto set my hand and official seal at Dover this* second *day of* March *in the year of our Lord one thousand nine hundred and* seventy.

Eugene Bunting

Secretary of State

R. H. Caldwell

Ass't Secretary of State

FORM 121

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY

FIRST: That the Board of Directors of Great Northern Pacific & Burlington Lines, Inc., at a special meeting held pursuant to written waiver of notice signed by all Directors entitled to notice thereof on May 9, 1968, adopted a resolution setting forth a proposed amendment to the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and submitting said amendment to the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

> "RESOLVED, That it be, and hereby is, proposed and declared advisable that the Certificate of Incorporation of this Corporation be amended by striking out Article First thereof and substituting in lieu thereof the following:
>
> "FIRST: The name of the corporation is Burlington Northern Inc."

SECOND: That thereafter, pursuant to resolution of its Board of Directors, the proposed amendment was submitted to the stockholders of said corporation and was adopted by consent of such stockholders in accordance with Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: That the capital of said corporation will not be reduced under or by reason of said amendment.

IN WITNESS WHEREOF, said Great Northern Pacific & Burlington Lines, Inc., has caused its corporate seal to be hereunto affixed and this certificate to be signed by its Vice Chairman and its Secretary this 12th day of February, 1970.

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

By WILLIAM J. QUINN
Vice Chairman of the Board of Directors

ATTEST:

L. N. ASSELL
Secretary

GREAT NORTHERN PACIFIC
& BURLINGTON LINES, INC.
CORPORATE SEAL
1961
DELAWARE

BN-00018

State of Illinois
County of Cook } ss.

Be It Remembered that on this 12th day of February, 1970, personally came before me, a Notary Public in and for the State and County aforesaid, William J. Quinn, Vice Chairman of the Board of Directors of Great Northern Pacific & Burlington Lines, Inc., a Delaware corporation, the corporation described in and which executed the foregoing certificate, known to me to be such, and he, as such Vice Chairman of the Board of Directors, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation, that the facts stated therein are true, that the signatures of said Vice Chairman of the Board of Directors and of the Secretary of said corporation to said foregoing certificate are in the handwriting of the said Vice Chairman of the Board of Directors and Secretary of said corporation, respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

P. E. Hess

Notary Public

P. E. HESS
NOTARY PUBLIC
COOK COUNTY, ILL.

MY COMMISSION EXPIRES APRIL 15, 1971

State of Delaware

Office of Secretary of State.

I, **Eugene Bunting,** *Secretary of State of the State of Delaware,*

do hereby certify *that the above and foregoing is a true and correct copy of*

Certificate of Amendment of the "GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.", as received and filed in this office the second day of March, A.D. 1970, at 10:20 o'clock A.M.

In Testimony Whereof, *I have hereunto set my hand and official seal at Dover this* second *day of* March *in the year of our Lord one thousand nine hundred and* seventy.

Eugene Bunting

Secretary of State

R N Cloell

Ass't Secretary of State

FORM 121

RESTATED CERTIFICATE OF INCORPORATION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

The Burlington Northern and Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Delaware, hereby certifies that:

1. The present name of the corporation (hereinafter called the "Corporation") is THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY. The name under which the Corporation was originally incorporated is Great Northern Pacific & Burlington Lines, Inc., and the date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of Delaware is January 13, 1961.

2. This Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Corporation's Certificate of Merger Merging The Atchison, Topeka and Santa Fe Railway Company with and into Burlington Northern Railroad Company dated December 30, 1996 (including Exhibit A thereto, the Restated Certificate of Incorporation of The Burlington Northern and Santa Fe Railway Company) by integrating and restating and further amending said Restated Certificate of Incorporation of The Burlington Northern and Santa Fe Railway Company in its entirety as set forth in Exhibit A attached hereto and made a part hereof.

3. The Restated Certificate of Incorporation herein certified was duly adopted and approved by the written consent of the board of directors and the stockholder of the Corporation in accordance with the applicable provisions of Sections 141(f), 228, 242 and 245 of the General Corporation Law of Delaware, as amended.

IN WITNESS WHEREOF, said THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY has caused this certificate to be signed by Jeffrey T. Williams, its Assistant Secretary, on January 17th, 2005.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By: Jeffrey T. Williams
Name: Jeffrey T. Williams
Title: Assistant Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:04 AM 01/20/2005
FILED 08:53 AM 01/20/2005
SRV 050047012 - 0561728 FILE

Exhibit A

RESTATED CERTIFICATE OF INCORPORATION OF BNSF RAILWAY COMPANY

FIRST: The name of the Corporation is BNSF Railway Company.

SECOND: The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("Delaware Law").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock, having a par value of $1.00 per share.

FIFTH: In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized:

1. To make, amend or repeal the By-Laws of the Corporation, subject to the power of the stockholders of the Corporation having voting power to amend or repeal By-Laws whether adopted by them or otherwise.

2. To remove at any time any officer elected or appointed by the Board of Directors by such vote of the Board of Directors as may be provided for in the By-Laws. Any other officer of the Corporation may be removed at any time by a vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the By-Laws or by a vote of the Board of Directors.

3. To establish bonus, profit, sharing, stock option, stock purchase, retirement or other types of incentive or compensation plans for the employees (including officers and directors) of the Corporation and to fix the terms of such plans and to determine, or prescribe the method for determining, the persons to participate in any such plans and the amount of their respective participations.

4. To authorize, and to cause to be executed mortgages, pledges, liens and charges upon the real and personal property of the Corporation and to issue obligations secured thereby.

Both stockholders and directors shall have power to hold their meetings and the Corporation may have one or more offices, within or without the State of Delaware, and the books of the Corporation may, subject to the laws of the State of Delaware, be kept outside of such State at such places as may be from time to time determined by the Board of Directors.

SIXTH: (1) A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by Delaware Law.

(2) (a) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE SIXTH shall also include the right to be paid by the Corporation the expenses incurred on connection with any such proceeding in advance of its final disposition of the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE SIXTH shall be a contract right.

(b) The Corporation may, by action of its Board of Director, provide indemnification to such of the directors, officers, employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

(3) The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under Delaware Law.

(4) The rights and authority conferred in this ARTICLE SIXTH shall not be exclusive of any other right which any person may otherwise have or hereafter acquire.

(5) Neither the amendment nor repeal of this ARTICLE SIXTH, nor the adoption of any provision of this Restated Certificate of Incorporation or the By-Laws of the Corporation, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall eliminate or reduce the effect of this ARTICLE SIXTH in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

SEVENTH: The Corporation reserves the right to amend this Restated Certificate of Incorporation in any manner permitted by Delaware Law and, with the sole exception of those rights and powers conferred under the above ARTICLE SIXTH, all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

RECEIVED
MAY 03 2013
ECEJ

BNSF RAILWAY

Brooke Kuhl
General Attorney

BNSF Railway Company
201 West Railroad Ave., Suite 300
Missoula, MT 59801
406-274-7085 Direct
817-352-2398 Fax
Brooke.Kuhl@bnsf.com

May 2, 2013

VIA FEDERAL EXPRESS

Ms. Sharon Abendschan (8ENF-RC)
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

RE: **BNSF RAILWAY'S RESPONSE TO EPA REQUEST FOR INFORMATION PURSUANT TO 104(e) OF CERCLA FOR THE SMURFIT-STONE MILL SITE (SSID #A804)**

Dear Ms. Abendschan:

BNSF Railway Company ("BNSF") received an April 3, 2013 information request pursuant to CERCLA § 104(e) (the "Request") from the United States Environmental Protection Agency Region 8 ("EPA") addressed to Matthew Rose and received April 5, 2013, regarding the Smurfit-Stone Mill (located near Frenchtown, Montana in Missoula County). BNSF has searched its records and provides this response pursuant to CERCLA § 104(e).

In the spirit of cooperation and openness, BNSF has diligently searched (and continues to search) its files for documents and information potentially responsive to the Request and provides this response to EPA's Request. At this time we are providing maps of the area, with BNSF's right of way outlined on the maps, and various deeds. We are also providing documents relating to BNSF's corporate history. We are continuing to search archived records for any additional responsive information. If you do not require further response, I would appreciate your letting us know so that we can stop incurring costs to extract the information.

BNSF reserves the right to supplement or amend this response if additional responsive information or documents are discovered. Nothing in this response should be construed as an admission of any liability or responsibility on the part of BNSF regarding or for any site or any costs incurred by EPA or any other party. BNSF reserves all defenses and rights available to it under the law. In providing this response, BNSF does not waive, and reserves for later assertion, any objections, including but not limited to objections that the Request is overly broad, vague, ambiguous, unduly burdensome, calls for a legal conclusion, exceeds the scope of EPA's statutory authority, seeks information protected by the attorney-client privilege or work-product

doctrine or other applicable privileges or exemptions from disclosure, or calls for information that is a matter of public record or equally available to EPA. BNSF reserves the right to assert further objections to the Request should BNSF discover additional grounds for objection.

Subject to the objections outlined above, this response constitutes BNSF's good-faith effort to respond to the Request. If EPA is or becomes aware of relevant and responsive information or documents not previously provided to BNSF and not identified or disclosed in this response, BNSF requests that EPA provide the information or documents because those documents may aid BNSF in locating any additional information or documents responsive to the Request.

Please contact me if you have any questions regarding the responses provided to the Request.

Sincerely,

Brooke Kuhl

Brooke Kuhl

ENCLOSURES

cc: Mark Engdahl

BNSF's RESPONSE TO EPA's REQUEST

1) **Identify the person(s) answering these questions by providing their name, address, and telephone number.**

In searching for records responsive to EPA's request and in responding to these requests, BNSF consulted the following individuals:

1. Brooke Kuhl
   General Attorney
   BNSF Railway Company
   201 West Railroad Street, Missoula, MT 59801
   (406) 543-0019

2. Mark Engdahl
   Manager of Environmental Remediation
   BNSF Railway Company
   800 N. Last Chance Gulch, Suite 101, Helena, MT 59601
   (406) 256-4048

3. Jennifer Sheetz
   Paralegal Environmental Department
   BNSF Railway Company
   2500 Lou Menk Drive, AOB-3, Fort Worth, Texas 76131
   (817) 352-4304

4. Chris M. Randall
   Director Shortline Market Development
   BNSF Railway Company
   2500 Lou Menk Drive –AOB 1; Fort Worth, Texas 76131
   (817) 352-6132

5. John Karl
   Regional Manager Economic Development
   BNSF Railway Company
   2500 Lou Menk Drive – MOB-2; Fort Worth, Texas 76131
   (817) 867-0779

6. Lorrie Branson
   Corporate General Counsel
   BNSF Railway Company
   2500 Lou Menk Drive, AOB-3; Fort Worth, Texas 76131
   (817) 352-2098

7. Peter Lee
   General Counsel
   BNSF Railway Company
   2500 Lou Menk Drive, AOB-3
   Fort Worth, Texas 76131
   (817) 352-2364

8. Bryan L. Evans
   Controller
   BNSF Railway Company
   2500 Lou Menk Drive, AOB-3; Fort Worth, Texas 76131
   (817) 352-2428

9. Robert Beine
   Controller
   BNSF Railway Company
   PO Box 1738; Topeka, Kansas 76131
   (785) 435-2943

10. Dan L. Reid
    Technology Services
    BNSF Railway Company
    PO Box 1738; Topeka, Kansas 76131
    (785) 435-2031

11. Tony W. Allen
    Controller
    BNSF Railway Company
    176 East 5th Street; St. Paul, MN 55101
    (651) 298-7461

12. Joyce Thompson
    Controller
    BNSF Railway Company
    176 East 5th Street; St. Paul, MN 55101
    (651) 298-7390

13. Jennifer Dombkowski
    Industrial Products
    BNSF Railway Company
    2500 Lou Menk Drive; Fort Worth, Texas 76131
    (817) 593-1134

14. Scott Cole
    Controller
    BNSF Railway Company
    PO Box 1738 Topeka, Kansas 76131
    (785) 676-3903

15. Aeva L Vazquez
    Assistant Manager Accounts Receivable
    BNSF Railway Company
    PO Box 1738; Topeka, Kansas 76131
    (785) 676-7007

16. Dan McCaskill
    Manager Industrial Hygiene
    BNSF Railway Company
    2500 Lou Menk Drive; Fort Worth, Texas 76131
    (817) 352-1633

17. Dwayne Curbow
    Director Facility Engineering
    BNSF Railway Company
    4515 Kansas Avenue; Kansas City, Kansas 66106
    (913) 551-4139

18. Trent Hudak
    Director Engineering Services
    BNSF Railway Company
    4515 Kansas Avenue; Kansas City, Kansas 66106
    (913) 551-4435

19. Jim Goff
    Manager Field Engineering & Design
    BNSF Railway Company
    4515 Kansas Avenue; Kansas City, Kansas 66106
    (913) 551-4418

20. Arthur Charrow
    General Director Maintenance Planning
    BNSF Railway Company
    2500 Lou Menk Drive; Fort Worth, Texas 76131
    (817) 352-1935

21. Thomas Schmidt
    Director Engineering Services
    BNSF Railway Company
    4515 Kansas Avenue; Kansas City, Kansas 66106
    (913) 551-4330

22. Gunnar Rasmussen
    Manager Information Resources
    BNSF Railway Company
    2500 Lou Menk Drive
    Fort Worth, TX 76131
    (817) 352-1548

23. Haydar Tamimi
    Records Manager
    BNSF Railway Company
    2500 Lou Menk Drive
    Fort Worth, TX 76131
    (817) 352-0447

24. Abel Hernandez
    Associate Manager
    Title & Escrow Services
    Jones Lang LaSalle Americas, Inc.
    4300 Amon Carter Blvd., Suite 100
    Fort Worth, TX 76155
    (817) 230-2600

25. Angela Sester
    Bartlett & West
    Rail Division
    1207 SW Executive Dr.
    Topeka, KS 66615
    (888) 200-6464

These individuals may be contacted through counsel, Brooke Kuhl.

2) Identify the person(s) whom you wish to receive all further communications from the EPA relating to the Site.

Answer: Mark Engdahl
Manager of Environmental Remediation
BNSF Railway Company
800 N. Last Chance Gulch, Suite 101, Helena, MT 59601
(406) 256-4048

And

Brooke Kuhl
General Attorney
BNSF Railway Company
201 West Railroad Street
Missoula, MT 59801
(406) 543-0019

3) **For each and every question contained herein, identify all persons consulted in the preparation of the answer.**

Answer: This is incorporated in the following responses.

4) **For each and every question contained herein, identify documents consulted, examined, or referred to in the preparation of the answer or that contains information responsive to the question and provide accurate copies of all such documents.**

Answer: BNSF has diligently searched its records for responsive documents and has located none other than those referenced in response to Request Nos. 5 and 6.

5) **Describe the relationship among Northern Pacific Railway Company, Burlington Northern Railroad, and BNSF Railway as it relates to the Site. Provide copies of all documents related to each relationship, including, but not limited to, merger agreements, purchase agreements, property transfer documents and assumptions of liability.**

Answer: On July 2, 1864, President Abraham Lincoln signed an Act of Congress creating the Northern Pacific Railroad Company. The Burlington Northern Railroad Company (then Burlington Northern Inc.) was established on March 2, 1970, emerging from the combination of the Great Northern Railway Company, the Northern Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Company. Through a holding company reorganization in 1981, Burlington Northern Inc.'s name changed to Burlington Northern Railroad Company and it became a wholly-owned subsidiary of Burlington Northern Inc. (previously known as Burlington Northern Holding Company). In 1996, Burlington Northern Inc. merged with and into Santa Fe Pacific Corporation. In 1996, The Atchison, Topeka and Santa Fe Railway Company merged with and into the Company, then known as Burlington Northern Railroad Company, and the Company changed its name to The Burlington Northern and Santa Fe Railway Company. In 1998, Santa Fe Pacific Corporation merged with and into the Company. On January 20, 2005, the Company changed its name from "The Burlington Northern and Santa Fe Railway Company" to its current name, BNSF Railway Company. The Company has all property, rights, privileges, powers and

franchises of the corporations merged into it and all debts, liabilities and duties of the respective corporations.

See also the attached documents.

In preparing this response, BNSF consulted the individuals listed at numbers 1, 3 and 6 in response to Request No. 1 above.

6) **Describe Respondent's activities at the Site including the following and provide copies of all documents relating to such activities:**
   a. **The date Respondent acquired any portion of the Site;**
   b. **The entity from which Respondent acquired any portion of the Site.**
   c. **A description of Respondent's operations at the Site;**
   d. **Any changes Respondent made to the Site including any demolition or improvements;**
   e. **The activities taken upon cessation of operations at the Site;**
   f. **The date Respondent transferred all or a portion of the Site, and the entity to which the Site was transferred.**

Answer: Copies of the deeds and other documents referenced below along with maps and industrial track agreements are being produced in connection with these responses.

(a) Please see attached deeds: NP – 497, NP-498, NP-500, and NP-542 which are responsive to this request showing the property acquired by Northern Pacific Railway

Map TI-M.0507 is attached and shows the property discussed in NP-498, NP-500 and NP-542.

On or about January 8, 1957, Missoula County conveyed to Northern Pacific Railway company an easement to "construct, operate and maintain a spur track and to pass and repass with its locomotives and cars over and upon that portion of the Missoula County highway (Mullan Road) and highway right of way in the West Half Southwest Quarter Northeast Quarter (W1/2SW1/4NE1/4), Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian Missoula County, Montana." (NP –497).

Parcel 11 of the subject property, shown orange on the attached print, was acquired by deed (NP 498) on or about February 18, 1957 from Philias Lacasse and Florida Lacasse to the Northern Pacific Railway Company.

Parcel 12 of the subject property, shown yellow on the attached print, was acquired on or about July 16, 1957 by deed (NP 500) from Henry Kramer and Margaret Kramer to the Northern Pacific Railway Company.

Parcel 15 of the subject property, shown green on the attached print, was acquired by reversionary deed (NP 542) dated October 4, 1967 from Hoerner-Waldorf Corporation of Montana to the Northern Pacific Railway Company.

On or about October 17, 1961, Waldorf-Hoerner Paper Products Company, Inc. granted to Northern Pacific Railway Company an easement for spur track (NP-520).

BNSF never acquired an interest to the Chicago, Milwaukee St. Paul and Pacific Railroad track that also adjoins or runs through the Site.

In preparing this response, BNSF consulted the individuals listed at numbers 1, 3 4, 24, and 25 in response to Request No. 1 above.

(b) Please see attached deeds: NP-497, NP-498, NP-500, and NP-542and the response to (a) above which are responsive to this request showing the property acquired by Northern Pacific Railway

In preparing this response, BNSF consulted the individuals listed at numbers 1, 3 4, 24, and 25 in response to Request No. 1 above.

(c) BNSF's predecessors operations at the Site would have been limited to that of a common carrier and would have included inbound delivery of wood products (logs, wood chips, scrap paper and the like) and other materials used in the Mill's operations and outbound delivery of paper products manufactured by the Mill.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

(d) The entire track property owned by BNSF was leased to Montana Rail Link (MRL) in 1987.

BNSF has undertaken no demolition or improvements at the site and has no information regarding any demolition or improvements undertaken by its predecessors.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

(e) The entire track property owned by BNSF was leased to Montana Rail Link (MRL) in 1987.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

(f) On or about October 4, 1967 (NP 542) Hoerner-Waldorf Corporation of Montana executed an indenture intended, in part, to cancel an easement (NP 520) Waldorf-Hoerner Paper Products Company, Inc. had granted to Northern Pacific Railway Company on or about October 17, 1961. See NP 542.

On or about August 8, 1978 (S-3856), Burlington Northern Inc. conveyed to Hoerner-Waldorf Division, Champion International Corporation the property described as:

> Those certain tracts or strips of land 17 feet in width, being 8 ½ feet on each side of the center line of the certain spur tracks or sidings which are now located and constructed across the premises of the Burlington Northern Inc., described as follows:
>
> Portions of the Southwest Quarter Northeast Quarter (SW¼ NE¼), Southeast Quarter Northwest Quarter (SE¼ NW¼) and Northeast Quarter Northwest Quarter (NE¼ NW¼) of Section 24, Township 14 North, Range 21 West, Montana Principal Meridian, Missoula County, Montana

The entire track property owned by BNSF was leased to Montana Rail Link (MRL) in 1987.

In preparing this response, BNSF consulted the individuals listed at numbers 1, 3 4, 24, and 25 in response to Request No. 1 above.

7) **Provide copies of all documents regarding environmental conditions at the Site including, but not limited to, any sampling information, solid and hazardous waste management plans, and any known releases of hazardous substances.**

Answer: BNSF is aware of no documents regarding environmental conditions at the Site other than those available through the Montana Department of Environmental Quality and the EPA.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

8) **Describe all waste materials that resulted from Respondent's activities at the Site. Describe the location and method of storing waste. Identify any hazardous substances contained in such wastes and provide copies of any and all documents that describe any analysis of such wastes and the results of the analysis.**

Answer: BNSF's predecessors' operations, those of a common carrier, did not result in any known waste materials at the Site. BNSF did not store any waste at the Site.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

9) **Provide copies of any and all permits issued by State or Federal agencies related to your activities at the Site.**

Answer: BNSF is not aware of any permits issued by State or Federal agencies related to its predecessors' operations, as a common carrier, at the Site.
In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

10) **Identify companies or individuals that Respondent hired to perform work at the Site. Provide all documentation, including contracts, pertaining to this work. Include information about the purpose of and documentation related to Respondent's contracts at the Site.**

Answer: The entire track property owned by BNSF was leased to Montana Rail Link (MRL) in 1987.

BNSF has no information regarding predecessors' "work at the Site" if any.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

11) **If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Question contained herein or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.**

Answer: BNSF knows of none.

In preparing this response, BNSF consulted the individuals listed at numbers 1-23 in response to Request No. 1 above.

BNSF's Response to EPA's 104(e) Request
Re: Frenchtown Mill
5/1/2013

Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY", A DELAWARE CORPORATION,

WITH AND INTO "BURLINGTON NORTHERN RAILROAD COMPANY" UNDER THE NAME OF "THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTIETH DAY OF DECEMBER, A.D. 1996, AT 9:01 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 1996.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

0561728 8100M

071100685

AUTHENTICATION: 6061949

DATE: 10-10-07

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:01 AM 12/30/1996
960387152 - 0561728

CERTIFICATE OF MERGER
MERGING
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
WITH AND INTO
BURLINGTON NORTHERN RAILROAD COMPANY

* * * * * * * *

Pursuant to Section 251
of the General Corporation
Law of the State of
Delaware

Pursuant to Section 251 of the General Corporation Law of the State of Delaware (the "General Corporation Law"), the undersigned corporation does hereby certify:

FIRST: The name and state of incorporation of each of the constituent corporations to the merger is as follows: Burlington Northern Railroad Company ("BNRR") is a Delaware corporation organized and existing under the General Corporation Law; and The Atchison, Topeka and Santa Fe Railway Company ("ATSF") is a Delaware corporation organized and existing under the General Corporation Law.

SECOND: An Agreement and Plan of Merger, dated December 30, 1996, between BNRR and ATSF has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 251 of the General Corporation Law.

THIRD: The name of the surviving corporation of the merger is Burlington Northern Railroad Company (the "Surviving Corporation"), and the name shall be changed to The Burlington Northern and Santa Fe Railway Company.

FOURTH: The Restated Certificate of Incorporation of the Surviving Corporation shall be amended in its entirety as of the Effective Time as set forth in Exhibit A hereto.

FIFTH: The executed Agreement and Plan of Merger is on file at an office of the Surviving Corporation, the address of which is 2650 Lou Menk Drive, Second Floor, Fort Worth, Texas 76131-2830.

SIXTH: A copy of the Agreement and Plan of Merger will be furnished, on request and without cost, to any stockholder of either of the constituent corporations.

SEVENTH: That this Certificate of Merger shall be effective on December 31, 1996 at 9:00 a.m. (Eastern Time).

IN WITNESS WHEREOF, the undersigned has executed this Certificate on this 30th day of December, 1996.

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____

Its: Chairman, President & Chief Executive Officer

Robert D. Krebs

EXHIBIT A

RESTATED CERTIFICATE OF INCORPORATION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

FIRST: The name of the Corporation is The Burlington Northern and Santa Fe Railway Company.

SECOND: The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("Delaware Law").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock, having a par value of $1.00 per share.

FIFTH: In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized:

1. To make, amend or repeal the By-Laws of the Corporation, subject to the power of the stockholders of the Corporation having voting power to amend or repeal By-Laws whether adopted by them or otherwise.

2. To remove at any time any officer elected or appointed by the Board of Directors by such vote of the Board of Directors as may be provided for in the By-Laws. Any other officer of the Corporation may be removed at any time by a vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the By-Laws or by a vote of the Board of Directors.

3. To establish bonus, profit, sharing, stock option, stock purchase, retirement or other types of incentive or compensation plans for the employees (including officers and directors) of the Corporation and to fix the terms of such plans and to determine, or

prescribe the method for determining, the persons to participate in any such plans and the amount of their respective participations.

4. To authorize, and to cause to be executed mortgages, pledges, liens and charges upon the real and personal property of the Corporation and to issue obligations secured thereby.

Both stockholders and directors shall have power to hold their meetings, and the Corporation may have one or more offices, within or without the State of Delaware, and the books of the Corporation may, subject to the laws of the State of Delaware, be kept outside of such State at such places as may be from time to time determined by the Board of Directors.

SEVENTH: (1) A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by Delaware Law.

(2) (a) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE SEVENTH shall also include the right to be paid by the Corporation the expenses incurred in connection with any such proceeding in advance of its final disposition of the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE SEVENTH shall be a contract right.

(b) The Corporation may, by action of its Board of Directors, provide indemnification to such of the directors, officers, employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

(3) The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under Delaware Law.

(4) The rights and authority conferred in this ARTICLE SEVENTH shall not be exclusive of any other right which any person may otherwise have or hereafter acquire.

(5) Neither the amendment nor repeal of this ARTICLE SEVENTH, nor the adoption of any provision of this Certificate of Incorporation or the By-laws of the Corporation, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall eliminate or reduce the effect of this ARTICLE SEVENTH in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

EIGHTH: The Corporation reserves the right to amend this Restated Certificate of Incorporation in any manner permitted by Delaware Law and, with the sole exception of those rights and powers conferred under the above ARTICLE SEVENTH, all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

State of Delaware

Office of Secretary of State.

I, **Eugene Bunting,** *Secretary of State of the State of Delaware,*

do hereby certify *that the above and foregoing is a true and correct copy of* Certificate of Agreemant of Merger of the "NORTHERN PACIFIC RAILWAY COMPANY", a corporation organized and existing under the laws of the State of Wisconsin, "GREAT NORTHERN RAILWAY COMPANY", a corporation organized and existing under the laws of the State of Minnesota, and the "PACIFIC COAST R.R. CO.", a corporation organized and existing udner the laws of the State of Washington, merging with and into the "GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.", a corporation organized and existing under the laws of the State of Delaware, under the name of"GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.", as received and filed in this office the second day of March, A.D. 1970, at 9:59 o'clock A.M.;

And I do hereby further certify that the aforesaid Corporation shall be governed by the laws of the State of Delaware.

In Testimony Whereof, *I have hereunto set my hand and official seal at Dover this* second *day of* March *in the year of our Lord one thousand nine hundred and* seventy.

Eugene Bunting

Secretary of State

R. H. Caldwell

Ass't Secretary of State

FORM 121

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY

FIRST: That the Board of Directors of Great Northern Pacific & Burlington Lines, Inc., at a special meeting held pursuant to written waiver of notice signed by all Directors entitled to notice thereof on May 9, 1968, adopted a resolution setting forth a proposed amendment to the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and submitting said amendment to the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

> "RESOLVED, That it be, and hereby is, proposed and declared advisable that the Certificate of Incorporation of this Corporation be amended by striking out Article First thereof and substituting in lieu thereof the following:
>
> "FIRST: The name of the corporation is Burlington Northern Inc."

SECOND: That thereafter, pursuant to resolution of its Board of Directors, the proposed amendment was submitted to the stockholders of said corporation and was adopted by consent of such stockholders in accordance with Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: That the capital of said corporation will not be reduced under or by reason of said amendment.

IN WITNESS WHEREOF, said Great Northern Pacific & Burlington Lines, Inc., has caused its corporate seal to be hereunto affixed and this certificate to be signed by its Vice Chairman and its Secretary this 12th day of February, 1970.

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

By WILLIAM J. QUINN

Vice Chairman of the Board of Directors

ATTEST:

L. N. ASSELL

Secretary

GREAT NORTHERN PACIFIC
& BURLINGTON LINES, INC.
CORPORATE SEAL
1961
DELAWARE

State of Illinois
County of Cook } ss.

Be It Remembered that on this 12th day of February, 1970, personally came before me, a Notary Public in and for the State and County aforesaid, William J. Quinn, Vice Chairman of the Board of Directors of Great Northern Pacific & Burlington Lines, Inc., a Delaware corporation, the corporation described in and which executed the foregoing certificate, known to me to be such, and he, as such Vice Chairman of the Board of Directors, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation, that the facts stated therein are true, that the signatures of said Vice Chairman of the Board of Directors and of the Secretary of said corporation to said foregoing certificate are in the handwriting of the said Vice Chairman of the Board of Directors and Secretary of said corporation, respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

P. E. Hess

Notary Public

P. E. HESS
NOTARY PUBLIC
COOK COUNTY, ILL.

MY COMMISSION EXPIRES APRIL 15, 1971

State of Delaware

Office of Secretary of State.

I, **Eugene Bunting,** *Secretary of State of the State of Delaware,*

do hereby certify *that the above and foregoing is a true and correct copy of*

Certificate of Amendment of the "GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.", as received and filed in this office the second day of March, A.D. 1970, at 10:20 o'clock A.M.

In Testimony Whereof, *I have hereunto set my hand and official seal at Dover this* second *day of* March *in the year of our Lord one thousand nine hundred and* seventy.

Eugene Bunting

Secretary of State

R N Cloell

Ass't Secretary of State

FORM 121

RESTATED CERTIFICATE OF INCORPORATION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

The Burlington Northern and Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Delaware, hereby certifies that:

1. The present name of the corporation (hereinafter called the "Corporation") is THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY. The name under which the Corporation was originally incorporated is Great Northern Pacific & Burlington Lines, Inc., and the date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of Delaware is January 13, 1961.

2. This Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Corporation's Certificate of Merger Merging The Atchison, Topeka and Santa Fe Railway Company with and into Burlington Northern Railroad Company dated December 30, 1996 (including Exhibit A thereto, the Restated Certificate of Incorporation of The Burlington Northern and Santa Fe Railway Company) by integrating and restating and further amending said Restated Certificate of Incorporation of The Burlington Northern and Santa Fe Railway Company in its entirety as set forth in Exhibit A attached hereto and made a part hereof.

3. The Restated Certificate of Incorporation herein certified was duly adopted and approved by the written consent of the board of directors and the stockholder of the Corporation in accordance with the applicable provisions of Sections 141(f), 228, 242 and 245 of the General Corporation Law of Delaware, as amended.

IN WITNESS WHEREOF, said THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY has caused this certificate to be signed by Jeffrey T. Williams, its Assistant Secretary, on January 17th, 2005.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By: Jeffrey T. Williams
Name: Jeffrey T. Williams
Title: Assistant Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:04 AM 01/20/2005
FILED 08:53 AM 01/20/2005
SRV 050047012 - 0561728 FILE

Exhibit A

RESTATED CERTIFICATE OF INCORPORATION OF BNSF RAILWAY COMPANY

FIRST: The name of the Corporation is BNSF Railway Company.

SECOND: The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("Delaware Law").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock, having a par value of $1.00 per share.

FIFTH: In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized:

1. To make, amend or repeal the By-Laws of the Corporation, subject to the power of the stockholders of the Corporation having voting power to amend or repeal By-Laws whether adopted by them or otherwise.

2. To remove at any time any officer elected or appointed by the Board of Directors by such vote of the Board of Directors as may be provided for in the By-Laws. Any other officer of the Corporation may be removed at any time by a vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the By-Laws or by a vote of the Board of Directors.

3. To establish bonus, profit, sharing, stock option, stock purchase, retirement or other types of incentive or compensation plans for the employees (including officers and directors) of the Corporation and to fix the terms of such plans and to determine, or prescribe the method for determining, the persons to participate in any such plans and the amount of their respective participations.

4. To authorize, and to cause to be executed mortgages, pledges, liens and charges upon the real and personal property of the Corporation and to issue obligations secured thereby.

Both stockholders and directors shall have power to hold their meetings and the Corporation may have one or more offices, within or without the State of Delaware, and the books of the Corporation may, subject to the laws of the State of Delaware, be kept outside of such State at such places as may be from time to time determined by the Board of Directors.

SIXTH: (1) A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by Delaware Law.

(2) (a) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE SIXTH shall also include the right to be paid by the Corporation the expenses incurred on connection with any such proceeding in advance of its final disposition of the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE SIXTH shall be a contract right.

(b) The Corporation may, by action of its Board of Director, provide indemnification to such of the directors, officers, employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

(3) The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under Delaware Law.

(4) The rights and authority conferred in this ARTICLE SIXTH shall not be exclusive of any other right which any person may otherwise have or hereafter acquire.

(5) Neither the amendment nor repeal of this ARTICLE SIXTH, nor the adoption of any provision of this Restated Certificate of Incorporation or the By-Laws of the Corporation, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall eliminate or reduce the effect of this ARTICLE SIXTH in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

SEVENTH: The Corporation reserves the right to amend this Restated Certificate of Incorporation in any manner permitted by Delaware Law and, with the sole exception of those rights and powers conferred under the above ARTICLE SIXTH, all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

Schilling, Mont.-
9-1

BURLINGTON NORTHERN INC.
DOCKET NO. BN 518
OFFICE OF SECRETARY
ST. PAUL, MINNESOTA

BURLINGTON NORTHERN INC.

INDUSTRIAL TRACK AGREEMENT

Parties

AGREEMENT, made this 7 day of DECEMBER 19 70, between BURLINGTON NORTHERN INC., a corporation hereinafter called "Railroad", and HOERNER-WALDORF CORPORATION, a Deleware Corporation, hereinafter called "Industry"

Location

WHEREAS, Industry desires the construction, maintenance and operation of trackage hereinafter called "track" to be located at Schilling, Montana, shown between the letters A and B, on the plat hereto attached, marked Exhibit "A", and by this reference made a part hereof.

NOW therefore, the parties hereto agree to the construction, maintenance and operation of said track on the following terms and conditions:

Right of Way

Section 1. Industry shall first procure and furnish without expense to Railroad all necessary right of way, including all necessary public authority and permission for the construction, maintenance and operation of the track.

Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad rather than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of compliance with or violation of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

Construction, Ownership and Maintenance

Section 2. (a) Industry, at its own expense, will do all grading and provide necessary drainage for that portion of track which is located off Railroad property, unless by prior understanding Railroad does the work, which, in such event, will be at expense of Industry.

(b) Railroad will construct track ~~from point of switch to point of~~ clearance ~~(14 feet from center to center of tracks)~~ between the letters A and B on Exhibit "A" for the agreed amount of Nine Thousand Two Hundred Ninety-five Dollars ($ 9,295.00) ~~and from point of clearance to end between the letters _____ on Exhibit "A" for the agreed amount of _____ Dollars ($ _____)~~ ~~all~~ at expense of Industry. Industry, before any construction is begun, shall pay to Railroad such agreed amounts.

~~(c) Cost of construction of track from point of switch to point of clearance between the letters _____ on Exhibit "A", paid for by Industry in the first instance in the amount of _____ Dollars ($ _____)~~ is subject to refund from the general funds of Railroad to Industry ~~at the rate of Ten and No/100 Dollars ($10.00) for each car of carload freight delivered on or shipped from track on which Railroad receives road-haul revenue in excess of Fifty and No/100 Dollars ($50.00) during the period of five (5) years after the date of completion of track, unless the total of such refund payments shall sooner equal said amount. Industry shall submit a list of such cars to Railroad's Director Disbursement Accounting, 176 East Fifth Street, Saint Paul, Minnesota, 55101, upon each six (6) month anniversary of this agreement, and a settlement shall be made promptly after verification of such lists by said Director. Such lists shall show car numbers, waybill numbers and dates, points of origin and destination.~~

(d) Railroad will maintain track between the letters A and B ~~on Exhibit "A" at its expense and will maintain track between the letters _____~~ on Exhibit "A" at expense of Industry.

(e) ~~Railroad will own the track between the letters _____ on Exhibit "A" and~~ Industry will own the track between the letters A and B on Exhibit "A".

Industry shall pay for all present and future changes in or additions to Railroad's line made necessary by the construction and continued existence and operation of the track.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, done by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Should Industry do any work of construction, maintenance, or of additions and betterments, it shall do such work in substantial and workmanlike manner, and in accordance with Railroad's standards. If Industry fails to properly maintain the track or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over it.

Definition of Cost

Section 3. "Cost" for the purpose of this agreement shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used. Rental for equipment shall be on a non-profit basis to Railroad.

Right of Railroad to Use

~~Section 4. Railroad shall have the right to use and extend said track and construct spur tracks therefrom for~~ the accommodation of the business of Railroad or the business of other parties, ~~provided such use or extension~~ does not unduly interfere with the use of ~~said track by Industry.~~ In case the track is regularly used by or is extended for the ~~accommodation of another industry~~, it is agreed that Railroad may fix the terms upon which ~~such new industry shall share in the cost of construction and maintenance of the track used in common.~~

Clearances

Section 5. Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. Industry agrees to indemnify Railroad and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any covenant contained in this agreement.

Public Assessments

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining, and operating said track.

Liability

Section 7. Industry agrees to indemnify and hold harmless Railroad for loss, damage or injury from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about said track, and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

Assignment

Section 8. Industry shall not assign this agreement or any interest therein without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

Right to Disconnect Track

Section 9. Railroad shall be privileged to discontinue the maintenance and operation of said track, ~~and to remove its turnout connection~~ in the event Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

Removal of Track

~~Section 10. Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way~~ that part of the track originally paid for by Industry ~~and to pay to Industry~~ the salvage value of the usable ~~material so removed, less cost of recovering it.~~

Joint Use by Other Railroads

Section 11. This agreement is also made for the benefit of such other railroads who, either by prior understandings or agreements with the Railroad have the right to use the track, or who shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

BURLINGTON NORTHERN INC.

By _____
Vice President

HOERNER-WALDORF CORPORATION

By _____
Title Vice Pres

Form 60007 6-70

BN518

REFERENCE NOT PRESENT IN FILE

○ Page	____ of ____
○ Pages	____ thru ____
○ Appendix	____
○ Appendices	____ thru ____
☑ Exhibit	A
○ Other	

Imaging Services

BURLINGTON NORTHERN RAILROAD CO.
DOCKET NUMBER 18437.01

OFFICE OF SECRETARY
ST. PAUL, MINNESOTA

SUPPLEMENTAL AGREEMENT, made this 16th day of December, 1983, between BURLINGTON NORTHERN RAILROAD COMPANY (formerly Burlington Northern Inc.), a Delaware corporation, hereinafter called "Railroad", and CHAMPION INTERNATIONAL CORPORATION, hereinafter called "Industry".

WHEREAS, the parties hereto are parties to an industrial track agreement dated April 6, 1979 providing for the construction, maintenance, operation and ownership of certain trackage as SCHILLING, MONTANA, as shown on the print attached thereto, dated November 6, 1978, marked Exhibit "A", and made a part thereof; and

WHEREAS, the aforesaid print dated November 6, 1978 does not show crossing colored red, signals colored green and location of said trackage as the same is now constructed, the location thereof being shown in solid and dashed blue on the print dated March 1, 1983 attached hereto, marked Exhibit "A", and made a part hereof, and it is desired by the parties hereto to substitute said print dated March 1, 1983 for the print dated November 6, 1983 in the aforesaid agreement.

WHEREAS, Section 2 of said April 6, 1979 agreement does not provide for maintenance of crossing and signals as shown on the print dated March 1, 1983 attached hereto, and it is the desire of the parties hereto that Section 2 of said April 6, 1979 agreement be deleted therefrom and the following Section 2 substituted therefor;

Section 2.(a) Railroad will maintain track shown solid blue on Exhibit "A" at its expense and will maintain signals colored green on Exhibit "A" at expense of Industry.

Industry will, at its own expense, maintain track shown in dashed blue and crossing colored red.

Maintenance for the purpose of this agreement shall include responsibility to provide proper drainage and to keep the track free and clear of snow, ice, weeds and other obstacles and debris and to provide a safe workway for Railroad.

(b) Railroad will own the track shown solid blue on Exhibit "A" and Industry will own the track shown dashed blue, crossing colored red and signals colored green on Exhibit "A".

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation or necessary because of any other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing or maintaining the track or any facilities extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over the track.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

(c) Railroad shall, at the sole cost and expense of Industry, furnish necessary labor and materials to maintain said signals and will make from time to time the necessary changes and additions thereto which Railroad deems necessary or as may be required by public authority. In maintaining said signals only the usual customary maintenance and repairs will be performed by Railroad, the same as is done at similar installations at other locations on the line of Railroad. In the event said signals are partially or wholly destroyed and their replacement value, or cost of repair, cannot be recovered from the persons responsible for such destruction, the cost of repair of the signals, or the cost of installation of new signals, shall be borne by Industry.

The annual maintenance of the signal installation colored green on said Exhibit "A" consists of 10 A.A.R. Units and the 1982 maintenance cost is at a rate of $112.00 per unit for a total annual maintenance cost of $1,120.00 for said signal installation.

The annual maintenance cost per A.A.R. Unit shall be, from time to time, adjusted upwards or downwards, as the case may be, in accordance with the Annual Index of Railroad Material Prices, Wage Rates and Supplements Combined, as published by the Association of American Railroads for the Western District (the "Annual Index"). Railroad shall bill Industry annually, on or about July 1, for the current year's cost of maintenance of said signals on the basis of maintenance costs per A.A.R. Unit based on the previous year's Annual Index.

All maintenance, improvements, additions and betterments performed or made by Railroad pursuant to this agreement shall comply with all applicable laws, rules, regualtions, orders and statutes of all city, county, state and federal authorities having jurisdiction and shall be done or made in a good and workmanlike manner and shall be fit for the particular purpose intended.

(d) Industry further agrees to indemnify, save harmless and defend Railroad from and against any and all claims, suits, losses, damages or expenses on account of injury to or death of employees of Railroad from any cause whatsoever, while engaged in the maintenance, repair, renewal or removal of said signals, or while making additions or betterments thereto, or changes therein, even though such injury or death may be due wholly or in part to the negligence of the employees of Railroad.

Industry hereby indemnifies and holds harmless Railroad from and against any and all liability for loss of or damage to the property of the parties hereto or of any other persons and from injuries to or death of employees of the parties hereto, or of any other persons, arising or growing out of the operations of its trains at and over said crossing protected by said signals, in the event of the failure of said signals to operate properly. Industry shall indemnify and hold harmless and defend Railroad from and against any claims, suits, losses, damages or expenses for loss of or damage to any and all property to whomsoever belonging, and for injuries to or death of any and all persons caused by the presence of said signals or their failure to operate properly.

NOW THEREFORE, the parties hereto agree that print dated March 1, 1983 hereto attached shall be and is hereby substituted for the print dated November 6, 1978 attached to and made a part of said agreement dated April 6, 1979;

Section 2 of said agreement dated April 6, 1979 is hereby stricken and the new Section 2 herein stated is substituted therefor.

Except as hereby modified, supplemented and amended, said agreement dated April 6, 1979 shall be and remain in full force and effect between the parties hereto in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers thereunto duly authorized the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By _____

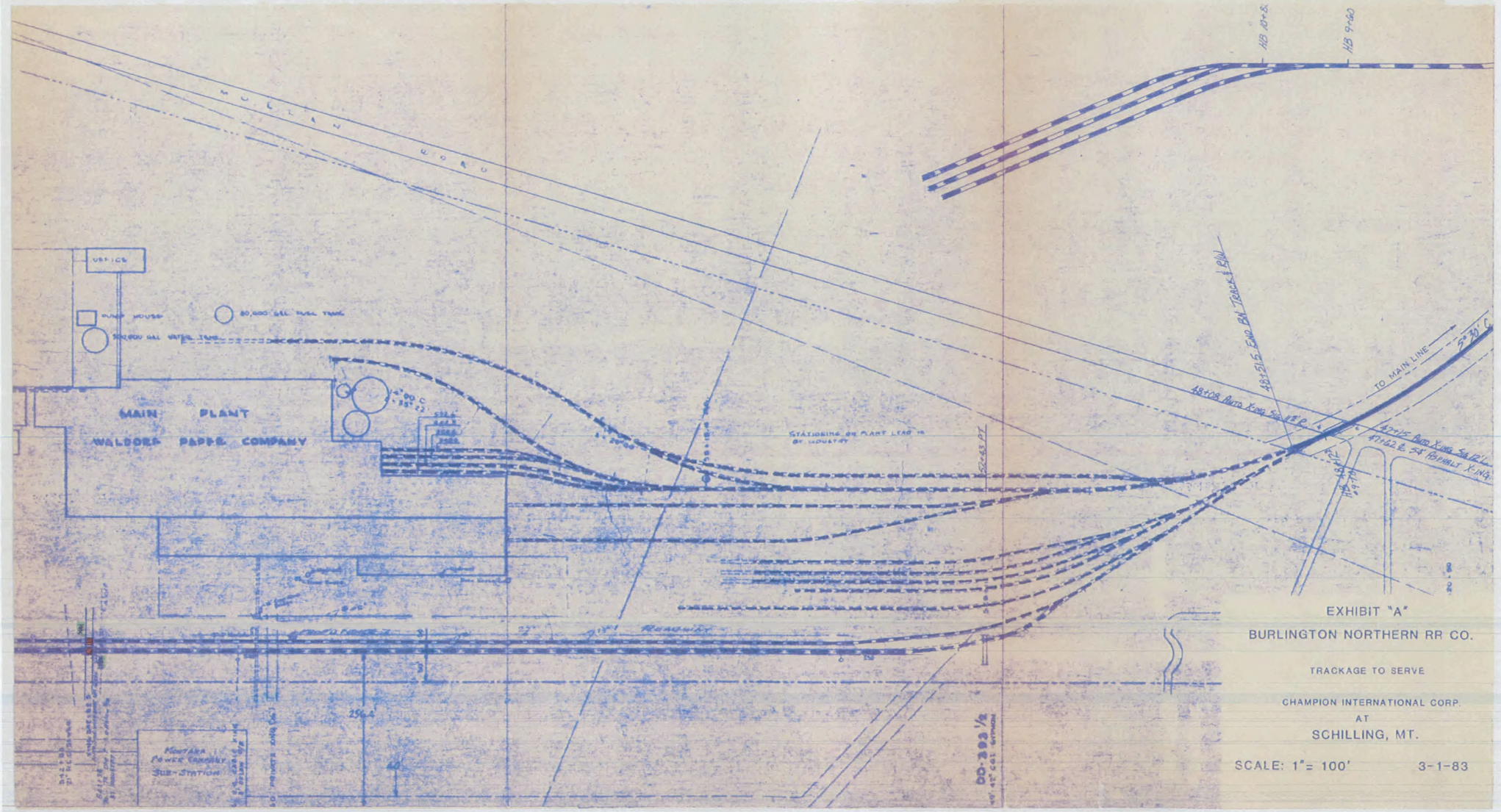
Title: General Manager Industrial Trackage

CHAMPION INTERNATIONAL CORPORATION

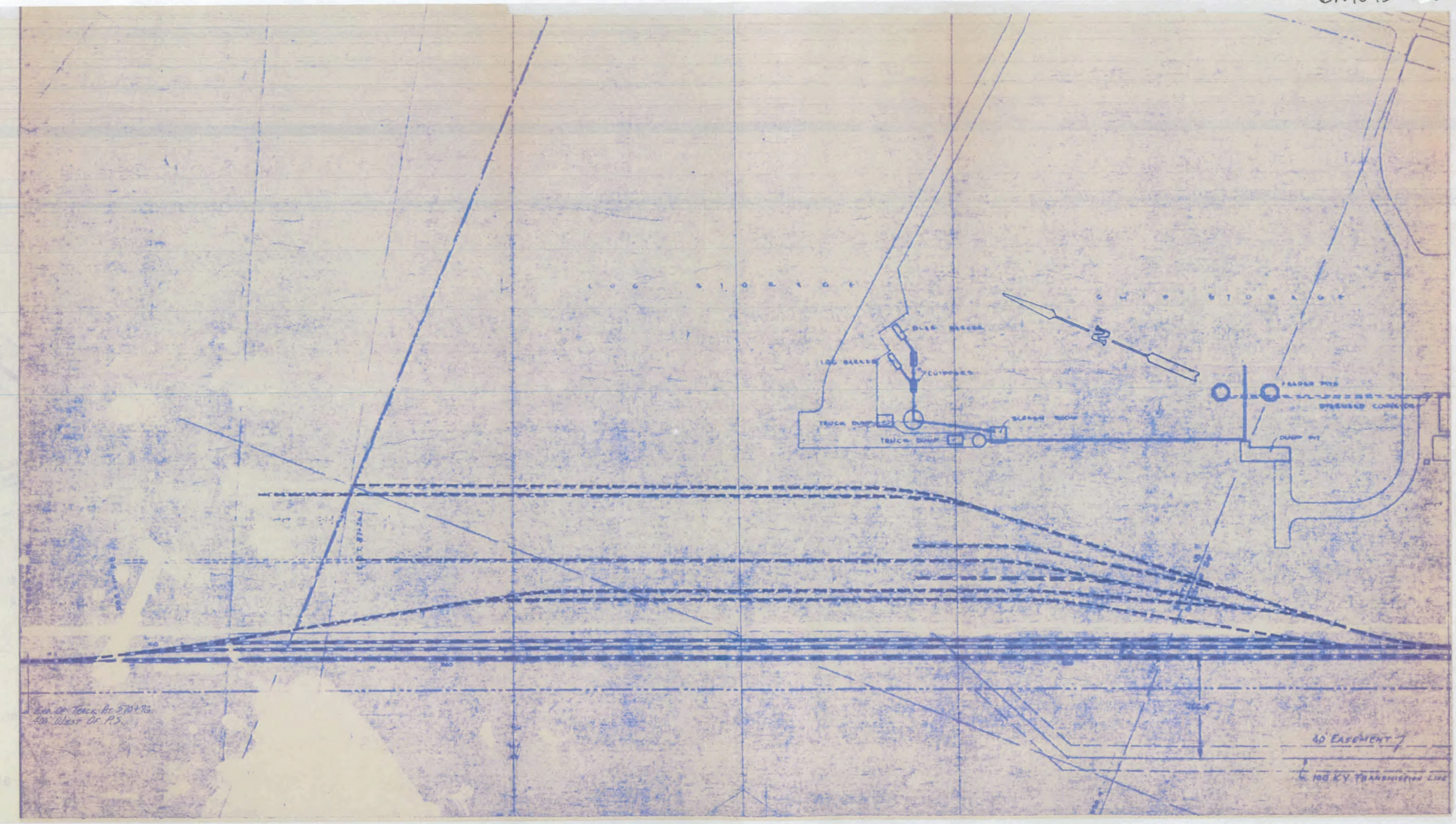
By _____

Title: Howard J. Gidez - Vice President
Purchasing & Transportation

BN 10437.01 (1/2)



BN10437-01 (2/2)



BN10437.02

ASSIGNMENT

AGREEMENT, made this 26th day of February, 1986, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (formerly Burlington Northern Inc.), hereinafter called "Railroad", HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, hereinafter called "Assignor", STONE BROWN PAPERS, INC., Doing Business As STONE CONTAINER CORPORATION, hereinafter called "Assignee", whose billing address for the purpose of this agreement is 360 North Michigan Avenue, Chicago, Illinois 60601.

WHEREAS, Railroad and Assignor are parties to an industrial track agreement dated April 6, 1979 as supplemented by agreement dated December 16, 1983 providing for the continued maintenance, operation and ownership of industrial trackage at Schilling, Montana, said trackage being located as more particularly described in said agreement; and

WHEREAS, Assignor now desires to sell, assign, transfer and set over its rights under and by virtue of said industrial track agreement dated April 6, 1979 as supplemented by agreement dated December 16, 1983 to Assignee.

NOW THEREFORE, in consideration of the mutual covenants herein contained it is agreed between the parties as follows:

1. For a valuable consideration, the receipt whereof is hereby acknowledged, Assignor hereby sells, assigns, transfers and sets over to Assignee all of Assignor's right, title and interest in and to said trackage and in and under said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983.

2. Railroad agrees and consents to the transfer of said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983 and all rights thereunder from Assignor to Assignee.

3. In consideration of said assignment and the consent of the Railroad thereto, Assignee assumes and agrees to perform and be bound by all of the obligations imposed upon Assignor by said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983.

4. Said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983 as hereby assigned shall remain in full force and effect in accordance with its terms between Railroad and Assignee.

5. This agreement shall be effective as of the date of Closing Under the Asset Purchase Agreement between Champion International Corporation and Stone Container Corporation dated October 1, 1985.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

BY _____
General Manager Industrial Trackage

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

BY _____
Title: Vice President

STONE BROWN PAPERS, INC., Doing Business As STONE CONTAINER CORPORATION

BY _____
Title:

BURLINGTON NORTHERN INC.
DOCUMENT NO. BN 1047
OFFICE OF SECRETARY
ST. PAUL, MINNESOTA

BURLINGTON NORTHERN INC.

INDUSTRIAL TRACK AGREEMENT
(When No New Construction Is Involved)

Parties

AGREEMENT made this 6th day of April, 1979, between BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Railroad", and HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, a New York corporation, hereinafter called "Industry", whose billing address for the purpose of this agreement is Drawer D, Missoula, Montana 59801.

Location

WHEREAS, Industry desires the continued maintenance and operation of trackage hereinafter called "track" located at Schilling, Montana shown ~~between the letters~~ colored solid and dashed blue, on the plat hereto attached dated November 6, 1978, marked Exhibit "A", and by this reference made a part hereof.

NOW THEREFORE, the parties hereto agree to the continued maintenance and operation of said track on the following terms and conditions:

Right of Way

Section 1. Industry shall first procure without expense to Railroad all necessary right of way and all necessary public authority and permission for the continued maintenance and operation of the track.

Industry further agrees that said track shall be maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad rather than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of the compliance with or violation of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

Maintenance, Operation and Ownership

Section 2. (a) Railroad will maintain track ~~between the letters~~ colored solid blue on Exhibit "A" at its expense ~~and will maintain track between the letters~~ ~~on Exhibit "A" at expense of Industry.~~

Industry will, at its own expense, maintain track ~~between the letters~~ colored dashed blue on Exhibit "A".

(b) Railroad will own the track ~~between the letters~~ colored solid blue on Exhibit "A" and Industry will own the track ~~between the letters~~ colored dashed blue on Exhibit "A". Connecting track colored solid green on Exhibit "A" is owned and will be maintained by others

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation, or necessary because of any other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing or maintaining the track or any facilities extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over the track.

Approved as to form
Asst. Gen. Counsel
Law Dept. B.N.I.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

Definition of Cost

Section 3. "Cost" for the purpose of this agreement shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used.

Right of Railroad to Use

Section 4. Railroad shall have the right to use and extend said track and construct spur tracks therefrom for the accommodation of the business of Railroad or the business of other parties, provided such use or extension does not unduly interfere with the use of said track by Industry.

Clearances

Section 5. Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this Section. Industry agrees to indemnify Railroad and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

Should either, or both, the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Industry hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Railroad from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Railroad's operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Industry contained in this Section 5 or of Railroad's right to recover for such damages to property or injury to or death of persons that may result therefrom.

Public Assessments

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of maintaining and operating said track.

Liability

Section 7. Industry agrees to indemnify and hold harmless Railroad for loss, damage, injury or death from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

In the event Industry permits a party or parties, hereinafter called "Permittee", other than Railroad to use said track for receiving, forwarding or storing shipments, Railroad hereby consents to such use, and in such case Industry hereby agrees to indemnify and hold harmless Railroad from and against any and all loss, damage, injury or death, resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of the parties hereto and said Permittee, and to the person or property of any person or corporation while on or near said track.

Assignment

Section 8. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; however, Industry shall not assign this agreement without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

Right to Disconnect Track

Section 9. Railroad shall be privileged to terminate this agreement and discontinue the maintenance and operation of said track, and to remove its ownership, in the event of any of the following contingencies, viz.:

(a) Industry ceases for a continuous period of one (1) year the doing of business in an active and substantial way at the industry or establishment served.

(b) Railroad is authorized by competent public authority to abandon its line to which track is connected.

(c) Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

No recourse or claim will exist in favor of or be asserted by Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this Section of this agreement.

Removal of Track

Section 10. Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track owned by Industry and to pay to Industry the salvage value of the usable material so removed, less cost of recovering it. If the cost of removing or recovering said track exceeds the salvage value thereof, Industry shall pay Railroad the difference.

Joint Use by Other Railroads

Section 11. This agreement is also made for the benefit of such other railroads which, either by prior understandings or agreements with the Railroad have the right to use the track, or which shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

Section 12. It is mutually agreed by and between Burlington Northern Inc. and Hoerner Waldorf Division, Champion International Corporation (successor in interest to Hoerner Waldorf Corporation) that the certain agreement dated December 13, 1971 covering the continued maintenance, operation and ownership of industrial trackage at Schilling, Montana, shall be and the same is hereby terminated as of the date hereof; provided, however, that such termination shall not affect or impair any right or obligation of either party to said agreement which accrued prior to said termination date.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

BURLINGTON NORTHERN INC.

By J. C. Kennedy
Vice President

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

By [illegible]
Title Vice President

FORM 60045 2-75

BN10437 (1/2)

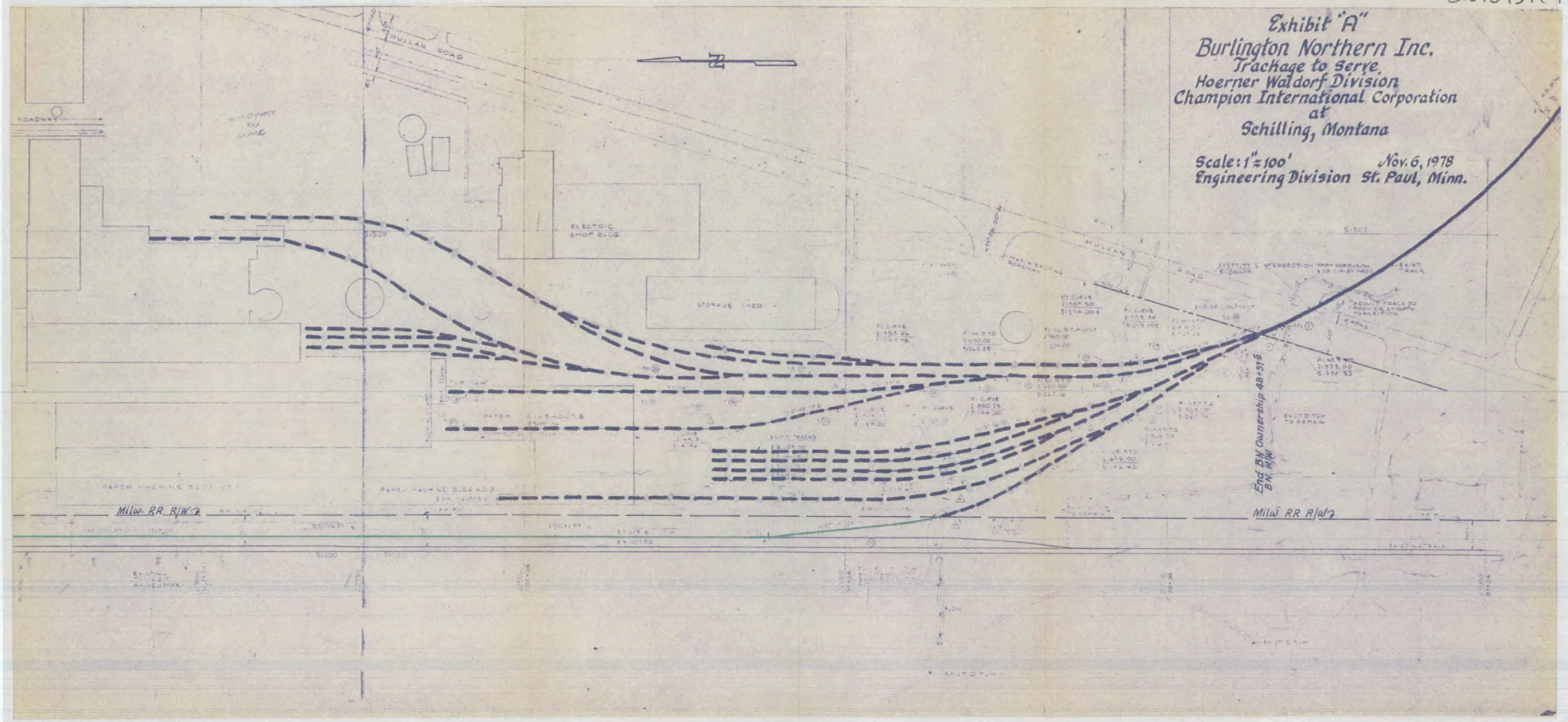
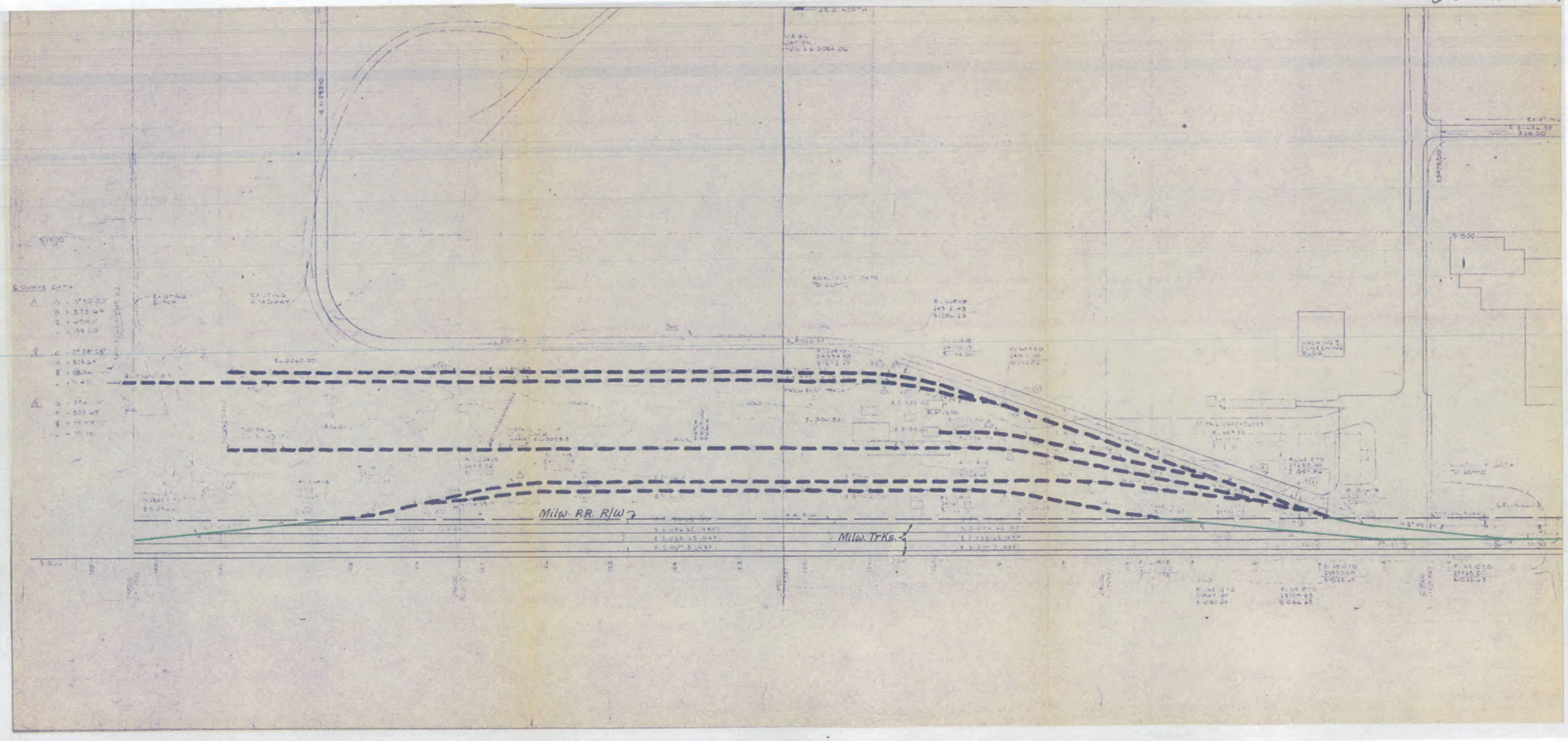


Exhibit "A"
Burlington Northern Inc.
Trackage to Serve
Hoerner Waldorf Division
Champion International Corporation
at
Schilling, Montana
Scale: 1" = 100'
Nov. 6, 1978
Engineering Division St. Paul, Minn.
HULLAN ROAD
ROADWAY TO LAKE
ELECTRIC SHOP BLDG.
STORAGE SHED
PAPER WAREHOUSE
End BN Ownership 48+51.5
BN R/W
Milw. RR R/W
Milw. RR R/W

BN 10437 (2/2)



BN/0438.01

ASSIGNMENT

AGREEMENT, made this 26th day of February, 1986, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (formerly Burlington Northern, Inc.), hereinafter called "Railroad", HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, hereinafter called "Assignor", STONE BROWN PAPERS, INC., Doing Business As STONE CONTAINER CORPORATION, hereinafter called "Assignee", whose billing address for the purpose of this agreement is 360 North Michigan Avenue, Chicago, Illinois 60601.

WHEREAS, Railroad and Assignor are parties to an industrial track agreement dated April 3, 1979 providing for the construction, maintenance, operation and ownership of industrial trackage at Schilling, Montana, said trackage being located as more particularly described in said agreement; and

WHEREAS, Assignor now desires to sell, assign, transfer and set over its rights under and by virtue of said industrial track agreement dated April 3, 1979 to Assignee.

NOW THEREFORE, in consideration of the mutual covenants herein contained it is agreed between the parties as follows:

1. For a valuable consideration, the receipt whereof is hereby acknowledged, Assignor hereby sells, assigns, transfers and sets over to Assignee all of Assignor's right, title and interest in and to said trackage and in and under said agreement of April 3, 1979.

2. Railroad agrees and consents to the transfer of said agreement of April 3, 1979 and all rights thereunder from Assignor to Assignee.

3. In consideration of said assignment and the consent of the Railroad thereto, Assignee assumes and agrees to perform and be bound by all of the obligations imposed upon Assignor by said agreement of April 3, 1979.

4. Said agreement of April 3, 1979 as hereby assigned shall remain in full force and effect in accordance with its terms between Railroad and Assignee.

5. This agreement shall be effective as of the date of Closing Under the Asset Purchase Agreement between Champion International Corporation and Stone Container Corporation dated October 1, 1985.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

BY _____
General Manager Industrial Trackage

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

BY _____
Title: Vice President

STONE BROWN PAPERS, INC., Doing Business As STONE CONTAINER CORPORATION

BY _____
Title: Vice President

BURLINGTON NORTHERN INC.

BURLINGTON NORTHERN INC.
DOCKET NO. BN 10438
OFFICE OF SECRETARY
ST. PAUL, MINNESOTA

INDUSTRIAL TRACK AGREEMENT

Parties

AGREEMENT, made this 3rd day of April, 19 79 between BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Railroad", and HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, a New York corporation, hereinafter called "Industry", whose billing address for the purpose of this agreement is Drawer D, Missoula, Montana 59801

Location

WHEREAS, Industry desires the construction, maintenance and operation of trackage hereinafter called "track" to be located at Schilling, Montana, shown colored solid and dashed blue ~~shown between the letters~~ dashed orange and walkway colored green, on the plat hereto attached dated December 26, 1978, marked Exhibit "A", and by this reference made a part hereof.

NOW THEREFORE, the parties hereto agree to the construction, maintenance and operation of said track on the following terms and conditions:

Right of Way

Section 1. Industry shall first procure without expense to Railroad all necessary right of way and all necessary public authority and permission for the construction, maintenance and operation of the track.

Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad rather than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of the compliance with or violation of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

Construction, Maintenance, Operation and Ownership

Section 2. (a) Industry, at its own expense, will perform or will arrange for all grading and provide necessary drainage for that portion of track which is located off Railroad property. ~~Grading and drainage work on Railroad property will be performed by Railroad/Industry at Industry's expense.~~

(b) Railroad will construct track from point of switch to point of clearance (14 feet from center to center of tracks) ~~between the letters~~ colored solid blue on Exhibit "A" for the agreed amount of $ 17,109.00 and from point of clearance to ~~end between the letters~~ right of way colored dashed orange and walkway colored green on Exhibit "A" for the agreed amount of $ 4,150.00 all at expense of Industry. ~~Industry shall also pay to Railroad the agreed amount of $ _____ for cost of grading and drainage work performed by Railroad~~. Industry, before any construction is begun, shall pay to Railroad such agreed amounts. Industry will, at its expense, construct track colored dashed blue on Exhibit "A".

(c) Cost of construction of track from point of switch to point of clearance ~~between the letters~~ colored solid blue on Exhibit "A", paid for by Industry in the first instance in the amount of $ 17,109.00 is subject to refund by Railroad to Industry or any assignee of Industry at the rate of $ 20.00 for each car of freight delivered on or shipped from track on which Railroad receives road-haul revenue in excess of $150.00 during the period of five (5) years after the date of completion of track, unless the total of such refund payments shall sooner equal said amount. Industry or its assignee shall submit a list of such cars to Railroad's Director A.F.E. Accounting, 176 East Fifth Street, Saint Paul, Minnesota 55101, upon each six (6) month anniversary of this agreement, and a settlement shall be made promptly after verification of such lists by said Director. Such lists shall show car numbers, waybill numbers and dates, points of origin and destination.

Approved as to form
Asst. Gen. Counsel
Law Dept. B.N.I.

(d) Railroad will maintain track ~~between the letters~~ colored solid blue on Exhibit "A" at its expense and will maintain track ~~between the letters~~ colored dashed orange on Exhibit "A" at expense of Industry.

Industry will, at its own expense, maintain track ~~between the letters~~ colored dashed blue on Exhibit "A".

(e) Railroad will own the track ~~between the letters~~ colored solid blue on Exhibit "A" and Industry will own the track ~~between the letters~~ colored dashed orange and dashed blue on Exhibit "A".

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation, or necessary because of any other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing or maintaining the track or any facilities extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over the track.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

Definition of Cost

Section 3. "Cost" for the purpose of this agreement shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used.

Right of Railroad to Use

Section 4. Railroad shall have the right to use and extend said track and construct spur tracks therefrom for the accommodation of the business of Railroad or the business of other parties, provided such use or extension does not unduly interfere with the use of said track by Industry.

Clearances

Section 5. Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this Section. Industry agrees to indemnify Railroad and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

Should either, or both, the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Industry hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Railroad from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Railroad's operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Industry contained in this Section 5 or of Railroad's right to recover for such damages to property or injury to or death of persons that may result therefrom.

Public Assessments

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining and operating said track.

Liability

Section 7. Industry agrees to indemnify and hold harmless Railroad for loss, damage, injury or death from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

In the event Industry permits a party or parties, hereinafter called "Permittee", other than Railroad to use said track for receiving, forwarding or storing shipments, Railroad hereby consents to such use, and in such case Industry hereby agrees to indemnify and hold harmless Railroad from and against any and all loss, damage, injury or death, resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of the parties hereto and said Permittee, and to the person or property of any other person or corporation while on or near said track.

Assignment

Section 8. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; however, Industry shall not assign this agreement without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

Right to Disconnect Track

Section 9. Railroad shall be privileged to terminate this agreement and discontinue the maintenance and operation of said track, and to remove its turnout connection, in the event of any of the following contingencies, viz.:

(a) Industry ceases for a continuous period of one (1) year the doing of business in an active and substantial way at the industry or establishment served.

(b) Railroad is authorized by competent public authority to abandon its line to which track is connected.

(c) Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

No recourse or claim will exist in favor of or be asserted by Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this Section of this agreement.

Removal of Track

Section 10. Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track owned by Industry and to pay to Industry the salvage value of the usable material so removed, less cost of recovering it. If the cost of removing or recovering said track exceeds the salvage value thereof, Industry shall pay Railroad the difference.

Joint use by Other Railroads

Section 11. This agreement is also made for the benefit of such other railroads which, either by prior understandings or agreements with the Railroad have the right to use the track, or which shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

BURLINGTON NORTHERN INC.

By J. C. Kennedy
Vice President

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

By R. Springer
(Title) Vice President

FORM 60007 2-75

BN10438

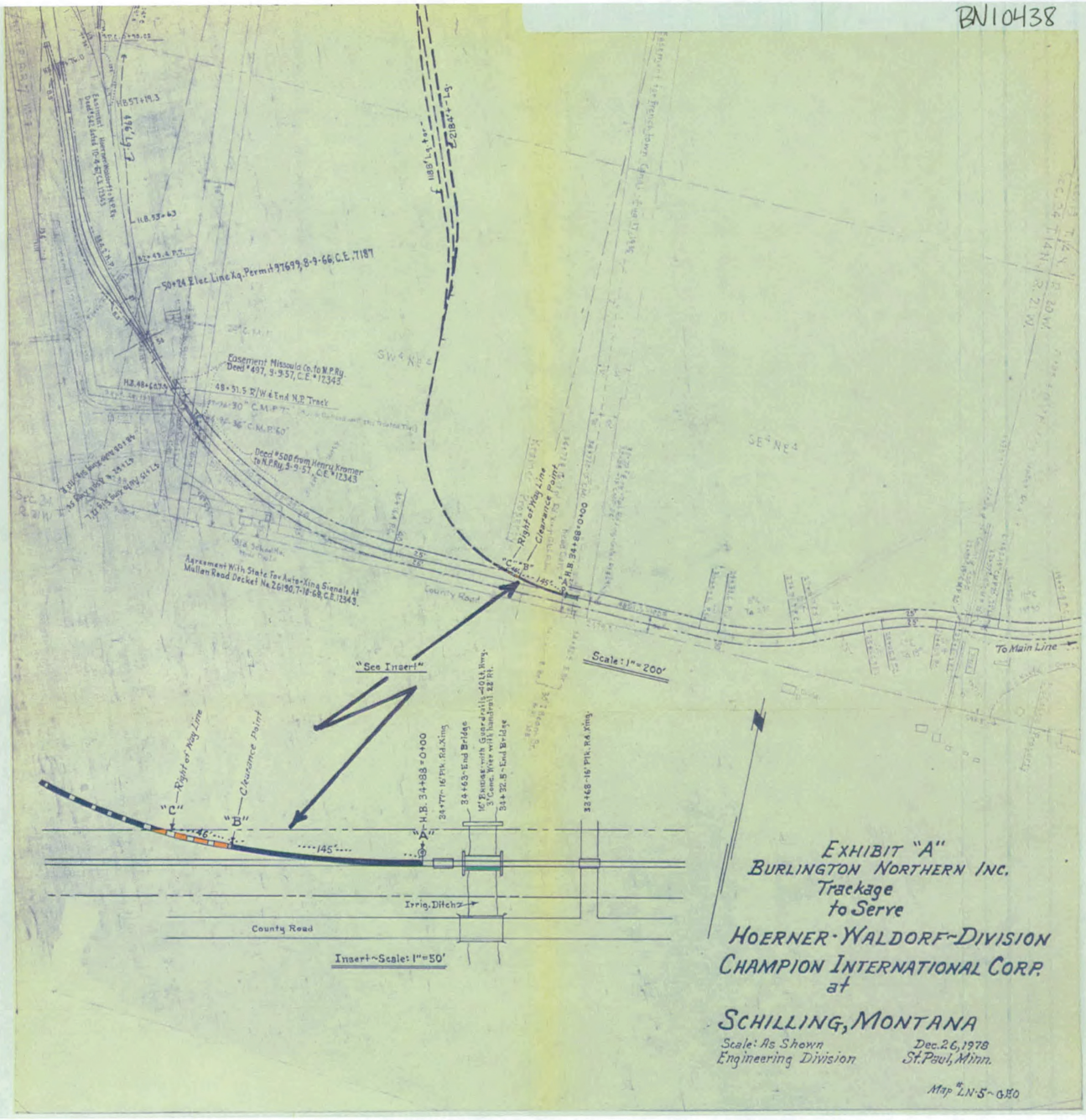


EXHIBIT "A"
BURLINGTON NORTHERN INC.
Trackage
to Serve
HOERNER-WALDORF-DIVISION
CHAMPION INTERNATIONAL CORP.
at
SCHILLING, MONTANA

Scale: As Shown
Engineering Division

Dec. 26, 1978
St. Paul, Minn.

Map #LN-5-6.#0

AGREEMENT

MADE BETWEEN

BURLINGTON NORTHERN RAILROAD COMPANY

AND

MONTANA RAIL LINK, INC.

Dated as of July 21, 1987

TABLE OF CONTENTS

Section		Page
1.	Definitions	2
2.	Branch Lines	5
	A. Purchased Lines	5
	B. Conveyancing Instruments	6
	C. Drummond-Philipsburg Line	9
	D. Mortgage Releases	10
	E. Indemnification and Allocation of Liabilities	11
3.	Main Lines	11
	A. Leased Premises	11
	B. BN Rights	12
	C. Rental	14
	D. Taxes and Other Charges	14
	E. Rail Service Use	16
	F. Environmental Liability	17
	G. Taking	17
	H. Sublease/Assignment	18
	I. Default	19
	J. Transfers in Event of Default	20
	K. Validity of Escrowed Documents and Execution of Additional Documents	21
	L. Lease Subject to BN Mortgages	22
	M. Title to Leased Premises	22
	N. Maintenance	23
	O. Discontinuance	27
	P. Adjustments to Rental	28
	Q. Records	28
	R. Indemnification and Allocation of Liabilities	28
	S. Purchase Option	29
	T. Recordation	32
	U. Financial Statements	32
	V. Insurance	32
4.	Purchase and Sale of Other Properties	34
	A. Livingston Shop Complex	34
	B. Excluded Trackage	36
	C. Equipment	36
	D. Discontinued Branch Lines	37
5.	Property Related and Joint Facility Agreements	37
	A.1. Administration Before Transfer	37
	A.2. Administration After Transfer	38
	B. Joint Facility Agreements	39
6.	Locomotive Transportation	40

KR
RS

7. Rail Freight Service..... 40
A. Interchange/Trackage Rights Agreements... 40
B. Division and Rates..... 42
C. Run Through Agreement..... 42
D. Rail Service..... 42
E. Agreements as Condition Subsequent..... 43

8. Equipment..... 44
A. Responsibility for Equipment..... 44
B. Car Repair Agreement..... 44
C. Line-Haul Carrier..... 45
D. Diesel Locomotive Fuel..... 45

9. Governmental Approvals..... 47
A. Government Approval as Condition Subsequent..... 47
B. Acceptability of Approvals..... 48
C. Labor Protection..... 48

10. Representations and Warranties of BN..... 49
A. Organization, Standing and Qualification. 49
B. Authority, Execution and Delivery..... 49
C. Material Data..... 49
D. Absence of Undisclosed Liabilities..... 53
E. Contracts and Commitments..... 54
F. Maintenance of Property by BN..... 54
G. Ability to Operate..... 55
H. Remedies for Breach..... 55
I. Survival of Remedies..... 57

11. Representations and Warranties of MRL..... 58
A. Organization, Standing and Qualification. 58
B. Authority..... 58
C. Corporate or Other Proceedings..... 58
D. Enforceable Against MRL..... 58
E. MRL is a Non-Carrier..... 58
F. Survival of Remedies..... 59

12. Transfer..... 59
A. Conditions of Closing..... 59
B. Transfer Date..... 60

13. Payment of Purchase Price..... 60

14. Right of First Refusal..... 61

15. Notices..... 62

16. Governing Law..... 63

17. Amendment..... 63

18. Interpretation..... 63

19. Arbitration..... 65

20. Effectiveness..... 67

21. Changed Circumstances..... 68

22. Additional Real Property..... 69

KR
DJB

Lease. The agreement for lease of certain main line properties set forth in Section 3. of this Agreement.

Leased Premises or Premises. Those properties leased to MRL as described in and pursuant to Section 3. of this Agreement.

Section 3. Main Lines

A. Leased Premises. At Transfer, BN agrees to lease to MRL and MRL agrees to lease from BN, on the terms and conditions set forth in this Section, for a term commencing on the Transfer Date and terminating on December 31, 2047 ("Term"), the rail line between Huntley, Montana, at M.P. 209.91 and West Helena, Montana, at M.P. 2.95 Main Track 1 and M.P. 5.02 Main Track 2 and the rail line between Phosphate, Montana, at M.P. 52.94 (Spokane 2nd Subdivision) and Sand Point, Idaho at M.P. 2.79 (Spokane 5th Subdivision), and the rail line between De Smet, Montana, at M.P. 0.0 and Paradise, Montana, at M.P. 64.27 (Spokane 5th Subdivision), including the track, track material, wires, pipes, conduits, poles, guys, bridges, switches, buildings, culverts, signals, scales and related structures, all ancillary and directly contiguous rail operating yards (including the Laurel Yard), facilities, plants, and appurtenances, but excluding there-

from: (1) the rail welding plant, automobile loading/unloading facility, and the DEC Computer in Laurel Yard; (2) all "non-essential" right of way and station grounds to be agreed upon by the parties; (3) the Intermodal Hub facility at Missoula; (4) the granite quarry and stockpile of ballast located at McQuarry Station east of Missoula near M.P. 106.4; (5) the Intermodal Hub facility at Billings and the Yellowstone Division office facility, fixtures and equipment at Billings; and (6) BN's microwave and communication equipment and facilities located on, along or adjacent to the Leased Premises (the "Excluded Properties"). Attached are Exhibit B-1 showing the Premises between Huntley and West Helena outlined in red, Exhibit B-2 showing the Premises between Phosphate and Sand Point outlined in red and Exhibit B-3 showing the Premises between De Smet and Paradise outlined in red (hereinafter together called the "Leased Premises"). Attached as Exhibits B-4 through B-9 are prints showing the Excluded Properties outlined in green. BN does not warrant its quality of title to the Premises nor undertake to defend MRL in the peaceable possession or use thereof, and no covenant of quiet enjoyment is made.

B. <u>BN Rights</u>. BN reserves unto itself and others, the right of access (but not including the right to operate trains or other vehicles or rolling stock on the trackage leased to MRL) to any BN property adjoining the Leased Premises, and the right to construct, relocate, maintain and

rights and remedies under the BN Mortgages and in equity or at law.

L. Lease Subject to BN Mortgages. This Lease shall not effect an assignment to MRL of BN's rights or obligations under the BN Mortgages, except such obligations as may relate to the continued maintenance and operation of the Premises for railroad purposes which obligations will be satisfied by compliance with this Agreement, and MRL understands that any right to cure a BN default or exercise other privileges under the BN Mortgages may be granted to MRL, if at all, at the sole discretion of the Trustees.

M. Title to Leased Premises. Title to the Leased Premises (including without limitation all fixtures, facilities and buildings) and to any and all additions, betterments and improvements to and of the Premises, whether made by BN or by MRL, shall remain the property of BN as lessor and shall not be removed by MRL, subject to Subsections N and S. MRL shall, if the purchase option set forth in Subsection S is not exercised, surrender possession of the Premises, as improved, to BN on Lease expiration or termination, free of any liens or encumbrances, not existing on the Transfer Date, and created or permitted by or through MRL without BN's written consent, and in at least as good a condition as pertained on the Transfer Date of this Agreement, in accordance with the obligations set forth in Subsection N. Should MRL, having not exercised its purchase option in accordance with its terms, fail to surrender possession of the Premises as

required (unless prohibited from surrendering possession by law or order of court or agency of competent jurisdiction), MRL shall pay to BN, as rental during any such hold-over period, to compensate BN partially for the loss of use of the Premises and disruption of operations, a sum equal to one hundred twenty-five percent (125%) of the rental rate specified in Section 3.C., payable weekly in arrears, and MRL shall be deemed a tenant at sufferance only. Payment of such rental is not BN's exclusive remedy and shall not relieve MRL from the consequences of breach of its said obligation to surrender possession.

N. Maintenance. MRL has inspected to its satisfaction the Premises and accepts them AS IS as of the date of execution of this Agreement. MRL shall repair, manage, and maintain the Premises in compliance with this Subsection, so as to accommodate continuous and uninterrupted train operations.

To comply with this Subsection N, MRL covenants to perform Maintenance of Leased Premises in a manner such that at all times Leased Premises shall meet the "Standard of Maintenance" applicable to the particular type or kind of rail facility or structure set forth hereinafter. BN agrees to deliver to MRL at Transfer the Leased Premises in not less than the FRA Track Safety Standards classes and maintenance condition that such lines exist in as of the date hereof.

MRL agrees that the Standard of Maintenance for the mainline trackage and all track structures, switches, track materials, and roadbed related thereto shall be a standard of

maintenance which allows said mainline at all times during this Agreement to meet the various classes of FRA Track Safety Standards permitting train operations at the timetable speeds and pursuant to the general orders existing over the Leased Premises on the date of Transfer. The Standard of Maintenance for all other trackage, track structures, switches, and all related track materials, structures and roadbed shall be the condition described in the report of the joint inspection of the parties. There shall be attached hereto at Transfer as Exhibit D an excerpt from the current timetable and the general orders which indicate the operating speeds currently in effect over the Leased Premises. BN shall remove prior to Transfer all temporary conditions requiring restrictions on operations not contained in Exhibit D.

MRL may identify from time to time to BN trackage or other structures which it wishes to maintain at less than the designated Standard of Maintenance applicable to such facility or structure. Upon such notice, BN shall determine whether it is willing to permit MRL to maintain such facility or structure in less than the applicable Standard of Maintenance. Unless a written waiver of the applicable Standard of Maintenance is granted by BN with respect to any particular facility or structure, the Leased Premises shall be maintained to the designated Standard of Maintenance at all times during the Term.

The parties agree to make an annual joint inspection of the Leased Premises to determine whether during the course of the year all facilities were maintained in accordance with the applicable Standard of Maintenance. Such inspection shall include an annual inspection of the mainline track by Sperry car provided by BN at BN's sole expense and at such reasonable time as BN shall select. In the event that as a result of the joint inspection of the Leased Premises or the Sperry car inspection, BN believes that any facility, structure, or other portion of the Leased Premises fails to meet the appropriate Standard of Maintenance, BN shall so advise MRL of the steps necessary in BN's judgment to bring the facility into a condition meeting the applicable Standard of Maintenance. Thereafter, MRL shall have a reasonable period of time, such time to be mutually agreed upon, within which to take corrective action to bring the alleged non-complying facility into the applicable Standard of Maintenance. In the event MRL shall not take such corrective action within a reasonable period of time, BN shall have the right, after reasonable notice, to take such corrective action at BN's sole expense. BN may deduct all of such expense from the per car allowances owed to MRL under the Rate and Allowance Agreement provided that, if the matter is submitted to arbitration pursuant to Section 19. hereof, until such arbitration is completed BN may deduct only one-half of such amount. If requested, the arbitrators shall decide whether and to

what extent BN or MRL is to bear the expense of taking such action.

MRL agrees to maintain adequate maintenance records for the Leased Premises during the Term to permit a determination of the existing maintenance level for the Leased Premises at any given point in time. The parties understand and agree that such records shall include track profiles which shall be based upon BN's track profiles for the Leased Premises which BN shall provide to MRL at Transfer, inspection reports, reports of materials removed, scrapped, redeployed or installed new and other such maintenance records. Prior to the end of each Agreement Year, other than the first Agreement Year, MRL agrees to submit to BN its proposed maintenance plan for the upcoming Agreement Year. In addition, prior to the end of every third Agreement Year over the Term, MRL will submit to BN a ten-year capital and maintenance plan for the Leased Premises.

MRL agrees that it shall not remove any of the existing Leased Premises and replace same with materials of inferior quality without the advance consent of BN. BN's consent to remove track materials or other parts of the Leased Premises in the course of MRL's performance of ordinary and routine Maintenance shall not be necessary when any materials removed from the Leased Premises are to be, and in fact are, soon after replaced by materials of equal or superior quality, in which event MRL may retain and dispose of for its own account any materials so removed.

MRL agrees to comply with all laws, ordinances, rules, regulations, final orders and decrees applicable to the Leased Premises and Maintenance thereof and shall indemnify, defend, protect and hold harmless BN from and against any fines or penalties levied against MRL or BN as a result of MRL's noncompliance with said laws, ordinances, rules, regulations, final orders and decrees.

NOTICE OF LEASE

NOTICE IS HEREBY GIVEN that on the 30th day of October, 1987, Burlington Northern Railroad Company, Lessor, and Montana Rail Link, Inc. Lessee, entered into a Lease for the following described premises:

> The rail line between Huntley, Montana, at M.P. 209.91 and West Helena, Montana, at M.P. 2.95 Main Track 1 and M.P. 5.02 Main Track 2 and the rail line between Phosphate, Montana, at M.P. 52.94 (Spokane 2nd Subdivision) and Sand Point, Idaho at M.P. 2.79 (Spokane 5th Subdivision), and the rail line between De Smet, Montana, at M.P. 0.00 and Paradise, Montana, at M.P. 64.27 (Spokane 5th Subdivision), including the track, track material, wires, pipes, conduits, poles, guys, bridges, switches, buildings, culverts, signals, scales and related structures, all ancillary and directly continguous rail operating yards (including the Laurel Yard), facilities, plants, and appurtenances, but excluding therefrom: (1) the rail welding plant, automobile loading/unloading facility, and the DEC Computer in Laurel Yard; (2) all "non-essential" right of way and station grounds to be agreed upon by the parties; (3) the Intermodal Hub facility at Missoula; (4) the granite quarry and stockpile of ballast located at McQuarry Station east of Missoula near M.P. 106.4; (5) the Intermodal Hub facility at Billings and the Yellowstone Division office facility, fixtures and equipment at Billings, and (6) BN's microwave and communication equipment and facilities located on, along or adjacent to the Leased Premises (the "Excluded Properties").

The Lease between the parties is on terms and conditions as more specifically set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hand on the 30th day of October, 1987.

BURLINGTON NORTHERN RAILROAD COMPANY

By Doris W. Gaskin Jr.
Its:

MONTANA RAIL LINK, INC.

By
Its: VP

STATE OF ~~MONTANA~~ TEXAS)
:ss
County of ~~Missoula~~ Tarrant)

On the 30th day of October, before me, a notary public for the State of ~~Montana~~ Texas, personally appeared DARIUS W. GASKINS JR, on behalf of Burlington Northern Railroad Company, and known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Julie A. Moberly
Notary Public for the State of ~~Montana~~ Texas
(SEAL) Residing at Ft. Worth TX
My Commission Expires:

JULIE A. MOBERLY
Notary Public, State of Texas
My Commission Expires 11-9-07

STATE OF ~~MONTANA~~ TEXAS)
:ss
County of ~~Missoula~~ Tarrant)

On the 30th day of October, before me, a notary public for the State of ~~Montana~~ Texas, personally appeared DOEN PARKINSON, on behalf of Montana Rail Link, Inc., and known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Julie A. Moberly
Notary Public for the State of ~~Montana~~ Texas
(SEAL) Residing at Ft. Worth, TX
My Commission Expires:

JULIE A. MOBERLY
Notary Public, State of Texas
My Commission Expires 11-9-07

NP 520

EASEMENT FOR SPUR TRACK UNDER AGREEMENT R W14 500—C-H

This Indenture, made this 17th day of October A. D. 19 61

between WALDORF-HOERNER PAPER PRODUCTS COMPANY, INC.

a Delaware corporation

party of the first part, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation under the laws of the state of Wisconsin, having its principal place of business at St. Paul, Minnesota, party of the second part,

WITNESSETH:

For and in consideration of the sum of one dollar to it paid, the receipt whereof is hereby acknowledged, and in performance of the agreement between Waldorf-Hoerner Paper Products Company, Inc. and the Northern Pacific Railway Company dated June 13, 1961, the party of the first part has GRANTED, and by these presents does GRANT, to the party of the second part, its successors and assigns, the following described premises, situate in the County of Missoula and State of Montana to-wit:

That certain tract or strip of land 17 feet in width, being 8½ feet on each side of the center line of the certain spur track or siding which is now located or may be located and constructed across the premises of the party of the first part, described as follows:

Portions of the Southwest Quarter Northeast Quarter (SW¼NE¼), Southeast Quarter Northwest Quarter (SE¼NW¼) and Northeast Quarter Northwest Quarter (NE¼NW¼) of Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian.

For a more particular description, and as explanatory hereof, reference is made to the attached plat, which is hereby made a part of this indenture and shows colored red the strip above described.

To Have and to Hold said premises unto the party of the second part, its successors and assigns, according to the conditions in said agreement stated.

Provided that should the party of the second part cease to use said premises for railway purposes, and remove its rails therefrom, the same shall revert to the party of the first part.

The party of the second part shall have the right to enter upon the lands of the party of the first part adjoining said premises for the purpose of constructing, maintaining and operating said track or tracks.

In Witness Whereof, the party of the first part has executed these presents the day and year first above written.

WITNESSES:

Elgar F. Kirk

Joellyn Gray

WALDORF-HOERNER PAPER PRODUCTS COMPANY, INC.

By [signature] (Seal)
Title:

By W. C. Holly (Seal)
Title:

STATE OF ..... }ss.
County of ..... }

I, ..., a Notary Public do hereby certify that on this ..... day of ..... 19 ..., personally appeared before me ..... to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as ..... free and voluntary act and deed for the uses and purposes therein mentioned.

Give under my hand and official seal this ..... day of ..... 19 ....

.....
Notary Public, ... County, ...
My Commission expires .....

STATE OF Montana }ss.
County of Missoula }

On this 17th day of October in the year 19.61, before me the undersigned a Notary Public, personally appeared N.H. Sandberg and W.C. Hodge to me known to be the President and Asst Secretary respectively, of the Lessee Company, the corporation which executed the foregoing instrument, and who being duly sworn did say, that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corportion by authority of its Board of Directors, and the said President and Asst Secretary acknowledged said instrument to be the free act and deed of said corporation.

Given under my hand and official seal this 17th day of October 19.61.

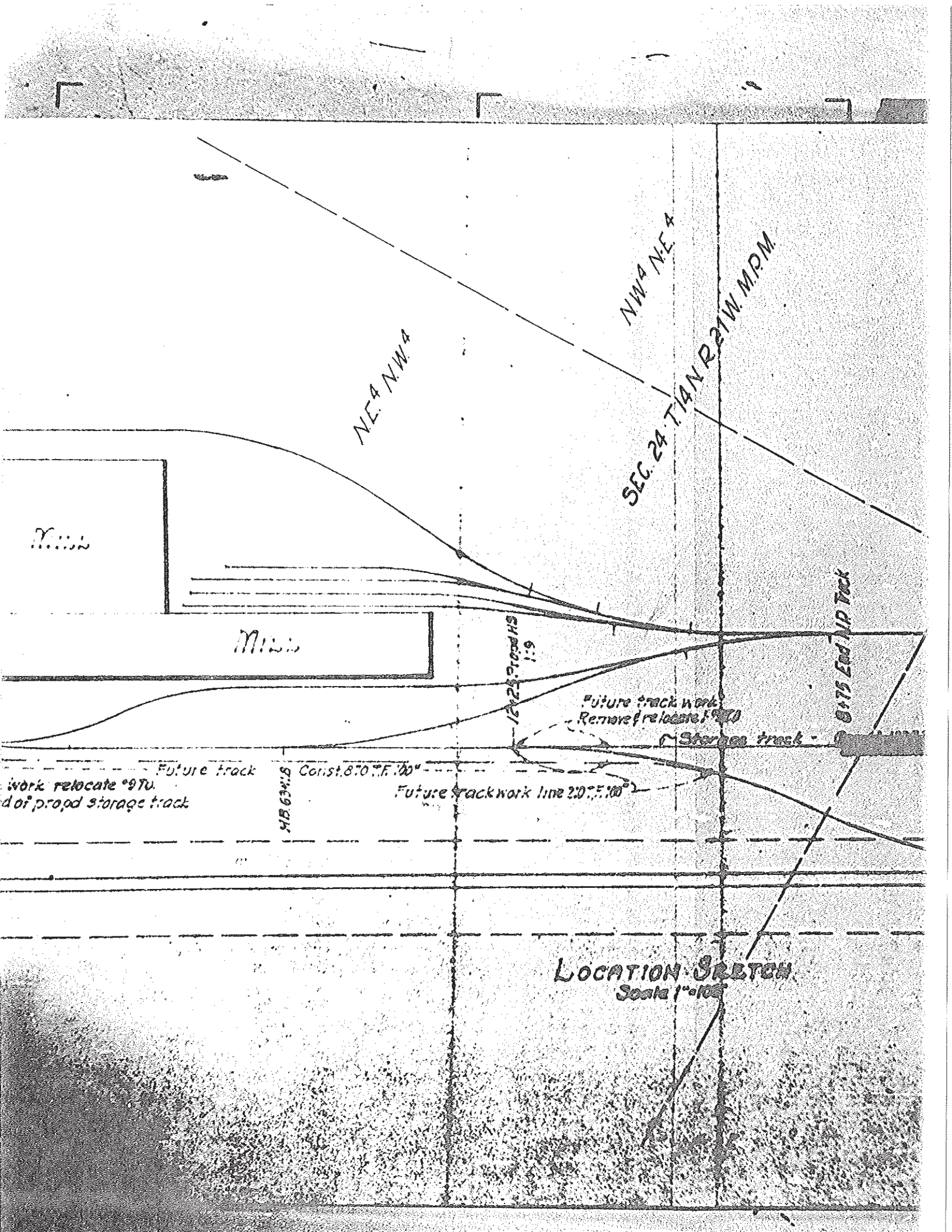
Vern Evans Jones
Notary Public, Missoula County, Montana
My Commission expires Aug. 10, 1962

EVAN JONES NOTARIAL SEAL STATE OF MONTANA

19[illegible] Deed Bk. 10 25

I received and filed this instrument for record on the 23 day of Feb 1962 at 8:12 o'clock A.M. and it is recorded in Vol 223 of Deed Records of the County of Missoula, State of Montana, on page 384 Fee $2.00
Fee 4.00 Return to W. Railway Co. Witness my hand, MARTIN S. DEHNER, County Recorder
Address Properties Department By [illegible] Deputy
St. Paul, Minn.
Atta: F.C. Sempf.

Chip Unloader
Pulp Mill
Paper
Propane
Future track work relocate 9 RR
from West end of proposed storage track
Future tr
STATE OF
County of
ss.


NE 4 NW 4
NW 4 NE 4
SEC. 24 T14N R21W M.P.M.
Mill
Mill
Future track work
Remove & relocate
Storage track
Future track
Const. 870 L.F. 20"
Future trackwork line 20 L.F. 100"
HB 634.8
Proposed HS
1:9
Bnd Up Track
LOCATION SKETCH
Scale 1" = 100'

W-15621

THIS INDENTURE, Made this 1st day of October, A D 1967, between HOERNER-WALDORF CORPORATION OF MONTANA, a Montana corporation, party of the first part, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation under the laws of the State of Wisconsin, having its principal place of business at St Paul, Minnesota, party of the second part,

WITNESSETH

For and in consideration of the sum of One Dollar ($1 00) to it paid, the receipt whereof is hereby acknowledged, the party of the first part has GRANTED, and by these presents does GRANT, to the party of the second part, its successors and assigns, the following described premises, situate in the County of Missoula and State of Montana, to-wit

> Those certain tracts or strips of land seventeen (17) feet in width, being eight and one-half (8-1/2) feet on each side of the center line of the certain spur tracks or sidings which are now located and constructed across the premises of the party of the first part, described as follows
>
> Portions of the Southwest Quarter Northeast Quarter (SW1/4 NE1/4), Southeast Quarter Northwest Quarter (SE1/4 NW1/4), and Northeast Quarter Northwest Quarter (NE1/4 NW1/4) of Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian, as shown colored RED on the map marked Exhibit "A" dated July 18, 1967, attached hereto and made a part hereof

HBK

This agreement supersedes and cancels that certain other easement agreement granted by Waldorf-Hoerner Paper Products Company, Inc , (predecessor in interest of Hoerner-Waldorf Corporation) to Northern Pacific Railway Company by instrument dated October 17, 1961, recorded in the office of the register of deeds, Missoula County, Montana on February 23, 1962 in Book 223, page 384, as Document No 190003, covering a portion of the premises hereinabove described

TO HAVE AND TO HOLD said premises unto the party of the second part, its successors and assigns, provided, however, that should the party of the second part cease to use said premises for railway purposes, and remove its rails therefrom, the same shall revert to the party of the first part

The party of the second part shall have the right to enter upon the lands of the party of the first part adjoining said premises for the purposes of constructing, maintaining and operating said track or tracks

IN WITNESS WHEREOF, the party of the first part has executed these presents the day and year first above written

WITNESSES

HOERNER-WALDORF CORPORATION OF MONTANA

By _____
Title _____

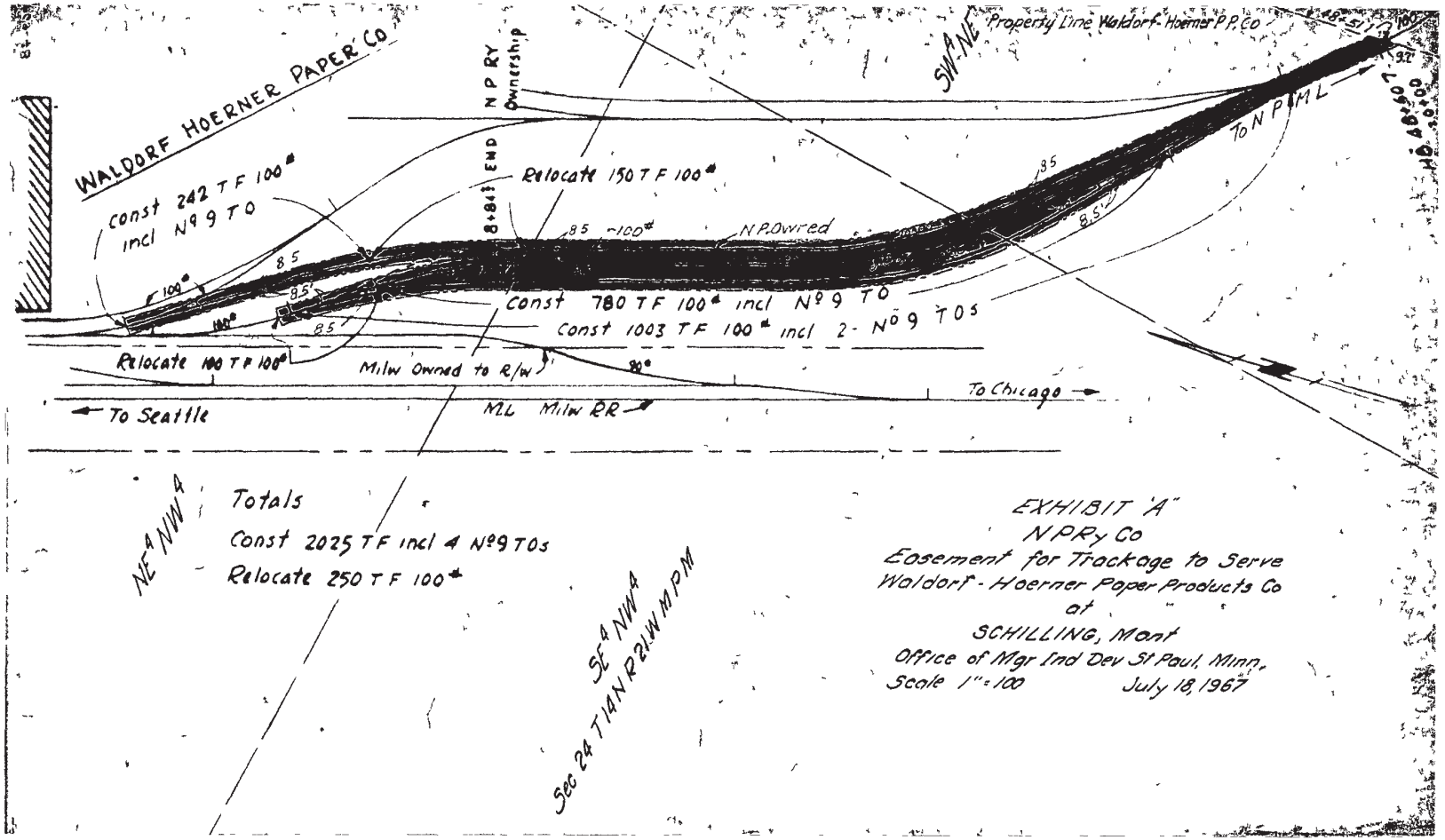
STATE OF Minnesota)
) ss
County of Ramsey)

On this 17th day of October in the year 1967, before me, Paul W Thorne, a Notary Public for the State of ~~Montana~~ Minnesota, personally appeared V D Shuck known to me to be the ~~President~~ Senior Vice President of the Hoerner-Waldorf Corporation of Montana, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year in this certificate first above written

PAUL W THORNE
Notary Public Ramsey County, Minn
My Commission Expires Sept 3 1968

Paul W Thorne


WALDORF HOERNER PAPER CO
N P RY Ownership
8+84 END
Property Line Waldorf-Hoerner P.P. Co
SW¼ NE¼
Const 242 T F 100#
incl Nº 9 T O
Relocate 150 T F 100#
N.P. Owned
Const 780 T F 100# incl Nº 9 T O
Const 1003 T F 100# incl 2 - Nº 9 T Os
Relocate 100 T F 100#
Milw Owned to R/W
To N P M L
To Chicago
To Seattle
M L Milw RR
NE¼ NW¼
Totals
Const 2025 T F incl 4 Nº 9 T Os
Relocate 250 T F 100#
SE¼ NW¼
Sec 24 T 14 N R 21 W M P M
EXHIBIT "A"
N P Ry Co
Easement for Trackage to Serve
Waldorf - Hoerner Paper Products Co
at
SCHILLING, Mont
Office of Mgr Ind Dev St Paul, Minn.
Scale 1" = 100
July 18, 1967

EASEMENT FOR RAILWAY RIGHT OF WAY

KNOW ALL MEN That Missoula County, a municipal corporation, of the State of Montana, in consideration of One and no/100 Dollar ($1.00) to it in hand paid, the receipt of which is hereby acknowledged, and the benefits to accrue to it by reason of the construction and operation of the railroad of the grantee herein, does hereby grant to Northern Pacific Railway Company, a corporation, its successors and assigns, a permanent and perpetual right, privilege and easement to construct, operate and maintain a spur track and to pass and repass with its locomotives and cars over and upon that portion of the Missoula County highway (Mullan Road) and highway right of way in the West Half Southwest Quarter Northeast Quarter (W½SW¼NE¼), Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian Missoula County, Montana, lying between two lines concentric with and distant respectively 25 feet northeasterly and southwesterly, measured radially, from the center line of that certain spur track to be located and constructed across said highway and highway right of way.

Form Approved By [illegible] Attorney

For a more particular description, and as explanatory hereof, reference is made to the attached plat marked Exhibit "A", which is made a part hereof and shows by red color the strip of land above-described.

Description Approved [illegible] Industrial Agt

Dated this 8th day of January, 1957.

MISSOULA COUNTY,
A Municipal Corporation

By [illegible]
Chairman of the Board of County Commissioners

[illegible]
Commissioner

[illegible]
Commissioner

ATTEST
Joe D Brown
County Clerk
By Evelyn Lind, Deputy

STATE OF MONTANA)
:ss
County of Missoula)

On this 8th day of January, 1957, before me Harval Thompson a Notary Public for the State of Montana, personally appeared R.G. Ostergren, J. J. Howe & H. W. Stoutenburg members of the Board of County Commissioners, known to me to be the Chairman and Commissioners of the Board of County Commissioners of Missoula County, Montana, who being duly sworn did say that the foregoing instrument was signed and sealed in behalf of said County by authority of its Board of County Commissioners and Joe D. Brown, the County Clerk in and for said County, acknowledged said instrument to be the free act and deed of said Board.

Harval Thompson
Notary Public for the State of Montana
Residing at Missoula, Montana
My commission expires August 1 1957

Deed Bk # 129

142988

I received and filed this instrument for record on the 18 day of Apr 1957 at 2:20 o'clock P M and it is recorded in vol 200 of Deed Record of the County of Missoula State of Montana on page 35 Fee 1.00
Paid Return to NP Ry Co
Address G.N.C. Prop. Mgr. and only
Witness my hand EVELYN LIND County Recorder
By [illegible] Deputy

OVERSIZED
DOCUMENT NOT
SCANNED

THIS INDENTURE, Made the 18th day of February, 1957, between PHILIAS LACASSE and FLORIDA LACASSE, his wife, of Missoula, Montana, the parties of the First Part; and NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, the party of the Second Part;

WITNESSETH, That the said parties of the First Part, for and in consideration of the sum of Four Thousand and no/100 Dollars ($4,000.00) lawful money of the United States of America to them in hand paid by said party of the Second Part, the receipt whereof is hereby acknowledged; do by these presents grant, bargain, sell, convey, warrant and confirm unto the said party of the Second Part, and to its successors and assigns forever, the hereinafter described real estate, situated in the County of Missoula and State of Montana, to-wit:

For By HBK Attorney

Description Approved Industrial Agt

A strip of land fifty (50) feet wide, being twenty-five (25) feet wide on each side of the center line of that certain spur track located and constructed across that portion of the South Half of the Northwest Quarter (S½NW¼) of Section Nineteen (19), Township Fourteen (14) North, Range Twenty (20) West, Montana Principal Meridian, lying westerly of the one hundred (100) foot wide right of way for the main line of the Northern Pacific Railway Company.

TOGETHER, with all and singular the hereinbefore described premises together with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the First Part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging, TO HAVE AND TO HOLD, all and singular the above mentioned and described premises unto the said party of the Second Part, and to its successors and assigns forever.

And the said parties of the First Part, and their heirs, do hereby covenant that they will forever WARRANT AND DEFEND all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said party of the Second Part its successors and assigns, against the acts and deeds of the said parties of the First Part, and all and every person and persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said parties of the First Part have hereunto set their hands and seals the day and year first hereinbefore written.

Signed, Sealed and Delivered in the Presence of:

Philias Lacasse

Florida Lacasse

STATE OF MONTANA)
:ss
County of Missoula)

On this 18th day of February, 1957, before me, Everett Dressman, a Notary Public for the State of Montana, personally appeared Philias Lacasse and Florida Lacasse known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

Everett Dressman
NOTARY PUBLIC for the State of Montana
Residing at Missoula, Montana
My commission expires June 25, 1958

BOOK 199 PAGE 386

142340

I received and filed this instrument for record on the 22 day of March 1957 at 8:00 o'clock A M. and it is recorded in Vol. 199 of Deed Records of the County of Missoula, State of Montana, on page 385.
Witness my hand
EVELYN LIND, County Recorder
By [illegible] Deputy
Fee $ 2.00 Paid
Return to P. O. Box [illegible] Missoula, Mont.
Address [illegible] St. Paul, Minn.

INDUSTRIAL DEVELOPMENT DEPARTMENT

Warranty DEED.

Dated July 16, 1957

From Henry Kramer ctux

To N. P. Ry. Co.

Description 50 ft. strip of land across portion of S2NE4 Sec. 24, T. 14 N. R. 21 W. M.P.M. Schilling, Mont.

Noted on Title Plat No. 6.2 K-1 DBA 9-6-57

Noted on Track Profile M. P.

Noted on Station Plat

R. of W. Change Memo No. 159 1957

Corres. File No. 22975

A Voucher $4000.00

B Contract dated Oct. 15, 1956

Abstract of Title

C Opinion on Title

Report of Negotiations

Release of Mortgage

File 4434

Coeur d'Alene Branch Deed No. 500

BOOK 201 PAGE 588

THIS INDENTURE, Made the 16th day of JULY, A.D., 1957, BETWEEN HENRY KRAMER and MARGARET KRAMER, his wife, of Missoula, Montana, the parties of the First Part; and NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, the party of the Second Part;

WITNESSETH, That the said parties of the First Part, for and in consideration of the sum of Four Thousand and no/100 Dollars ($4,000.00) lawful money of the United States of America to them in hand paid by said party of the Second Part, the receipt whereof is hereby acknowledged; do by these presents grant, bargain, sell, convey, warrant and confirm unto the said party of the Second Part, and to its successors and assigns forever, the hereinafter described real estate, situated in the County of Missoula and State of Montana, to-wit:

Approved as to form
By HBR
Attorney

Description Approved
Industrial Agt.

A strip of land fifty (50) feet wide, being twenty-five (25) feet wide on each side of the center line of that certain spur track located and constructed across that portion of the South Half Northeast Quarter (S½NE¼), Section Twenty-four (24), Township Fourteen (14) North, Range Twenty-one (21) West, Montana Principal Meridian, lying easterly of the right of way for Mullan Road.

TOGETHER, with all and singular the hereinbefore described premises together with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the First Part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging, TO HAVE AND TO HOLD, all and singular the above mentioned and described premises unto the said party of the Second Part, and to its successors and assigns forever.

And the said parties of the First Part, and their heirs, do hereby covenant that they will forever warrant and defend all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said party of the Second Part, its successors and assigns, against the acts and deeds of the said parties of the First Part, and all and every person and persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said parties of the First Part have hereunto set their hands and seals the day and year first hereinbefore written.

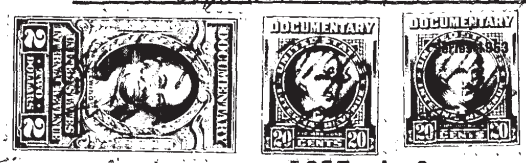
Signed, Sealed and Delivered in the Presence of:

Dorothy Vander Pas

Earnest P. Dussault

Henry Kramer

Margaret Kramer



STATE OF MONTANA)
: ss
County of Missoula)

On this 16th day of JULY in the year 1957, before me EDWARD T. DUSSAULT a Notary Public for the State of Montana personally appeared HENRY KRAMER & MARGARET KRAMER, his wife known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

NOTARY PUBLIC for the State of Montana
Residing at Missoula, Montana
My commission expires June 25, 1958.

Earnest P. Dussault

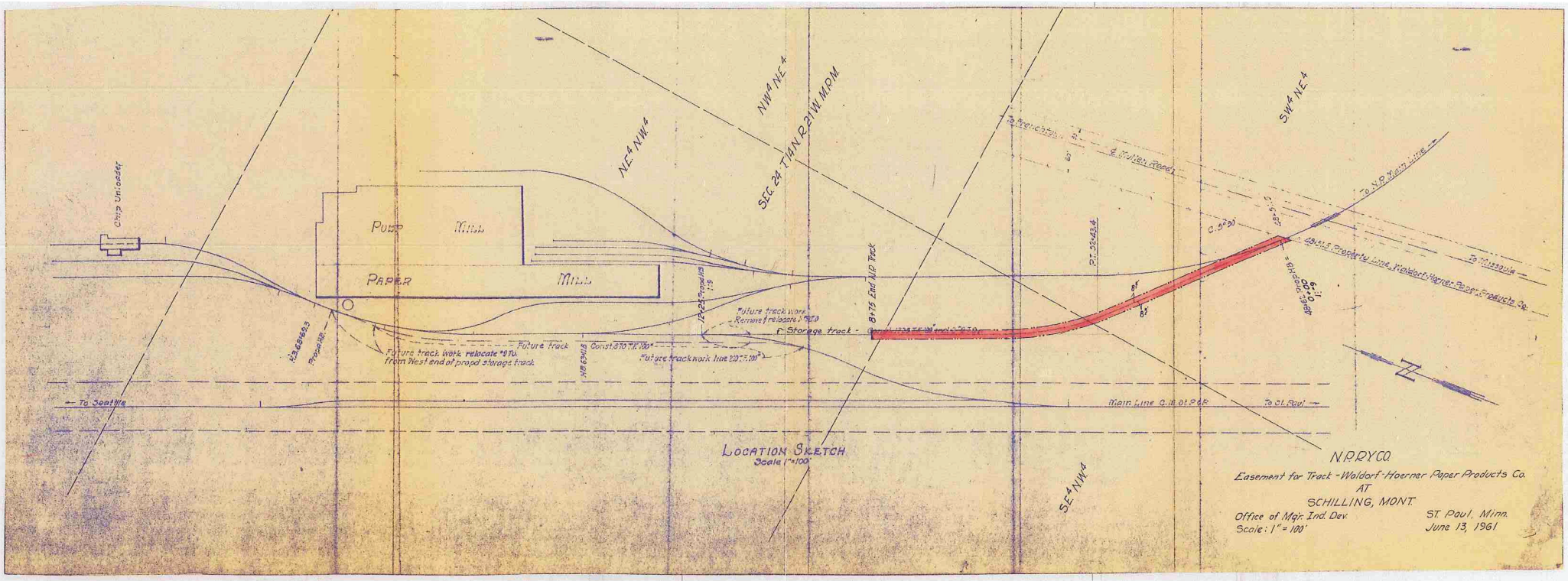
145505 ✓✓

I received and filed this instrument for record on the 12 day of Aug. 1957 at 8:32 o'clock A.M. and it is recorded in vol. 201 of Deed Records of the County of Missoula, State of Montana, on page 588. Fee 1.00

Paid ..... Return to N.P. Railway Co. Witness my hand, EVELYN LIND, County Recorder

Address St. Paul, Minn. By Rose Lewis Deputy

attention: F.C. Lemp, Mgr. Industrial Development.


Chip Unloader
Pulp Mill
Paper Mill
NE4 NW4
NW4 NE4
SEC 24 T14N R21W M.P.M.
SW4 NE4
SE4 NW4
To Missoula
To N.P. Main Line
Property Line Waldorf-Hoerner Paper Products Co.
Future track work relocate 8°70.
from West end of propd storage track
Future Track
Future track work
Reroute & relocate 5°70
Storage track
Main Line C.M.St.P&P.
To Seattle
To St. Paul
LOCATION SKETCH
Scale 1"=100'
N.P.R.Y.CO.
Easement for Track - Waldorf-Hoerner Paper Products Co.
AT
SCHILLING, MONT.
Office of Mgr. Ind. Dev.
Scale: 1" = 100'
ST. Paul, Minn.
June 13, 1961

QUITCLAIM DEED

THIS INDENTURE, Made the 8th day of August in the year of our Lord one thousand nine hundred and seventy-eight, between BURLINGTON NORTHERN INC., a corporation organized and existing under the laws of the State of Delaware, successor in interest to Northern Pacific Railway Company, Grantor, and HOERNER-WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, Grantee,

WITNESSETH: That the said Grantor for and in consideration of the sum of One and no/100 Dollar ($1.00) and other good and valuable consideration, to it in hand paid by the said Grantee, the Receipt of Which is hereby acknowledged, does convey, remise, release and forever quitclaim unto the said Grantee, and to its successors and assigns, the following described real estate, to-wit:

Those certain tracts or strips of land 17 feet in width, being 8 1/2 feet on each side of the center line of the certain spur tracks or sidings which are now located and constructed across the premises of the Burlington Northern Inc., described as follows:

Approved as to form
Asst. Gen. Counsel
Law Dept. B.N.I.

Portions of the Southwest Quarter Northeast Quarter (SW1/4 NE1/4), Southeast Quarter Northwest Quarter (SE1/4 NW1/4) and Northeast Quarter Northwest Quarter (NE1/4 NW1/4) of Section 24, Township 14 North, Range 21 West, Montana Principal Meridian, Missoula County, Montana, as shown colored red on the map marked Exhibit "A" dated July 18, 1967, attached hereto and made a part hereof.

Together with all the tenements, hereditaments and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said Grantor, of, in or to the said premises and every part and parcel thereof.

APPROX. AREA 1.07AC.

TO HAVE AND TO HOLD, all and singular the said premises, with the appurtenances unto the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, said Grantor has caused its corporate name to be subscribed and its corporate seal to be affixed, by its proper officers, thereunto duly authorized, on this 8th day of August, A.D. 1978.

BURLINGTON NORTHERN INC.

BY /s/ J. C. Kenady
Vice President

(S E A L)

ATTEST:

BY /s/ F. A. Deming
Assistant Secretary

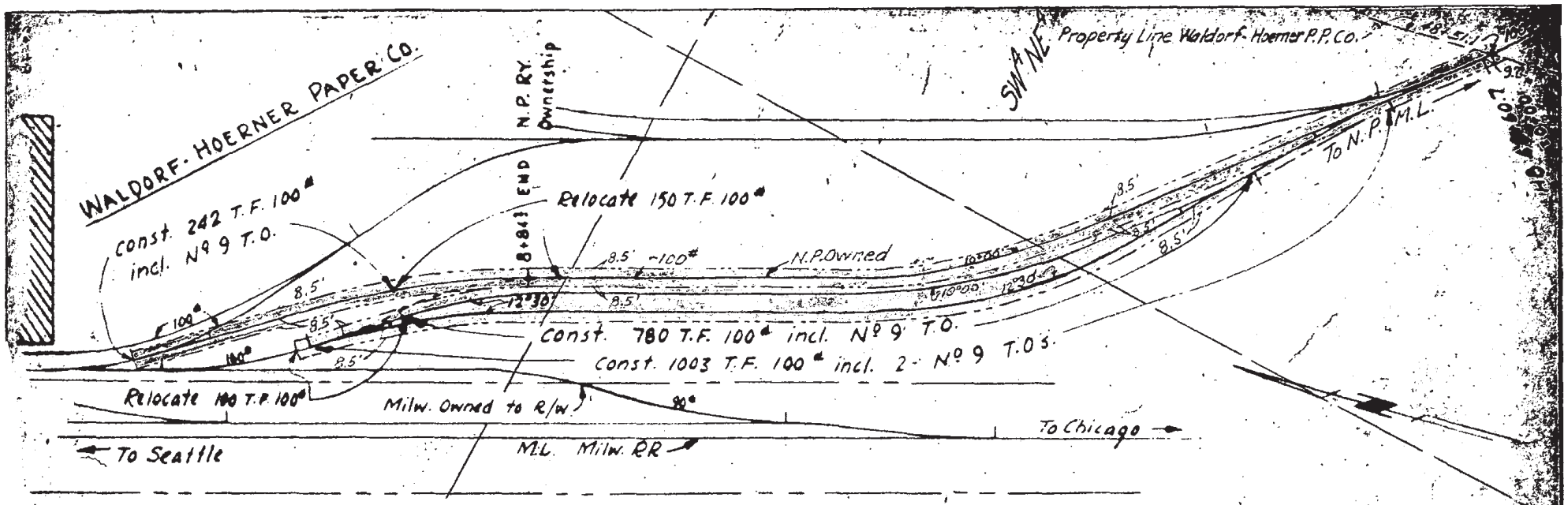
STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

On this 8th day of August in the year 1978, before me, a Notary Public, personally appeared J. C. KENADY known to me to be Vice President of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

/s/ R. H. Brokopp

R. H. BROKOPP
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires April 22, 1983

APPROVED
As To Form
Law Dept.
As To Property Interests
As To Description



NE¼ NW¼

Totals:

Const. 2025 T.F. incl. 4-Nº 9 T.O.s.

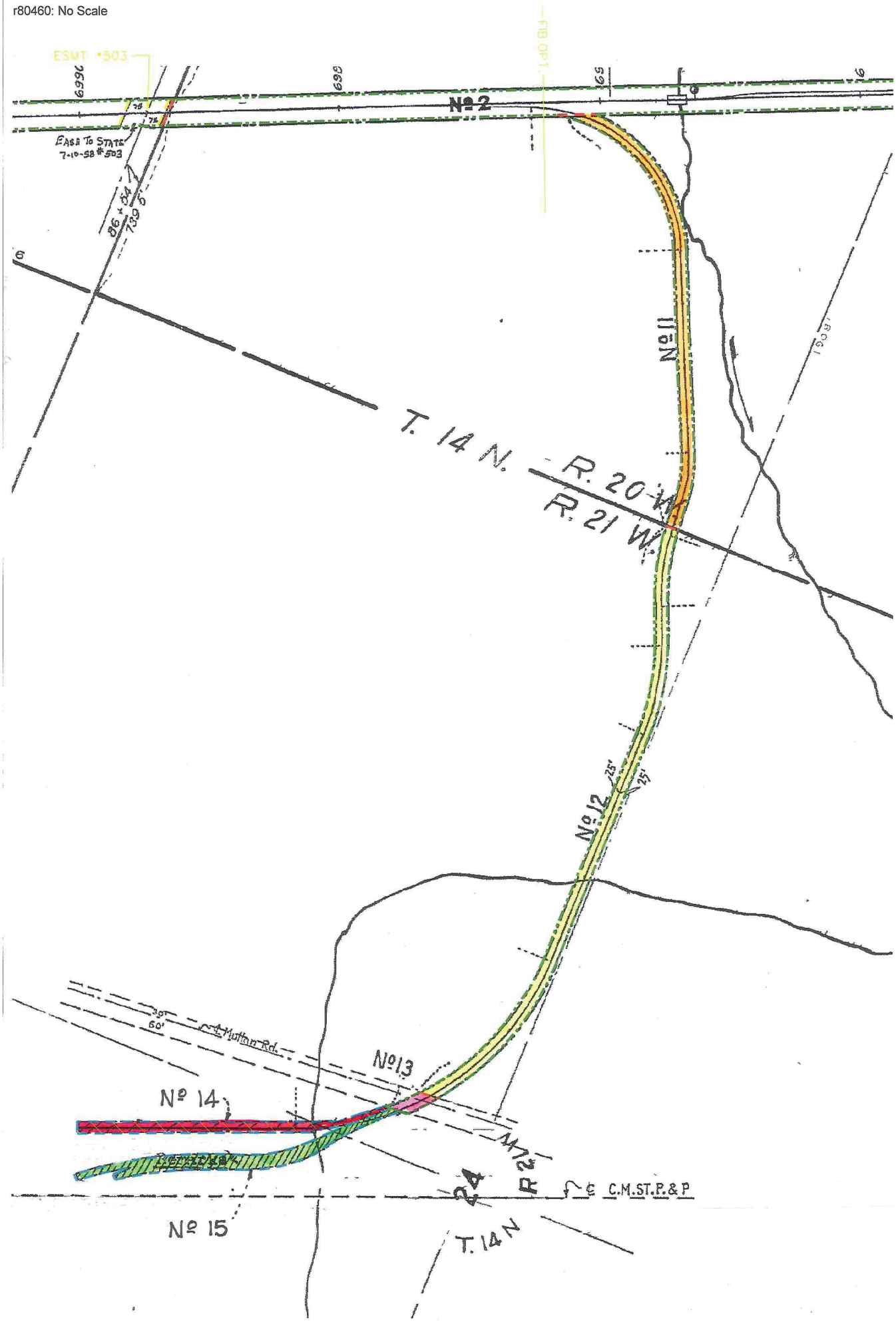
Relocate 250 T.F. 100#

SE¼ NW¼ Sec. 24 T.14N. R.21W. M.P.M.

EXHIBIT "A"
N.P.Ry. Co.
Easement for Trackage to Serve
Waldorf-Hoerner Paper Products Co.
at
SCHILLING, Mont
Office of Mgr. Ind. Dev. St. Paul, Minn.
Scale: 1" = 100' July 18, 1967

File	Station	County	State	Remarks	Sale No.
C.F. 22975 Pt. 2	Missoula	Missoula	Montana	Sale of land to Hoerner-Waldorf Division, Champion International Corporation.	S-3856

FORM 60078 2-74

A.F.E. _____ Property Management MAPS Book K-1 Pg. 6-2 Engineering _____ V. S 19

r80460: No Scale