

**SETTLEMENT, SALE, AND MUTUAL RELEASE
OF ALL CLAIMS AGREEMENT**

This Settlement, Sale, and Mutual Release of All Claims Agreement (this “**Agreement**”), dated as of November 12, 2020, is by and among Nevada Northern Railway Foundation, Inc., a Nevada nonprofit corporation (the “**Foundation**”), formerly known as White Pine Historical Railroad Foundation, Inc., a Nevada nonprofit corporation (“**WPHRF**”), the City of Ely, Nevada, a Nevada municipal corporation (the “**City**”) (the Foundation and the City, collectively, the “**Plaintiffs**” or the “**Sellers**,” and each, a “**Plaintiff**” or a “**Seller**”), and S & S Shortline Leasing, LLC, a Utah limited liability company (“**S & S**” or “**Buyer**” or “**Defendant**”) (the Foundation, the City, and S & S collectively referred to herein as the “**Parties**,” and each, a “**Party**”), and solely with respect to Sections D.4., J.1., M., and R. of Article III, Michael Williams, an individual residing in Missouri (“**Williams**”), and Avory Beggs, an individual residing in Missouri (“**Beggs**”), and solely with respect to Sections D.4 and R. of Article III, Tammy Williams, an individual residing in Missouri and the spouse of Williams (“**Mrs. Williams**”). This Agreement is entered into with the intent to, and for purposes of, resolving all claims that exist or may exist between the Parties, including, without limitation, in the actions currently pending in the Seventh Judicial District Court of the State of Nevada, in and for the county of White Pine, as Case No. CV-1506071, which is more fully described below.

I

RECITALS

A. On September 27, 2005, Sellers purchased from the City of Los Angeles, Acting By and Through the Department of Water and Power of the City of Los Angeles, a certain portion of the Nevada Northern Railway via a quitclaim deed dated September 27, 2005 (the “**L.A.**

Quitclaim Deed”) and a grant, bargain, and sale deed dated September 27, 2005 (the “**L.A. GBS Deed**”).

B. Pursuant to the Section 1955 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59, August 10, 2005), on September 26, 2005, the United States of America, by and through the United States Department of the Interior, Bureau of Land Management, conveyed to the City, via an Interim Conveyance, land previously authorized for use for the purpose of a railroad known as the Nevada Northern Railway (the “**Federal Government Interim Conveyance**”).

C. The Foundation and the City acquired all of the rights described in the L.A. Quitclaim Deed, the L.A. GBS Deed, and the Federal Government Interim Conveyance for the public purpose of developing commercial rail traffic on the Nevada Northern Railway from Cobre Junction and/or Shafter Junction south to and around the City, including the copper mine commonly known as the Robinson Mine near Ruth, Nevada.

D. On or about July 31, 2009, the Parties entered into a Lease Agreement/Joint Development Agreement for, at a minimum, the storage of rail cars on a portion of the Nevada Northern Railway (the “**Joint Development Agreement**”)

E. Since at least July 31, 2009, S & S has managed and controlled cars and other equipment on the portion of the Nevada Northern Railway near Shafter Junction in connection with the Joint Development Agreement and, therefore, S & S is a “public utility” under Nevada law pursuant to NRS § 704.010(1)(a).

F. On June 8, 2015, the action entitled City of Ely, Nevada, a Nevada municipal corporation, and White Pine Historical Railroad Foundation, Inc., a Nevada non-profit corporation

v. S & S Shortline Leasing, LLC, a Utah limited liability company was filed in the Seventh Judicial District Court of the State of Nevada.

G. S & S filed an Answer to the Complaint on August 21, 2015, generally denying the claims for relief set forth in the Complaint and setting forth numerous affirmative defenses.

H. The Parties have engaged in significant discovery, motion practice, and related litigation over more than five years.

I. On July 1, 2020, S & S's attorneys sent Plaintiffs' attorneys a letter threatening counterclaims arising out of the Joint Development Agreement and other claims related to breakdowns of settlement discussions in both 2019 and the first quarter of 2020.

J. Plaintiffs filed their First Amended Complaint on July 15, 2020.

K. The Parties agree that the best course of action for all Parties, and for achieving the public purpose of developing the Nevada Northern Railway for commercial rail activities and to spur economic growth, is for: (1) the Parties to settle their differences and bring an end to all matters associated with all claims, whether made or threatened, including all claims associated with this litigation; (2) S & S, a public utility, to own, in fee simple (subject to the City's reserved utility easement), and have the unfettered ability to control, develop, and benefit from, the Northern Line of the Nevada Northern Railway (as defined below), which will allow S & S to have the best chance possible of using its expertise in railroad development to fully develop the Northern Line for commercial rail traffic; (3) the City and the Foundation to have the unfettered ability to control, develop, and benefit from the Historical Line of the Nevada Northern Railway (as defined below), which will ensure protection of all the Foundation's operations of a historical rail museum and train ride that are vital to the economy of the City and surrounding communities. To achieve these three overarching goals of settlement and this Agreement, the Parties will create a clear

dividing line between the Historical and Northern Lines at Mile Post 127.00 on the main line of the Nevada Northern Railway.

L. Accordingly, the Parties agree to the terms of settlement, sale, and release set forth below.

II

REPRESENTATIONS AND WARRANTIES

A. Representations and Warranties of the Foundation.

The Foundation hereby represents and warrants to S & S as of the date hereof and as of the Closing as follows:

1. **Organization, Power, and Authority.** The Foundation is duly incorporated, formed, or organized, validly existing, and in good standing as a nonprofit corporation under the laws of the State of Nevada. The Foundation possesses all the requisite power and authority to enter into and perform this Agreement. The execution, performance, and delivery of this Agreement has been duly and validly approved by the Foundation's Board of Directors, and the signatory hereof on behalf of the Foundation has been duly and fully authorized to execute this Agreement on behalf of the Foundation.

2. **Binding Obligation.** This Agreement, when executed and delivered by the Foundation and the other parties hereto in accordance with the terms hereof, will constitute a valid and binding obligation of the Foundation that is enforceable in accordance with its terms; provided, however, that, notwithstanding any other provision of this Agreement, the Foundation makes no representations or warranties relating to the effect of the City's sale under the "utility for a public purpose exception" more fully described in Article III, Section J. below. The documents delivered

by the Foundation to S & S in connection herewith are in proper form to obligate the Foundation to be bound by the terms thereof.

B. Representations and Warranties of the City.

The City hereby represents and warrants to S & S as of the date hereof and as of the Closing as follows:

1. Organization, Power, and Authority. The City is duly incorporated, formed, or organized, validly existing, and in good standing as a municipal corporation under the laws of the State of Nevada. The City possesses all the requisite power and authority to enter into and perform this Agreement. The execution, performance, and delivery of this Agreement has been duly and validly approved by the City Council in compliance with Open Meeting Law, and the signatory hereof on behalf of the City has been duly and fully authorized to execute this Agreement on behalf of the City.

2. Binding Obligation. This Agreement, when executed and delivered by the City and the other parties hereto in accordance with the terms hereof, will constitute a valid and binding obligation of the City that is enforceable in accordance with its terms. The documents delivered by the City to S & S in connection herewith are in proper form to obligate the City to be bound by the terms thereof.

C. Representations and Warranties of S & S.

S & S hereby represents and warrants to the Sellers as of the date hereof and as of the Closing as follows:

1. Organization, Power and Authority. S & S is duly formed or organized, validly existing, and in good standing as a limited liability company under the laws of the State of Utah. S & S possesses all the requisite power and authority to enter into and perform this

Agreement. The execution, performance, and delivery of this Agreement has been duly and validly approved by S & S's members and managers, and the signatory hereof on behalf of S & S has been duly and fully authorized to execute this Agreement on behalf of S & S. S & S is a "public utility" as defined under Nevada law pursuant to NRS § 704.010(1)(a) and intends to use the Northern Line of the Nevada Northern Railway (as defined below) for the public purposes set forth in this Agreement.

2. **Binding Obligation.** This Agreement, when executed and delivered by S & S and the other parties hereto in accordance with the terms hereof, will constitute a valid and binding obligation of S & S that is enforceable in accordance with its terms. The documents delivered by S & S to Sellers in connection herewith are in proper form to obligate S & S to be bound by the terms thereof.

3. **Sufficiency of Funds; Solvency.** S & S has sufficient funds available to it to enable it to make payment of the entire Down Payment and consummate the transactions contemplated by this Agreement. S & S hereby represents and warrants to the Sellers as of the date hereof, as of the Closing, and as of the date of any payment under the Promissory Note (as defined below) is made that: (i) immediately after giving effect to the transactions contemplated hereby, S & S shall be able to pay its debts as they become due and own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of all contingent liabilities); and (ii) no transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay, or defraud either present or future creditors of S & S.

4. **Representations Under Deed of Trust.** At the Closing, S & S shall make the representations and warranties set forth in the Deed of Trust (defined in Article III, Section D.5. below) which are incorporated herein by reference.

D. **Exemption to Appraisal and Public Auction Requirements.** Notwithstanding any other provision of this Agreement, no Party makes any representation or warranty regarding the applicability of the exception to the appraisal and public bid or auction requirements set forth in NRS § 268.059.1, NRS § 268.061.1, and NRS § 268.062.1. The Parties have mutually agreed that the appraisal and bid or auction requirements are not applicable to this sale because S & S is a public utility purchasing the property for a public purpose, but have agreed to seek a court confirmation regarding this exemption prior to Closing pursuant to Article III, Section J. below.

III

SETTLEMENT AND SALE TERMS

A. **Termination of Joint Development Agreement.**

Except as provided in Article III, Section P.6. below, upon the Closing, the Parties agree that the Joint Development Agreement shall terminate and no Party will have any further rights, interests, or obligations under the terms of the Joint Development Agreement after the Closing. Following the Closing, the rights, interests, obligations, and responsibilities of the Parties will be governed by this Agreement and the agreements, instruments, and documents executed pursuant to this Agreement. The Parties acknowledge and agree that the rights and obligations of the Parties under the Joint Development Agreement shall remain in full force and effect until the Closing. Within five (5) business days of the execution of this Agreement, the Parties shall submit an executed Stipulation and Order for Dismissal with Prejudice of Case No. CV-1506071, a copy of which is attached hereto as **Exhibit “A,”** and incorporated by reference herein (the “**Stipulation**

and Order for Dismissal”), to the Court, which will become effective as of the Closing, but which will not become effective if the Closing does not occur. Additionally, in furtherance of the Parties’ intent that the Stipulation and Order for Dismissal not become effective if the Closing does not occur, the Parties will immediately file a Stipulation to Set Aside the Stipulation and Order for Dismissal if the Closing does not occur for any reason.

B. Foundation Sale of Its Right, Title, and Interest in Northern Line.

On the terms and conditions set forth in this Agreement, and subject to the reserved easement for the City described in Article III, Section C.3. below, the Foundation agrees to sell to S & S and S & S agrees to buy from the Foundation, the following property (the “**Property**”):

1. **Land.** All of the Foundation’s right, title, and interest in and to real property owned by the Foundation on that portion of the mainline of the Nevada Northern Railway between Cobre (Mile Post 0.00) and Mile Post 127.00, more particularly described on the quitclaim deed in **Exhibit B** attached hereto and incorporated herein by reference (the “**Northern Line**”).

2. **Improvements.** All of the Foundation’s right, title, and interest in and to all structures, railroad track, ties, switches, ballast, bridges, crossings, culverts, roadways, track materials, and other facilities, if any, located on the Northern Line (collectively, the “**Improvements**”).

C. City Sale of Its Right, Title, and Interest in Northern Line; Reservation of Utility Easement.

On the terms and conditions set forth in this Agreement, and subject to the reserved easement in favor of the City described in Article III, Section C.3. below, the City agrees to sell to S & S, and S & S agrees to buy from the City, the following property:

1. **Land.** All of the City’s right, title, and interest in and to the Northern Line.

2. **Improvements.** All of the City's right, title, and interest in and to the Improvements.

3. **Reserved Easement.** The City reserves and excepts from the conveyance of the Northern Line a nonexclusive easement for all utilities, including without limitation, electricity, natural gas, fiber optics, water, and oil. The use of the City's reserved easement shall not unreasonably affect S & S's rail operations. S & S may convey other easements to third parties without obtaining a sub-easement from the City, so long as the other easements conveyed by S & S do not interfere with the City's reserved easements. The City's reserved easement may be used by the City and/or any other public or private utility providers. The City's reserved easement shall be set forth in the conveyance deed of the Northern Line to S & S.

D. Purchase Price; Terms of Payment; Guaranty; Deed of Trust; and Other Terms Concerning the Property.

In consideration for the sale of the Foundation's and the City's respective right, title, and interest in and to the Northern Line and Improvements, S & S agrees to pay the sum of ONE MILLION FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$1,550,000.00) to the Foundation, and ONE MILLION FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$1,550,000.00) to the City (collectively, the "**Purchase Price**"), in accordance with the following terms:

1. **Deposit.** An initial earnest money deposit in the sum of ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000.00) (hereinafter, the "**Deposit**") shall be deposited by S & S into escrow in the trust account of Escrow Agent (as hereinafter defined) within seven (7) calendar days after the full execution of this Agreement. The Deposit shall be invested by Escrow Agent in a federally insured interest-bearing account and held in accordance with escrow instructions executed by the parties and consistent with this Agreement. All interest

accruing on the Deposit shall be paid or credited to S & S. The Deposit shall be applied to the Down Payment and Purchase Price at Closing. If the sale fails to Close for any reason, Buyer shall be entitled to a return of its Deposit, less any fees or costs incurred by Escrow Agent, and neither Buyer nor Sellers shall have any further rights or obligations under this Agreement. S & S acknowledges and agrees that all of Sellers' obligations, representations, warranties, and covenants under this Agreement shall terminate if S & S does not pay the Deposit into the Escrow within seven (7) days of all Parties executing this Agreement.

2. **Down Payment.** At the Closing, S & S will pay a ONE MILLION ONE HUNDRED THOUSAND DOLLAR (\$1,100,000.00) down payment (the "**Down Payment**"), fifty percent (50%) of which shall be paid to the City and fifty percent (50%) of which shall be paid to the Foundation. The Deposit shall be credited to the Down Payment at the Closing.

3. **Promissory Note/Interest/Payments.** At the Closing, S & S will pay the balance of the Purchase Price through a duly executed promissory note in the original principal sum of TWO MILLION DOLLARS (\$2,000,000.00), payable jointly to the order of the City and the Foundation, each as to an undivided fifty percent (50%) interest, in the form attached hereto as **Exhibit "C,"** and incorporated by reference herein (the "**Promissory Note**"). There will be no pre-payment penalty for paying off the Promissory Note early.

4. **Personal Guaranty.** Michael Williams and Tammy Williams shall personally guaranty the timely payment and performance of the obligations under the Promissory Note pursuant to the terms of a Guaranty Agreement in the form attached hereto as **Exhibit "D,"** and incorporated by reference herein (the "**Guaranty Agreement**"), which shall be executed and delivered by Guarantors at the Closing.

5. **Deed of Trust, Security Agreement, Fixture Filing and Assignment of**

Rents. In addition to the personal guaranty pursuant to the Guaranty Agreement, the obligations of the Promissory Note shall be secured by a deed of trust, security agreement, fixture filing, and assignment of rents, in the form attached hereto as **Exhibit “E,”** and incorporated by reference herein (the “**Deed of Trust**”). The Deed of Trust shall encumber the portion of the conveyed property, including the Northern Line and Improvements, from Mile Post 17.00 to Mile Post 127.00, as more particularly set forth in the Deed of Trust. The Parties shall execute two (2) duplicate originals of the Deed of Trust in recordable form, one for recording at Closing in White Pine County, Nevada, and one for recording at Closing in Elko County, Nevada. The City and the Foundation may record and file UCC financing statements consistent with the Deed of Trust in any jurisdiction necessary for the City and the Foundation to maintain their security rights. Under no circumstances will the Joint Development Agreement be resurrected following a foreclosure under the Deed of Trust.

6. **Compliance with Laws.** S & S represents and warrants it has complied,

and will continue to comply, with all applicable laws, rules, and regulations applicable to or affecting the Property, including, without limitation, all laws, statutes, rules, and regulations regarding environmental matters, the access laws, the Federal Railroad Administration (“FRA”) rules and regulations, the Department of Transportation Act of 1966 as amended, Surface Transportation Board (“STB”) rules, regulations, and decisions, and historical preservation acts and regulations.

7. **No Hazardous Materials Stored on Property.** S & S agrees it shall not

store, or permit to be stored, any hazardous materials or hazardous substances (“**Hazardous Materials**”) on the Property, even in accordance with the laws, rules and regulations, until the

Promissory Note is paid in full. As used in this Agreement, Hazardous Materials shall mean any hazardous or toxic substances, materials, or wastes, the removal of which is required, the storage, maintenance, or transport of which is prohibited or penalized, or for which a permit is required under applicable law, including, but not limited to, any substance, material or waste which is defined as a "hazardous substance" in Section 40.504 of the Nevada Revised Statutes, as amended.

8. Insurance. S & S shall maintain fire and extended coverage property insurance to the full insurable value of all the Improvements (with standard mortgage loss payee endorsements), commercial general liability insurance with single combined limits of at least \$5,000,000, and environmental liability insurance with policy limits of at least \$5,000,000, and the City and the Foundation shall be added as additional insureds to all such environmental and liability insurance policies. S & S shall maintain these policies of insurance in full force and effect until the full repayment of the Promissory Note and as long as S & S or any of its Affiliates continue to own the Property.

9. Restrictions on Work on Secured Portion of the Northern Line. Until the Promissory Note is repaid in full, S & S may not perform any removal, scrapping, or rehabilitation work on the secured portion of the Northern Line without first providing Notice to both the City and the Foundation of the proposed rehabilitation plans and obtaining the prior written approval of both the City and the Foundation. Each Seller will not unreasonably withhold its consent; provided, however, that each Seller will not be deemed to be unreasonably withholding its consent if the proposed plan does not, at a minimum, provide that: (i) all removed and/or scrapped Improvements will be replaced within six (6) months, provided, however, that S & S will not be deemed to have breached any plan if a written order from any federal or state agency or any court that in any manner reasonably hinders, slows, or halts S & S's replacement efforts is the

proximate cause of S & S not being able to comply with the requirement to replace all removed and/or scrapped Improvements within six (6) months; (ii) all removed and/or scrapped Improvements will be rehabilitated to Class I FRA standards; (iii) only a ten (10) mile segment of Improvements may be taken out of service, removed, and/or scrapped at one time and must be completely rehabilitated in accordance with this Article III, Section D., before another segment may be taken out of service, removed, and/or scrapped; (iv) any petitions by S & S to the FRA for a waiver of all or any requirements must first be approved by both the City and the Foundation; and (v) S & S may not, as part of any rehabilitation plan or otherwise, petition the FRA or STB to abandon any section of the secured portion of the Northern Line from Mile Post 17.00 to Mile Post 127.00. Any breach of an approved rehabilitation plan shall constitute a default under the Promissory Note, the Deed of Trust, and this Agreement. None of these provisions of this Article III, Section D., apply to the portion of the Northern Line from Mile Post 0.00 to Mile Post 17.00.

10. Mile Post 0.00 to Mile Post 17.00. S & S may scrap the Improvements on the unsecured portion of the Northern Line from Mile Post 0.00 to Mile Post 17.00, provided that S & S removes all materials (including rail ties) and complies with all laws, rules, and regulations, including, without limitation, all environmental laws, rules, and regulations in the removal process. The restriction set forth in Article III, Section D.9. above do not apply to this provision.

11. All Restrictions Terminate Upon Payoff. All restrictions on S & S's activities on the Northern Line, except those set forth in Article III, Section D. 6 and D.8, shall terminate once the Promissory Note is paid in full.

E. As Is, Where Is, With All Faults Sale.

The Parties acknowledge and agree that all interests being conveyed by Sellers to Buyer, including the Improvements, shall constitute real property for purposes of the conveyances

contemplated under this Agreement. However, to the extent that personal property, if any, is conveyed, it shall be transferred AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, AND SPECIFICALLY DISCLAIMING ALL UCC WARRANTIES SUCH AS THE WARRANTY OF MERCHANTABILITY OR THE WARRANTY OF USE FOR A PARTICULAR PURPOSE.

The Parties acknowledge and agree that all Property, real, personal, or mixed, is being sold under this Agreement “AS-IS, WHERE-IS, WITH ALL FAULTS.” No representations or warranties, express, implied, or arising by operation of law, have been made or will be made by the City or the Foundation or by any board member, City Council member, officer, Person, firm, agent, attorney, or representative acting or purporting to act on behalf of the City or the Foundation regarding the condition of or title to any of the Property, including, without limitation, the environmental condition. S & S waives and releases Sellers from any past, present, or future claims arising from or relating to the condition of or title to the Property, including, without limitation, any claims arising from or related to the presence or alleged presence of any hazardous materials or harmful or toxic substances in, on, under, or about the property, prior to, on, or after the date of this Agreement, including, without limitation, any claims under or on account of any other federal, state, or local law, ordinance, rule, or regulation, now or hereafter in effect, that deals with or otherwise in any manner relates to, environmental matters of any kind. S & S and its successors and assigns covenant and agree to defend, indemnify, and hold harmless Sellers from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, relating to any hazardous materials or harmful or toxic substances heretofore or hereafter in, at, about, or under the Property being conveyed under this Agreement.

F. No Rights in the Historical Line Being Conveyed.

The Parties acknowledge and agree that, other than the rights in Article III, Sections B. and C. above, no other rights in the Nevada Northern Railway will be conveyed by the Sellers, and the Parties expressly acknowledge and agree that all rights and ownership associated with the portion of the mainline of the Nevada Northern Railway south of Mile Post 127.00 and including the McGill Junction, the approximately 2.6 mile section of the Nevada Northern Railway commonly known as the “**McGill Branch**,” and the approximately 8 mile section of the Nevada Northern Railway commonly known as the “**Adverse Branch**,” shall remain the property of the Sellers (the portion of the main line south of Mile Post 127.00, McGill Junction, the McGill Branch, and the Adverse Branch are hereafter collectively referred to as the “**Historical Line**”). The Parties acknowledge and agree that they are changing the commonly accepted dividing point between the Northern and Historical Lines from Mile Post 127.9 to Mile Post 127.00.

If the Quitclaim Deed conveying the Property to Buyer contains a legal description that includes a portion of Historical Line property, the Parties agree this is an error. In such event, the Parties agree that they will take reasonable steps to correct such error(s), including recording appropriate correction deeds, and other filings, at Sellers’ expense, to remove the Historical Line property from the conveyance to Buyer.

G. Phase I Environmental Report.

S & S shall have the right, but not the obligation, to conduct a Phase I environmental study report (the “**Phase I**”) of the Northern Line prior to the Closing. If S & S elects to obtain the Phase I, it shall obtain the Phase I at its sole cost and expense and shall immediately provide Sellers a copy of the Phase I upon receiving the Phase I. The Parties shall mutually select the party that will provide the Phase I. S & S shall have thirty (30) days from the date S & S executes this Agreement

to accept or reject the results of the Phase I, and if S & S does not terminate this Agreement within thirty (30) days from executing this Agreement, the Phase I and/or any Condition to Closing related to the Phase I shall be deemed satisfied.

H. Surface Transportation Board Filings.

To accomplish the transfer of trackage and other railroad rights as well as the sale of above-ground assets and land referenced in Article III, Sections B. and C. above, the Parties agree to file with the STB, within two (2) business days following execution of this Agreement, the following documents:

1. S & S shall file a Verified Notice of Exemption – Acquisition Exemption – under 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41 to acquire the portion of the mainline of the Nevada Northern Railway from Mile Post 0.00 to Mile Post 127.00. The Verified Notice of Exemption – Acquisition Exemption – shall be substantially similar to the Verified Notice of Exemption – Acquisition Exemption – attached hereto as **Exhibit “F,”** and incorporated by reference herein (the “**Acquisition Notice of Exemption**”).

2. S & S shall file a Verified Notice of Exemption – Acquisition and Control Exemption – under 49 U.S.C. § 11323 and 49 C.F.R. § 1180.2(d) to permit S & S to acquire the portion of the mainline of the Nevada Northern Railway from Mile Post 0.00 to Mile Post 127.00 while Michael Williams continues to own and control his other railroad properties that are subject to STB jurisdiction. The Verified Notice of Exemption – Acquisition and Control Exemption – shall be substantially similar to the Verified Notice of Exemption – Acquisition and Control Exemption – attached hereto as **Exhibit “G,”** and incorporated by reference herein (the “**Control Notice of Exemption**”).

3. The Foundation and/or its wholly-owned subsidiary, Great Basin & Northern Railroad, Inc. (“**GB&N**”), shall file a Verified Notice of Exemption – Change in Operators Exemption – under 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41 for authority to change the operator of the 0.9 mile portion of the line from Mile Post 127.00 to Mile Post 127.9 from S & S to GB&N, and for the acquisition by GB&N of all operating rights over this segment of the railroad. The Verified Notice of Exemption – Change in Operators Exemption – shall be substantially similar to the Verified Notice of Exemption – Change in Operators Exemption – attached hereto as **Exhibit “H,”** and incorporated by reference herein (the “**Change in Operators Notice of Exemption**”).

4. The Foundation, GB&N, and the City shall amend their current trackage rights agreement to include the right to operate the portion of the main line between Mile Post 127.00 and Mile Post 127.9.

5. The Sellers, GB&N, and S & S will file any additional documents with the STB necessary to effectuate the discontinuance of S & S’s service over the 0.9-mile portion of the line from Mile Post 127.00 to Mile Post 127.9, acquisition of authority or exemption authority for GB&N to operate over this segment, and the acquisition of trackage rights over this segment by GB&N.

6. All filing fees related to the STB will be born by the party responsible for making the filing.

I. No Trackage or Haulage Rights Conveyed.

Following the effectiveness of the Notices of Exemption set forth in Article III, Sections H.1.-4. above, the Parties acknowledge and agree that: (i) Sellers will not convey or grant trackage and/or haulage rights to S & S with respect to any portion of the railroad that is operating under

the STB authority possessed by Sellers and/or GB&N; and (ii) S & S will not convey or grant trackage and/or haulage rights to Sellers or GB&N with respect to any portion of the railroad that is operating under the STB authority possessed by S & S. For the avoidance of doubt, the Sellers will have no trackage or haulage rights over the Northern Line, and S & S shall have no trackage or haulage rights over the Historical Line.

J. City Sale.

1. Exemption from Appraisal and Public Bid or Auction. All Parties agree the City is not required to appraise its interest in the Property or put the Property out for bid or auction pursuant to NRS § 268.059.1 (appraisal) and NRS §§ 268.061.1 and 268.062.1 (bid/auction). All of NRS § 268.059.1 (appraisal) and NRS §§ 268.061.1 and 268.062.1 (bid/auction) contain an exception for sales to a public utility to be used for a public purpose which provide in part: “[E]xcept for the sale or lease of real property to a public utility, as defined in NRS 704.020, to be used for a public purpose[.]” All Parties agree that these statutory exceptions are applicable to this Agreement. Additionally, all Parties, Williams, and Beggs, and all Williams’ or Beggs’ Affiliates, shall not, directly or indirectly, singularly or in conjunction with any other Person: (i) contest or attack in any court the validity of the City’s sale in this Agreement; or (ii) assist in, promote, or in any way lend any aid to any Person in the filing of any action that seeks a determination of the validity of the City’s sale in this transaction. As a Condition to Closing, the Parties all agree to request the Honorable Steve L. Dobrescu, Department 1 Judge of the Nevada Seventh Judicial District Court, to make findings of fact and conclusions of law in his Order for Dismissal with Prejudice of Case No. CV-1506071 confirming that S & S is a public utility as defined in NRS 704.020, that the sale is for a public purpose, and that the City is permitted to sell

the Property to S & S without appraisal or public bid or auction pursuant to NRS § 268.059.1, NRS § 268.061.1, and NRS § 268.062.1.

2. **Protective Personal Property Determination.** The Parties acknowledge and agree all of the Property being sold by Sellers to S & S under this Agreement is real property for all purposes. However, if for any reason it is determined that any of the Property conveyed under this Agreement is personal property, all Parties acknowledge and agree the personal property is not required for public use because commercial rail traffic cannot operate on the personal property in its current condition, as it will have to be replaced, rehabilitated, and/or improved by a company with specialized short-line rehabilitation skills such as S & S. Therefore, to the extent any Property conveyed under this Agreement is considered personal property, the Parties acknowledge and agree it is no longer required for public use, it is in the best interests of the City to dispose of such personal property, and, therefore, such disposal satisfies NRS § 332.185(1).

3. **Illegality & Severability.** Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be part of this Agreement. If for any reason the conveyance of either Seller's interest in the Northern Line being conveyed under this Agreement is deemed void, such determination shall not invalidate the sale of the other Seller's interest, and S & S and the owner of the Seller's interest deemed void will own the Northern Line as tenants in common, subject to Article III, Section J.4. below.

4. **Effect of Void Sale.** If, after the Closing, the City's sale to S & S is declared void by a final non-appealable order, the following shall apply: (i) the City shall use its reasonable

best efforts to comply with all appraisal and bid statutes then applicable, and shall appraise its interest in the Northern Line and put it out for bid; (ii) S & S or its successor shall bid a minimum of \$1,550,000 for the City's interest, either in the form of a credit bid or 100% cash payment, as the case may be; (iii) contingent on S & S or its successor making the bid described in (ii) above, the Joint Development Agreement shall be revived in its entirety with respect to the property the City sold to S & S under this Agreement, and all claims arising from or related to the Joint Development Agreement with respect to only S & S and the City (but not the Foundation) shall be resurrected and the statutes of limitations applicable to any such claims will be deemed to have been tolled by agreement of the City and S & S; (iv) If S & S or its successor fails to comply with the bid requirements in (ii) above, the Joint Development Agreement shall terminate and be of no further force or effect, and the parties shall release all claims arising from or related to the Joint Development Agreement; (v) if S & S or its successor successfully bids for the City's interest pursuant to the bid requirements in (ii) above, the parties shall release all claims arising from or related to the Joint Development Agreement; and (vi) if S & S or its successor complies with the bid requirements in (ii) above, but another Person other than S & S successfully bids for the City's interest, S & S and the City shall release, hold harmless, and covenant not to sue each other for any claims arising from or related to the Joint Development Agreement, but S & S and the successful bidder will retain all claims and rights with respect to the Joint Development Agreement and all orders entered Case No. CV-1506071 in the Seventh Judicial District Court of the State of Nevada, in and for the county of White Pine.

If the process outlined in parts (i) through (vi) above is not undertaken or not completed, the City and S & S or its successor shall use their reasonable best efforts to put themselves in the position they would have been had the sale provision not been voided, *i.e.*, to have the City

quitclaim (other than the City's reserved utility easement) as-is with no representations the City's entire interest in the Northern Line and to have S & S or its successor pay the City \$1,550,000 for the City's interest. For the avoidance of doubt, no claims by or against the Foundation arising out of the Joint Development Agreement will be resurrected if, after the Closing, the City's sale to S & S is declared void by a final non-appealable order. Furthermore, in the event the City's sale is declared void by a final non-appealable order, S & S relinquishes any rights with respect to the application of the Joint Development Agreement from Mile Post 127.0 to Mile Post 127.9, and S & S shall take no action to affect the operator status of the Foundation, GB&N, or any Affiliate of the Foundation over that portion of the railroad. Additionally, the issuance of a final non-appealable order contemplated in this Article III, Section J. will not excuse S & S's obligation to pay the Foundation its share of any outstanding sums owed to it under the Promissory Note.

K. Currie Depot.

After the Closing, the Parties will cooperate in good faith to complete a transfer of the Currie Depot from S&S to the Foundation, for no consideration and at the Foundation's sole cost an expense, and to obtain all necessary permits and government approvals in advance of such transfer of the Currie Depot.

L. 45G Tax Credits.

Upon the Closing, Sellers agree to waive their right to seek recovery of any United States Internal Revenue Code 45G tax credits that were assigned by S & S in past years and to any 45G tax credits that may accrue to S & S into the future with respect to the Northern Line. Notwithstanding the above, the Foundation and/or GB&N retain their right to claim 45G tax credits with respect to all portions of the Historical Line, including the portion of the Historical Line between Mile Post 127.0 and Mile Post 127.9. Accordingly, the Foundation has the right to claim

future 45G tax credits with respect to the 0.9 miles attributable to Mile Post 127.0 to Mile Post 127.9, but waives its right to any past 45G tax credits with respect to Mile Post 127.0 to Mile Post 127.9. Similarly, S & S waives its right to any past or future 45G tax credits attributed to any portion of the Historical Line as well as any future 45G tax credits on that portion of the Historical Line between Mile Post 127.0 and Mile Post 127.9. Upon an Event of Default under the Deed of Trust or the Promissory Note, Sellers reserve the right to seek recovery of all 45G tax credits accruing to S & S and/or assigned by S & S following the Closing Date. Finally, this waiver relating to 45G tax credits and assignments will be deemed void *ab initio* with respect to the City if the City's sale to S & S is declared void by a final non-appealable order, as outlined in Article III, Section J.4. above, and the Parties agree to be bound: (i) the orders entered by the Court in Case No. CV1506071, subject to any appeal of those orders; and (ii) any decisions of the STB or federal courts.

M. Agreement Not to Interfere.

1. S & S, Williams, Beggs, and all the companies or entities owned and/or controlled, directly or indirectly, by any of them, or any of their agents or Affiliates, covenant not to perform any act or do anything, directly or indirectly, to attempt to interfere in any fashion with or harm the operation of the Foundation's Historical Railroad, commercial ventures, or Historical Line as defined in Article III, Section F. above.

2. Provided Buyer is not in default under this Agreement, the Deed of Trust, or the Promissory Note, Sellers covenant not to perform any act or do anything, directly or indirectly, to attempt to interfere in any fashion with or harm S & S's operations, commercial ventures, or the Northern Line as defined in Article III, Section B. above; provided, however, this covenant shall not prohibit Sellers from enforcing their rights and remedies under any provision

of this Agreement, the Deed of Trust, the Promissory Note, or Guaranty Agreement, including, without limitation, foreclosing under the Deed of Trust or bringing an action against S & S or Guarantors. The covenant contained in this Article III, Section M. shall continue to apply to any entity owned and controlled solely by S & S, Williams, or Beggs that operates or has an interest in the Northern Line. However, the covenant contained in this Section M.2. of Article III shall extinguish when neither Williams, Beggs, nor any entity owned and controlled by them cease to operate or own the Northern Line.

3. S & S, Williams, and Beggs covenant not to, directly or indirectly, own or operate a commercial rail venture on the Historical Line or operate trains on the Historical Line, and Sellers covenant not to own or operate a commercial rail venture on the Northern Line or operate Sellers' trains on the Northern Line while the Northern Line is owned or controlled by S & S, Williams, Beggs, or any entity owned or controlled by them; provided, however, that such covenant applying to Sellers shall terminate upon a default of the Promissory Note.

4. The covenants not to interfere in this Article III, Section M. include, but are not limited to, a covenant not to make an "Offer of Financial Assistance," request an adverse abandonment from the STB, or file a feeder line application with the STB with respect to any portion of the Historical Line (in the case of S & S, Williams, or Beggs) or the Northern Line (in the case of Sellers). For the avoidance of doubt, the covenants in this Article III, Section M. do not apply to the Sellers upon a default of the Promissory Note.

5. S & S, Williams, and Beggs further covenant to not, directly or indirectly, infringe on the Foundation's trade names "Nevada Northern Railway" or "Great Basin & Northern Railroad" in any way and to not utilize any part of the Foundation's trade names in its marketing or operations. S & S or any successor or substitute Person is free to refer to any part of the Northern

Line or its operations using any name other than any part of the Foundation's "Nevada Northern Railway" or "Great Basin & Northern Railroad" trade names.

6. Michael Williams and Avory Beggs execute this Agreement in their individual capacities to effectuate the covenants set forth in this Article III, Section M. as well as in Article III, Section J.1. above. Additionally, Michael Williams and Tammy Williams execute this Agreement in their individual capacities with respect to Article III, Section D.4., and Michael Williams also executes the Guaranty in his individual capacity.

N. Attorneys' Fees.

The Parties each agree to bear their own costs and attorneys' fees incurred in the prosecution and defense of this litigation, settlement, sale, and release.

O. Mutual Release of All Claims.

Upon the Closing, each Party, on behalf of itself and its respective present and former parents, subsidiaries, Affiliates, officers, directors, managers, City Council members, shareholders, members, successors, and assigns (collectively, "**Releasors**" and, each, a "**Releasor**") hereby fully and finally (except as to a void sale as addressed in Article III, Section J.4. above), waives, holds harmless, unconditionally releases, and forever discharges the other Parties and the other Parties' respective present and former, direct and indirect, parents, subsidiaries, Affiliates, servants, City Council members, employees, officers, attorneys, directors, managers, shareholders, members, agents, representatives, permitted successors, and permitted assigns (collectively, "**Releasees**" and, each, a "**Releasee**") of and from any and all actions, causes of action, lawsuits, losses, liabilities, debts, accounts, reckonings, costs, expenses, claims, demands, sums of money, and damages, whatsoever in law or equity that each Party has, or may have had against the other, for any cause, matter or thing whatsoever, whether known or unknown,

liquidated or unliquidated, absolute or contingent, enforceable under any local, state or federal statute, regulation or ordinance, or under the common laws of the United States, or of any of the states, territories or possessions thereof, which arose or occurred from the beginning of time up to and including the date on which this release is effective and including, but not limited to, any claims for legally recoverable attorneys' fees, costs, and expenses, arising in whole or in part prior to the date hereof, based on conduct occurring prior to the date hereof, except for any surviving rights or obligations under this Agreement and claims relating to rights and obligations preserved by, created by, or otherwise arising out of this Agreement. Without limitation to the foregoing general release, each Party to this Agreement expressly acknowledges that this release shall apply to any claims occurring or arising out of the facts, circumstances, and events which relate in any way to the claims and occurrences alleged in the litigation referenced above, generally entitled City of Ely, Nevada, a Nevada municipal corporation, and White Pine Historical Railroad Foundation, Inc., a Nevada non-profit corporation v. S & S Shortline Leasing, LLC, a Utah limited liability company pending as Case No. CV-1506071 in the Seventh Judicial District Court of the State of Nevada, in and for White Pine County, Nevada, and to any threatened claims by the Parties including, without limitation, claims threatened by S & S in its attorneys' letter dated July 1, 2020.

Each of the Parties hereto acknowledges it is aware it may discover facts different from or in addition to the facts now known or believed to be true with respect to the claims being released, with respect to any other claim that is in any way related to activities or conduct by any other Party, but that it is its intention to and it does hereby fully, finally, absolutely, and forever settle any and all claims, disputes, and differences that now exist, may exist or have ever existed between the Parties to this Agreement. This release shall operate as a full and complete release notwithstanding the discovery of any different or additional facts by any Party in the future.

Each Party hereto represents and warrants that it has not assigned or transferred, or purported to assign or transfer, voluntarily or involuntarily, to any Person, all or any part of any right, claim, debt, liability or obligation that is being released by this Agreement.

No Party shall bring any action, claim or proceeding of any kind in any forum from the date of this Agreement through and including the Closing and the effect of the mutual release described in this Article III, Section O.

P. Escrow; Conditions to the Closing; Closing; Termination.

1. **Escrow.** Upon full execution of this Agreement, Sellers and Buyer shall open escrow with Gloria Grubic, escrow officer, First Centennial Title Company (the “**Escrow Agent**”). Sellers shall provide the Escrow Agent with a fully executed copy of this Agreement. The terms and conditions set forth in this Agreement shall constitute both the agreement between Buyer and Sellers and joint escrow instructions for the Escrow Agent. If the Escrow Agent requires separate or additional escrow instructions, Sellers and Buyer agree to promptly execute and deliver such additional instructions to the Escrow Agent; provided, however, any such additional escrow instructions must be consistent with this Agreement. If there is any conflict or inconsistency between the terms and conditions of this Agreement and the additional instructions, the terms of this Agreement shall control.

2. **Conditions to Closing.** With respect to each Party, the following conditions must be satisfied or waived as of the Closing (the “**Conditions to Closing**”), except that the Parties acknowledge that the STB authorizations cannot be waived as a matter of law.

(a) **Sellers’ Conditions to Closing.** The obligation of the Sellers to consummate the transactions contemplated by this Agreement is subject to the fulfillment, or waiver by the Sellers, of all of the following conditions on or prior to the Closing, upon the non-

fulfillment of any of which this Agreement may, at the Sellers' option, be terminated pursuant to and with the effect set forth in Article III, Section P.6. below:

(i) All of the representations and warranties made by S & S in this Agreement will be true and correct as of the date hereof and true and correct as of the Closing;

(ii) All of the agreements, covenants, and obligations of S & S, Williams, Beggs, and Mrs. Williams will be performed hereunder through and including the Closing, and neither S & S, Williams, Beggs, nor Mrs. Williams will be in breach of any agreement, covenant, or obligation hereunder at any time prior to and including the Closing;

(iii) S & S will have delivered the Buyer's Deliverables to the Escrow Agent at the required time prior to the Closing;

(iv) Neither S & S, Williams, Beggs, nor Mrs. Williams will have taken any action, directly or indirectly, to frustrate the purpose of this Agreement prior to or as of the Closing;

(v) No party will have challenged the legal validity of the City's conveyance of its interest in the Northern Line prior to the Closing;

(vi) The Seventh Judicial District Court will have made findings of fact and conclusions of law in the Stipulation and Order for Dismissal, to be effective pending the Closing, confirming the City is not in violation of any laws with respect to the conveyance of its interest in the Northern Line and the appraisal and bid process;

(vii) All STB authorizations required for this transaction shall have been obtained, shall have become effective, and shall not have been stayed at the time of Closing; and

(viii) That with respect to each Seller, the other Seller will also be Closing on the Closing;

Any waiver by the Sellers of a Condition to Closing is binding on the Sellers as long as the Closing occurs; provided, however, that, notwithstanding the foregoing, any waiver related to breaches by S & S, Williams, or Beggs of covenants described in Article III, Sections I., L., and M. shall not be waived as legal claims post-Closing solely by reason of the Sellers' waiver of breaches of those covenants for the purpose of the Closing.

(b) **S & S's Conditions to Closing.** The obligation of S & S to consummate the transactions contemplated by this Agreement is subject to the fulfillment, or waiver by S & S, of all of the following conditions on or prior to the Closing, upon the non-fulfillment of any of which this Agreement may, at S & S's option, be terminated pursuant to and with the effect set forth in Article III, Section P.6. below:

(i) All of the representations and warranties made by the Sellers in this Agreement will be true and correct as of the date hereof and true and correct as of the Closing;

(ii) All of the agreements, covenants, and obligations of the Sellers will be performed hereunder through and including the Closing, and the Sellers will not be in breach of any agreement, covenant, or obligation hereunder at any time prior to and including the Closing;

(iii) Sellers will have delivered the Sellers' Deliverables to the Escrow Agent at the required time prior to the Closing;

(iv) Neither Seller will have taken any action, directly or indirectly, to frustrate the purpose of this Agreement prior to or as of the Closing;

(v) No party will have challenged the legal validity of the City's conveyance of its interest in the Northern Line prior to the Closing;

(vi) The Seventh Judicial District Court will have made findings of fact and conclusions of law in the Stipulation and Order for Dismissal, to be effective pending the Closing, confirming the City is not in violation of any laws with respect to the conveyance of its interest in the Northern Line and the appraisal and bid process;

(vii) All STB authorizations required for this transaction shall have been obtained, shall have become effective, and shall not have been stayed at the time of Closing; and

(viii) S & S will have accepted the results of the Phase I as described in Article III, Section G. above, or will have waived its rights with respect to this Condition to Closing relating to the Phase I as is outlined in Article III, Section G. above.

Any waiver by S & S is binding on S & S as long as the Closing occurs; provided, however, that, notwithstanding the foregoing, any waiver related to breaches by a Seller of covenants described in Article III, Sections I., L., and M. shall not be waived as legal claims post-Closing solely by reason of S & S's waiver of breaches of those covenants for the purpose of the Closing.

3. The Closing. As used herein, the term "**Closing Date**" or "**Closing**" shall mean the date and time the Escrow Agent records the Quitclaim Deed and the Deed of Trust in the Official Records of the County Recorder's Office for both White Pine County, Nevada and Elko County, Nevada. The Escrow Agent is authorized to close escrow after the following have occurred:

(a) The Escrow Agent is in possession of the Closing Deliveries described in Section P.4. below;

(b) The Conditions to Closing set forth in Section P.2. above have been satisfied or waived by the applicable Parties; and

(c) Buyer and Seller have executed and deposited into escrow any additional documents or escrow instructions reasonably required by the Escrow Agent in order to complete this transaction.

Upon the occurrence of all of the foregoing, Escrow Agent is authorized to complete the Closing and (i) record the duplicate originals of the quitclaim deed conveying the Property from Sellers to Buyer in the Official Records of both the White Pine County Recorder's Office and the Elko County Recorder's Office, (ii) record the duplicate originals of the Deed of Trust in the Official Records of both the White Pine County Recorder's Office and the Elko County Recorder's Office, (iii) pay and discharge the costs and prorations of the Parties as provided below, (iv) disburse the balance of the Down Payment to Sellers, with each receiving fifty percent (50%) of the total Down Payment, (v) deliver the original Promissory Note and Guaranty to the Sellers' legal counsel as representative of the Sellers, and (vi) deliver the closing statement and other documents to the Parties entitled thereto.

4. Closing Deliveries. The Parties shall make the following deliveries to Escrow Agent at least one (1) day prior to Closing, unless earlier specified in this Agreement:

(a) **Buyer Deliveries.** Buyer shall deliver the following "Buyer's Deliverables" to Escrow Agent:

(i) **Deposit; Down Payment and Closing Cost and Prorations.** Within seven (7) days of the execution of this Agreement by all the Parties, Buyer shall deposit into escrow, by wire transfer or by a certified or cashier's check made payable to the Escrow Agent, the entire Down Payment as Buyer's earnest money Deposit. At least one (1) day

prior to Closing, Buyer shall deliver additional funds to Escrow Agent to pay Buyer's Down Payment and Buyer's share of closing costs and prorations.

(ii) **Promissory Note**. Buyer shall deliver the duly executed Promissory Note in the form attached hereto as **Exhibit C**, to be dated by Escrow Agent as of the Closing Date.

(iii) **Guaranty Agreement**. Buyer shall cause Guarantor to deliver a duly executed and acknowledged Guaranty Agreement, in the form attached hereto as **Exhibit D**, to be dated by Escrow Agent as of the Closing Date.

(iv) **Deed of Trust**. Buyer shall deliver the duly executed duplicate originals of the Deed of Trust, acknowledged in recordable form, in the form attached hereto as **Exhibit E**, to be dated by Escrow Agent as of the Closing Date.

(v) **Further Escrow Instructions**. Buyer shall execute and deposit into escrow any additional documents or escrow instructions reasonably required by Escrow Agent in order to complete this transaction.

(b) **Seller Deliveries**. Sellers shall deliver the following "Sellers' Deliverables" to Escrow Agent:

(i) **Quitclaim Deeds**. Sellers shall deliver duly executed duplicate originals of the Quitclaim Deed, acknowledged in recordable form, in the form attached hereto as **Exhibit B**, to be dated by Escrow Agent as of the Closing Date.

(ii) **Non-Foreign Certificate**. A certification from each Seller that it is not a "foreign person," as such term is defined in the Internal Revenue Code and the Treasury Regulations promulgated thereunder.

(iii) **Further Escrow Instructions.** Sellers shall execute and deposit into escrow any additional documents or escrow instructions reasonably required by Escrow Agent in order to complete this transaction.

5. **Transfer Taxes and Closing Costs.** Buyer acknowledges and agrees that it shall be responsible for all transfer taxes imposed by Elko County and White Pine County and all closing costs (excluding escrow fees), but not limited to, all recording fees for recording the Quitclaim Deed and Deed of Trust. Buyer and Sellers shall each pay fifty percent (50%) of the fee of the Escrow Agent, excluding any title insurance costs. Sellers' share of the escrow fee shall be split equally by the two Sellers. If Buyer desires to obtain any title insurance, all costs shall be paid by Buyer, and Sellers shall not be required to pay any costs or sign any affidavits, owners certificates, or other documents for the purpose of obtaining title insurance. In addition, the issuance of title insurance shall not be a Condition to Closing, and the inability to obtain title insurance shall not relieve Buyer of any of its obligations under this Agreement. Finally, during the period between the execution of this Agreement and the Closing, Buyer shall be responsible for all operating costs of the Property and shall make any payments to Sellers due under the Joint Development Agreement.

6. **Termination of Agreement.**

(a) **Right to Terminate.** This Agreement and the transactions contemplated by this Agreement may be terminated at any time prior to the Closing:

- (i) by all the Parties, if they agree to a termination in writing;
- (ii) by any Party, if a Condition to Closing applicable to that Party is not met at the time the Closing would otherwise occur (for purposes of this Article III,

Section P., whether a Condition to Closing has been satisfied will be liberally construed in favor of the party terminating the Agreement);

(iii) by any Party, if the Closing has not occurred for any reason as of April 9, 2021.

(b) **Effect of Termination.** If this Agreement is terminated pursuant to Article III, Section P.6.(a) above, then all of the representations, warranties, covenants, and rights in this Agreement shall forever terminate, this Agreement will have no further force or effect, the Joint Development Agreement shall again become operative until otherwise terminated via litigation or other settlement, and the Parties shall continue their lawsuit in the Seventh Judicial District Court of the State of Nevada, in and for the county of White Pine, as Case No. CV-1506071.

Q. Future Cooperation.

The Parties agree to work cooperatively with one another in the future with respect to execution and implementation of the terms of this Agreement and with respect to the following:

1. **In-Person Meeting.** The City and the Foundation will use reasonable, good faith efforts to meet with Michael Williams, personally, in Ely, Nevada, after the Closing to discuss how to repair their relationship and how to work together to develop the Nevada Northern Railway for commercial rail traffic. The Parties will not be deemed unreasonable if they delay any meeting because of COVID-19. Each Party, including the representatives of each Party, agrees the meeting will be at the Party's own risk with respect to COVID-19.

2. **Letter of Support for Grants.** For twenty-four (24) months after the Closing, both the City and the Foundation will provide written support, consistent with the following procedure, of any S & S efforts to obtain grants that the City or the Foundation, as the

case may be, reasonably believes are being undertaken to attempt to rehabilitate the entire Northern Line. First, S & S shall provide any request to the Foundation and the City in writing. Second, the Foundation and the City will provide a draft letter of support to S & S for S & S's approval, which S & S shall not unreasonably withhold. S & S shall give its approval of any letter of support in writing to the Foundation and the City. After receiving S & S's written approval, the Foundation and the City shall provide the letter of support to the relevant third-party. The City and the Foundation shall have no obligation to provide any letter of support to a third party if S & S does not first provide its written approval of the letter. Nothing in this Agreement shall preclude the City or the Foundation from providing future letters of support after the expiration of the twenty-four (24) month period.

R. Miscellaneous.

1. **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their respective heirs, administrators, representatives, executors, permitted successors, and permitted assigns, and shall inure to the benefit of said parties and each of them and their heirs, administrators, representatives, executors, permitted successors, and permitted assigns. The parties expressly represent and warrant that they have not transferred to any Person any rights, causes of action, or claims that are released in this Agreement.

2. **Voluntary Agreement.** This Agreement is voluntarily entered into between the parties and not as a result of coercion, duress, or undue influence. By executing this Agreement, each party agrees that he, she, or it has read and fully understood the terms of this Agreement and has consulted with his, her, or their respective attorney prior to execution of this Agreement.

3. **No Reliance.** Each party represents and acknowledges that in executing this Agreement he, she, or it does not rely on, and has not relied on, any representation or statement

made by any other Party or any of their attorneys with regard to the subject matter, basis, or effect of this Agreement, other than those specifically stated in this Agreement.

4. Rules of Construction. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be considered to include the others whenever the context so indicates. The captions of this Agreement shall have no effect on its interpretation. The parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted, and the parties expressly waive any right to assert a rule for presumption against the drafter. As used in this Agreement, “**Person**” means any individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof. In the event of any inconsistencies between the terms and conditions of this Agreement and the Promissory Note, Guaranty, or Deed of Trust, the applicable provision of the Promissory Note, Guaranty, or Deed of Trust, as the case may be, shall control. Finally, as used in this Agreement, “**Affiliate**” shall mean, as to any Person, any other Person that is within the third degree of consanguinity of the Person or any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. As used in this definition of Affiliate, “control” (including, with correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person (whether through ownership of securities or partnership or other ownership interests, by contract, or otherwise).

5. **Entire Agreement.** This Agreement, together with all **Exhibits**, sets forth the entire agreement between the parties hereto and fully supersedes any prior agreements and understandings, written or oral, between the parties hereto pertaining to the subject matter hereof.

6. **Waivers.** The waiver by any Party of any right or remedy under the terms of this Agreement shall not be construed as a waiver of any other provision of this Agreement.

7. **Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by any Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

8. **Counterparts.** This Agreement may be executed in counterparts, and each executed counterpart shall have the efficacy and validity of a signed original and with the same effect as if all parties hereto had signed the same document. All counterparts so executed shall be deemed to be an original, shall be construed together, and shall constitute one Agreement. Photographic or electronic copies of such executed counterparts may be used in lieu of the original for any purpose.

9. **Signatures.** The parties agree that the facsimile or electronic signature of a party or counsel for a party shall, when delivered by counsel for that party to counsel for the other party, bind the party to this Agreement as if an original signed Agreement had been delivered.

10. **Incorporation of Recitals and Exhibits.** The recitals to this Agreement and all **Exhibits** to this Agreement are incorporated into and made a part of this Agreement.

11. **No Oral Change.** This Agreement, and any provisions of this Agreement, may not be modified, amended, waived, or extended orally, but only by an agreement in writing signed by all the parties hereto.

12. Attorneys' Fees and Costs. If any party brings an action or proceeding, to enforce, protect, or establish any right or remedy under the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

13. Governing Law, Jurisdiction, and Venue. Except to the extent preempted by federal law, the parties agree that the laws of the State of Nevada shall govern the terms, interpretation, and enforcement of this Agreement and all matters or documents arising out of or in any way related to this Agreement, without regard to any conflict-of-law provisions to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Nevada. Each party irrevocably submits to the exclusive jurisdiction and venue of the state courts located in White Pine County, Nevada, in any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement. If for any reason the state courts of White Pine County, Nevada, are unable to adjudicate a dispute under this Agreement, then the parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada. It is not the intent of the parties to adjudicate any dispute under this Agreement in federal court. However, should for any reason a legal or equitable suit, action, or proceeding arising out of or based upon this Agreement occur in federal court, the parties agree that the federal courts in Washoe County, Nevada, have exclusive jurisdiction and shall be the exclusive venue for any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement.

14. Survival. After the Closing, the respective representations, warranties, rights, and obligations of the parties hereto shall survive to the extent necessary to carry out the intentions of the parties under this Agreement. If this Agreement is terminated pursuant to Article III, Section P. above, all of the respective representations, warranties, rights, and obligations of the parties shall terminate and cease to exist.

15. **Force Majeure.** Unless specified elsewhere in this Agreement, no party is excused of nonperformance of its obligations or nonpayment under this Agreement because of any force majeure event, including, but not limited to, the following: (a) any epidemic, pandemic, or quarantine, such as any event connected in any way with COVID-19; (b) acts of God; (c) flood, fire, earthquake, or explosion; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) requirements of law; (f) actions, embargoes, or blockades in effect on or after the date of this Agreement; (g) action by any governmental authority; (h) national or regional emergency; (i) strikes, labor stoppages or slowdowns or other industrial disturbances; or (j) shortages of adequate power or transportation facilities. For the avoidance of doubt, S & S is not excused by any force majeure event or otherwise from making the Down Payment or payment under the Promissory Note.

16. **Full Cooperation in Execution of Agreement.** The parties agree to fully cooperate with each other in the execution and performance of this Agreement, to execute any and all supplementary documents necessary to fulfill the intent of this Agreement, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

17. **Assignment and Delegation.** No party may assign its rights or delegate its obligations under this Agreement without the express, written consent of the other parties; provided, however, that the Sellers may assign the Promissory Note, the Deed of Trust, and Guaranty. For purposes of this Agreement, with respect to each party that is not a natural person, an assignment or delegation will be deemed to occur if, with respect to such party, (i) the sale of all or substantially all of such party's assets or business occurs, or (ii) there is a transfer or series

of transfers, whether voluntary or involuntary, by merger, reorganization, acquisition, sale, or otherwise, of more than fifteen percent (15%) of the equity or voting power of such party.

18. Time is of the Essence. Time is of the essence of this Agreement and each and every provision hereof of which time is an element.

19. Jury Trial Waiver. THE PARTIES WAIVE FULLY THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN EACH AND EVERY TRIAL OR OTHER PROCEEDING IN WHICH ONE OR MORE CAUSES OF ACTION OR ISSUES ARE RAISED WHICH RESULT FROM OR ARISE OUT OF THIS AGREEMENT. EACH PARTY REPRESENTS THAT THIS AGREEMENT IS EXECUTED, KNOWINGLY, FREELY, AND VOLUNTARILY AFTER HAVING BEEN FULLY AND COMPLETELY READ AND UNDERSTOOD BY THE PARTY OR ITS AUTHORIZED OFFICERS, AND THAT THE PARTY UNDERSTANDS THE NATURE OF THE RIGHT BEING WAIVED AND THAT IT HAS HAD THE ADEQUATE OPPORTUNITY TO DISCUSS THIS WAIVER WITH ITS COUNSEL.

20. No Third-Party Beneficiaries. This Agreement solely benefits the parties to this Agreement, GB&N, the parties' respective permitted successors and assigns, and the Persons referenced in Article III, Section O. relating to mutual release of all claims. Nothing in this Agreement, express or implied, confers on any other Person a legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21. Notices. All notices, requests, consents, claims, demands, waivers, communications, or documents which are required or permitted to be given or served under this Agreement (each, a "Notice") shall be in writing and: (a) personally delivered to the party to be notified, in which instance Notice shall be deemed to have been given and received upon actual

delivery; (b) sent by certified United States mail, return receipt requested, postage prepaid, addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit in the mail at any postal station and received twenty-four (24) hours after such deposit or such earlier date as may be shown on the return receipt; (c) sent by a reputable national overnight commercial courier service (such as Federal Express, but not including United States Postal Service Express Mail) addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit with such courier service for delivery and received on the first (1st) business day after deposit; or (d) electronic mail (if a copy is sent within one (1) business day by one of the other means specified above). The addresses of the parties for Notice by any of the foregoing means shall be as follows:

**S & S, Williams,
Beggs, and Mrs.
Williams**

Address:
Michael Williams, Manager
S & S Shortline Leasing, LLC
10100 N. Ambassador Dr. Ste. 105
Kansas City, MO 64153

Email: mw@rrmaterials.com

The City

Address:
Jennifer Lee, City Clerk
City of Ely, Nevada
501 Mill Street
Ely, Nevada 89301

Email: jlee@elycity.com

The Foundation

Address:
Mark Bassett, President
Nevada Northern Railway
Foundation, Inc.
1100 Avenue A
Ely, NV 89301

Email: president@nnry.com

Any Person may change such Person's address for Notices or copies of Notices by giving Notice to the other party in accordance with this Article III, Section R.21.

**NEVADA NORTHERN RAILWAY
FOUNDATION, INC.**

Dated: _____, 2020.

By: _____
Mark Bassett

Its: President

S & S SHORTLINE LEASING, LLC

Dated: Nov. 4, 2020.

By: Michael Williams
Michael Williams

Its: Manager

Dated: Nov. 4, 2020.

Michael Williams
Michael Williams

Dated: 11/17/2020, 2020.

Avory Beggs
Avory Beggs

CITY OF ELY, NEVADA

Dated: _____, 2020.

By: _____
Michelle Beecher

Its: Mayor Pro Tem

Dated: 11-2, 2020.

Tammy Williams
Tammy Williams

APPROVED AS TO FORM AND
CONTENT:

Dated: _____, 2020

MAUPIN, COX & LeGOY

By: _____
Paul J. Anderson, Esq., SBN 709
Christopher M. Stanko, Esq., SBN 13591
4785 Caughlin Parkway
Reno, NV 89519
Tel: (775) 827-2000
*Counsel for Plaintiffs Nevada Northern
Railway Foundation, Inc. and City of Ely*

APPROVED AS TO FORM AND
CONTENT:

Dated: November 4, 2020

MCDONALD CARANO LLP

By: Jeff Silvestri
Jeff Silvestri, Esq., SBN 5779
Rory T. Kay, Esq., SBN 12416
2300 W. Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Tel: (702) 873-4100
*Attorneys for Defendant S & S Shortline
Leasing, Inc.*

**NEVADA NORTHERN RAILWAY
FOUNDATION, INC.**

Dated: November 25, 2020.

By: 
Mark Bassett

Its: President

S & S SHORTLINE LEASING, LLC

Dated: _____, 2020.

By: _____
Michael Williams

Its: Manager

Dated: _____, 2020.

Michael Williams

Dated: _____, 2020.

Avory Beggs

CITY OF ELY, NEVADA

Dated: _____, 2020.

By: _____
Michelle Beecher

Its: Mayor Pro Tem

Dated: _____, 2020.

Tammy Williams

APPROVED AS TO FORM AND
CONTENT:

Dated: _____, 2020

MAUPIN, COX & LeGOY

By: _____
Paul J. Anderson, Esq., SBN 709
Christopher M. Stanko, Esq., SBN 13591
4785 Caughlin Parkway
Reno, NV 89519
Tel: (775) 827-2000
*Counsel for Plaintiffs Nevada Northern
Railway Foundation, Inc. and City of Ely*

APPROVED AS TO FORM AND
CONTENT:

Dated: _____, 2020

MCDONALD CARANO LLP

By: _____
Jeff Silvestri, Esq., SBN 5779
Rory T. Kay, Esq., SBN 12416
2300 W. Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Tel: (702) 873-4100
*Attorneys for Defendant S & S Shortline
Leasing, Inc.*

**NEVADA NORTHERN RAILWAY
FOUNDATION, INC.**

S & S SHORTLINE LEASING, LLC

Dated: _____, 2020.

Dated: _____, 2020.

By: _____
Mark Bassett

By: _____
Michael Williams

Its: President

Its: Manager

Dated: _____, 2020.

Michael Williams

Dated: _____, 2020.

CITY OF ELY, NEVADA

Dated: 11/12, 2020.

Avory Beggs

By: K. Michelle Beecher
Michelle Beecher

Dated: _____, 2020.

Its: Mayor Pro Tem

Tammy Williams

APPROVED AS TO FORM AND
CONTENT:

APPROVED AS TO FORM AND
CONTENT:

Dated: November 12, 2020

Dated: _____, 2020

MAUPIN, COX & LeGOY

MCDONALD CARANO LLP

By: Chris Stanko
Paul J. Anderson, Esq., SBN 709
Christopher M. Stanko, Esq., SBN 13591
4785 Caughlin Parkway
Reno, NV 89519
Tel: (775) 827-2000
*Counsel for Plaintiffs Nevada Northern
Railway Foundation, Inc. and City of Ely*

By: _____
Jeff Silvestri, Esq., SBN 5779
Rory T. Kay, Esq., SBN 12416
2300 W. Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Tel: (702) 873-4100
*Attorneys for Defendant S & S Shortline
Leasing, Inc.*

EXHIBIT A
STIPULATION AND ORDER FOR DISMISSAL

1 Case No.: CV 15 06071

2 Dept. No.: 1

3

4

5

6

7

8

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9

IN AND FOR THE COUNTY OF WHITE PINE

10

CITY OF ELY, a Nevada municipal
corporation; and NEVADA NORTHERN
RAILWAY FOUNDATION, INC., formerly
known as WHITE PINE HISTORICAL
RAILROAD FOUNDATION, INC., a Nevada
non-profit corporation,

14

Plaintiffs,

15

vs.

16

S & S SHORTLINE LEASING, LLC; a Utah
limited liability company; and DOES 1
through 10, inclusive,

17

18

Defendants

**STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
FOR DISMISSAL WITH PREJUDICE**

19

The Parties to this case, above-named, by and through their undersigned counsel of record,
stipulate as follows:

21

This case has been pending before the Court since Plaintiffs filed their Complaint on June 8,
2015. On September 2, 2020, this Court entered an Order: (A) staying the case and all discovery
pending closing documents and performance of all acts contemplated in a negotiated, non-binding
Term Sheet between the Parties; (B) vacating the trial that had been set for October 13, 2020; and (C)
requiring the Parties to file a joint status report within thirty (30) days of the September 2, 2020 Order
and every thirty (30) days thereafter.

27

On November 12, 2020, the Parties executed a final Settlement, Sale, and Mutual Release

28

1 Agreement (the “Sale and Settlement Agreement”) that will become final and binding upon closing.
2 As a condition to closing, the parties requested this Court issues findings of fact and conclusions of
3 law consistent with this Order. The Court now renders its Findings of Fact, Conclusions of Law, and
4 Order for Dismissal with Prejudice, which shall only become effective upon the actual closing
5 contemplated by the Sale and Settlement Agreement and which shall be null, void, and of no effect
6 if the Sale and Settlement Agreement does not close with respect to all Parties.

7 **FINDINGS OF FACT**

8 1. Plaintiff, City of Ely, Nevada, a Nevada municipal corporation (the “City”), and
9 Plaintiff, Nevada Northern Railway Foundation, Inc., a Nevada non-profit corporation formerly
10 known as White Pine Historical Railroad Foundation, Inc., (the “Foundation”), received the portion
11 of the main line of the Nevada Northern Railway from Cobre, Elko County, Nevada, to McGill
12 Junction, White Pine County, Nevada (the “Northern Line”) by a September 26, 2005 conveyance
13 from the United States Department of the Interior, Bureau of Land Management (to the City) and a
14 September 27, 2005 conveyance from the Department of Water and Power of the City of Los Angeles
15 (to both the City and the Foundation).

16 2. The City and the Foundation acquired the Northern Line for the purpose of developing
17 commercial rail activity to and through the area in and around Ely, Nevada, including the Robinson
18 Mine near Ruth, Nevada, in hopes that such development would help create jobs, spur economic
19 activity, incentivize industrial development, and generally economically benefit the community in
20 and around Ely, Nevada, which, in turn, would directly benefit the City and the Foundation.

21 3. The aforementioned reasons for acquiring the Northern Line constitute a public
22 purpose under Sections 268.059, 268.061, and 268.062 of Chapter 268 of the Nevada Revised
23 Statutes (“NRS”).

24 4. On or about July 31, 2009, the City, the Foundation, and S & S Shortline Leasing,
25 LLC, a Utah limited liability company (“S&S”) entered into a “Lease Agreement/Joint Development
26 Agreement” (the “2009 Agreement”).

27 5. By its terms, the 2009 Agreement contemplated that S&S would store cars on a portion
28 of the Nevada Northern Railway.

1 6. Continuously since 2009, S&S has operated, managed, or controlled cars or other
2 equipment used on the Nevada Northern Railway in connection with the 2009 Agreement.

3 7. As such, S&S is a “public utility” as defined in NRS § 704.020(1)(a).

4 8. The City and the Foundation have decided that the best course of action for achieving
5 the public purpose initially contemplated when they acquired the Northern Line is for the Parties to
6 settle their differences and bring an end to all matters associated with this case and for S&S, a public
7 utility, to own, in fee simple (subject to the City’s reserved utility easement), and have the unfettered
8 ability to control, develop, and benefit from, the Northern Line.

9 9. By owning the Northern Line in fee simple, S&S will have the best chance possible
10 of using its expertise in railroad development to fully develop the Northern Line for commercial rail
11 traffic, as S&S will be able to better access credit and/or equity financing for rehabilitation of the
12 Northern Line by owning the Northern Line in fee simple.

13 10. S&S intends to rehabilitate and use the Northern Line for the public purpose of
14 developing commercial rail activity to and through the area in and around Ely, Nevada, including the
15 Robinson Mine, in hopes that such development will create jobs, spur economic activity, incentivize
16 industrial development, and generally provide economic assistance to the community in and around
17 Ely, Nevada, which, in turn, would directly benefit the City, the Foundation, and S&S.

18 11. Pursuant to Section Q.2. of Article III of the Sale and Settlement Agreement, the City
19 and the Foundation have contractually committed to writing letters of support for any grants S&S
20 attempts to obtain to rehabilitate the Northern Line.

21 12. Based on the foregoing, the City and the Foundation are selling the Northern Line to
22 S&S, a public utility, to be used for a public purpose.

23 13. The entire interest in the Northern Line being sold by the City and the Foundation
24 constitutes real property and, to the extent any aspect of the Northern Line constitutes personal
25 property, such personal property is not required for public use because commercial rail traffic cannot
26 operate on the personal property in its current condition, as it will have to be replaced, rehabilitated,
27 and/or improved by a company with specialized short-line rehabilitation skills such as S&S.

28 14. It is in the best interest of the City to dispose of personal property on the Northern

1 Line, if any exists.

2 15. As a practical matter, no other party but S&S could bid on the Northern Line, because
3 the Northern Line will likely continue to be encumbered by the 2009 Agreement for 19 more years,
4 and any other bidder would acquire the Northern Line subject to the 2009 Agreement and would
5 succeed Plaintiffs in this case.

6 16. Given the preceding paragraph, no other party but S&S could reasonably bid on the
7 Northern Line.

8 17. None of the public policy reasons for the appraisal requirements in NRS § 268.059 or
9 the bid/auction requirements in NRS § 268.061 or NRS § 268.062 are implicated by the sale of the
10 Northern Line contemplated in the Sale and Settlement Agreement.

11 18. Should any Finding of Fact be better construed as a Conclusion of Law, it shall be so
12 deemed.

13 **CONCLUSIONS OF LAW**

14 1. Pursuant to NRS § 704.020(1)(a), S&S is a public utility under Nevada law.

15 2. The real property being sold to S&S by the City and the Foundation, the Northern
16 Line, will be used for a public purpose.

17 3. The Northern Line does not need to be appraised pursuant to NRS § 268.059, because
18 the sale of the Northern Line by the City and the Foundation qualifies for an exception to the appraisal
19 requirements per NRS 268.059(1).

20 4. Additionally, the Northern Line does not need to be put out for bid/auction pursuant
21 to NRS § 268.061 and NRS § 268.062, because the sale of the Northern Line by the City and the
22 Foundation qualifies for an exception to the bid/auction requirements per NRS § 268.061(1) and NRS
23 § 268.062(1).

24 5. The conveyance of the Northern Line in accordance with the all the terms and
25 conditions of the Sale and Settlement Agreement is being carried out by this Order of the Court.

26 6. Should any Conclusion of Law be better construed as a Finding of Fact, its shall be so
27 deemed.

28 ///

1 **AFFIRMATION**

2 The undersigned hereby affirm that the foregoing document does not contain the social
3 security number of any person.

4 DATED this 13th day of November, 2020.

DATED this 13th day of November, 2020.

5 **MAUPIN, COX & LeGOY**

MCDONALD CARANO

6 By: _____

By: _____

7 Paul J. Anderson, Esq., SBN 709
8 Christopher M. Stanko, Esq., SBN 13591
9 4785 Caughlin Parkway
10 Reno, NV 89519
11 panderson@mcllawfirm.com
cstanko@mcllawfirm.com
12 Tel.: (775) 827-2000
13 Fax: (775) 824-7026
14 *Attorneys for Plaintiffs*

Jeff Silvestri, Esq., SBN 5779
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2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
jsilvestri@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Tel.: (702) 873-4100
Fax: (702) 873-9966
Attorneys for Defendant

13 **ORDER**

14 Based on the stipulation of the Parties and good cause existing therefore, the Court hereby
15 adopts the above Findings of Fact and Conclusions of Law in all respects and further orders that,
16 effective upon the closing contemplated in the Sale and Settlement Agreement, all of the terms of the
17 Sale and Settlement Agreement, including all the terms in all Exhibits to the Sale and Settlement
18 Agreement, are hereby approved by this Court and obligations of the parties thereto are being carried
19 out by order of this Court, this action is hereby dismissed with prejudice subject to the provisions of
20 Section J.4. of Article III of the Sale and Settlement Agreement more fully set forth in that document,¹
21 and each of the parties shall bear its own costs and attorneys' fees.

22 Dated this ____ day of _____, 2020.

23
24 _____
25 DISTRICT COURT JUDGE

26 _____
27 ¹ This dismissal with prejudice will become void with respect to the City's claims if the
28 condition described in Section J.4. of Article III of the Sale and Settlement Agreement becomes effective.

**EXHIBIT B
QUITCLAIM DEED**

REQUESTED BY, MAIL TAX
STATEMENTS TO AND WHEN
RECORDED MAIL TO:

S & S Shortline Leasing, LLC
ATTN: Michael Williams, Manager
10100 N. Ambassador Dr. Ste 105
Kansas City, MO 64153

The undersigned hereby affirms that this document submitted for recording does not contain the social security number of any person or persons per N.R.S. 239B.030.

Signature of Declarant or Agent

QUITCLAIM DEED

For value received, Nevada Northern Railway Foundation, Inc., a Nevada nonprofit corporation, formerly known as White Pine Historical Railroad Foundation, Inc., a Nevada nonprofit corporation, and City of Ely, Nevada, a Nevada municipal corporation, hereinafter collectively referred to as "Grantor," hereby quitclaims and releases to S & S Shortline Leasing, LLC, a Utah limited liability company, hereinafter referred to as "Grantee," all of its right, title, and interest in the real property located in the Counties Elko and White Pine, State of Nevada, consisting of the real property owned by Grantor along that portion of the Nevada Northern Railway from Cobre (Mile Post 0.0) to Mile Post 127.00, more particularly described on Exhibit A1-A3 attached hereto and incorporated herein by this reference subject to the exceptions and reservations set herein and on Exhibit A1-A3 attached hereto and incorporated herein by this reference (the "Real Property").

RESERVING AND EXCEPTING unto the City of Ely, Nevada, and its successors, assigns, agents, and licensees a permanent and nonexclusive easement and right of way over, under, and across the Real Property, for all utility purposes, including without limitation, electricity, natural gas, fiber optics, water, and oil, to construct, alter, maintain, inspect, repair, reconstruct, and operate utility facilities, together with the appropriate markers, conduits, pipes, valve boxes, meters, fixtures, gates, and any other facilities or appurtenances reasonably necessary for the use of the reserved utility easement. The City of Ely, Nevada, and its successors, assigns, agents, and licensees' use of the utility easement reserved hereunder shall not unreasonably affect Grantee's, or Grantee's successors, assigns, agents or licensees' rail operations on the Real Property. The City of Ely, Nevada, may permit other utility

providers to utilize the reserved easement, provided such utility providers use of the easement shall not unreasonably affect Grantee's, or Grantee's successors, assigns, agents or licensees' rail operations on the Real Property.

THE REAL PROPERTY IS CONVEYED together with all improvements located on the Real Property, the tenements, hereditaments, and appurtenances of the Real Property, and the rents, issues and profits thereof.

By accepting this Quitclaim Deed, Grantee assumes all obligations of the Grantor under the Interim Conveyance from the United States to the City of Ely, dated September 26, 2005, and recorded in the Office of the County Recorder for Elko County, Nevada on February 27, 2006, as Document Number 549417, Official Records, and recorded in the Office of the County Recorder for White Pine County, Nevada on November 9, 2005, as Document Number 331080, Official Records (the "Interim Conveyance"), and Grantee agrees to indemnify, defend, and hold Grantor and the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments or any kind or nature arising from the indemnification obligation described in the Interim Conveyance. Additionally, Grantee acknowledges it is accepting this Quitclaim Deed subject to the rights of all third parties as listed in the Interim Conveyance.

This Quitclaim Deed is executed in connection with the Settlement, Sale, and Mutual Release of All Claims Agreement between Grantor and Grantee for Case No.: CV-15-06071 in the Seventh Judicial District Court of the State of Nevada in and for the County of White Pine.

Dated this _____ day of _____, 2020.

Nevada Northern Railway Foundation Inc., a Nevada nonprofit corporation, formerly known as White Pine Historical Railroad Foundation, Inc., a Nevada nonprofit corporation

By: _____
Mark Bassett, President

City of Ely, Nevada, a Nevada municipal corporation

By: _____
Michelle Beecher, Mayor Pro Tem

STATE OF NEVADA

COUNTY OF WHITE PINE

This instrument was acknowledged before me on _____, 2020, by Mark Bassett, as President of Nevada Northern Railway Foundation, Inc., a Nevada nonprofit corporation.

Notary Public

STATE OF NEVADA

COUNTY OF WHITE PINE

This instrument was acknowledged before me on _____, 2020, by Michelle Beecher, as Mayor Pro Tem of the City of Ely, Nevada, a Nevada municipal corporation.

Notary Public

EXHIBIT A-1

I. EASEMENTS

The following easements for railroad purposes over and across that certain real property in White Pine County and Elko County, State of Nevada, more particularly described as follows:

PARCEL 1:

A strip of land, in said Elko County, 100 feet in width, described in documents recorded January 10, 1906 and May 31, 1907 in Book 28 Pages 601 and 602 and 617 and 618 of Deeds and on August 10, 1907, in Book 29, Pages 582 and 583 of Deeds, all Records of Said Elko County. Also being 50 feet on each side of the center line of the railroad as shown on the Right of Way-Station and Track Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California, and over and across a portion of the following described land:

TOWNSHIP 37 NORTH, RANGE 67 EAST, M.D.B. & M.

- Section 9: All
- Section 21: All
- Section 29: All

TOWNSHIP 36 NORTH, RANGE 67 EAST, M.D.B. & M.

- Section 5: All
- Section 7: All
- Section 19: All
- Section 31: All

TOWNSHIP 35 NORTH, RANGE 67 EAST, M.D.B. & M.

- Section 7: All

Section 19: All
Section 31: All

TOWNSHIP 34 NORTH, RANGE 67 EAST, M.D.B. & M.

Section 7: All
Section 19: N1/2

TOWNSHIP 28 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 14: S1/2 NW1/4
Section 22: E1/2 NW1/4; NE1/4 SW1/4
Section 27: E1/2 NW1/4; SW1/4 SW1/4 (Excepting E1/2 SE1/4
SW1/4 SW1/4)
Section 34: NW1/4 NW1/4

TOWNSHIP 27 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 4: NE1/4 SE1/4

PARCEL 2:

A strip of land, in said White Pine County, 100 feet in width, described in document recorded in Book D, Pages 696 to 698 Inclusive, Real Estate Records of said White Pine County, also being 50 feet on each side of the center line of the Railroad as shown on the Right of Way-Station and Track Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California and over and across a portion of the following described land:

TOWNSHIP 25 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 16: SW1/4 SW1/4
Section 17: S1/2 SE1/4
Section 21: NW1/4 NW1/4

PARCEL 3:

TOWNSHIP 24 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 7: That portion of said section described in Document recorded May 11, 1911, in Book 59, Pages 698 and 699, Real Estate Records of White Pine County and as shown on the Right of Way-Station and Track Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California and more particularly described as follows:

Beginning at a point fifty feet distant from the center line of the Railroad of the Nevada Northern Railway Company, as it is now constructed over the property of said party of the first part, and on the south boundary line of said property, whence the Section corner common to Sections 6 and 7 of Township 24 North, Range 64 East M.D.B. & M. and Sections 1 and 12 of Township 24 N., R. 63 East M.D.B. & M., bears North 58° 28' West, a distance of two thousand four hundred ninety-six feet; thence first course, along a line fifty feet distant from and parallel to the center line of the said railroad of said Nevada Northern Railway Company North 40° 37-1/2' East six hundred forty-four and four-tenths feet; thence second course, along a line coincident with the east boundary line of the property of said party of the first part, South 0° 21' West one hundred fifty-four and seven tenths feet; thence third course, along a line fifty feet distant from and parallel to the center line of said railroad, South 40° 37-1/2' West, four hundred forty-five and two-tenths feet; thence fourth course, along a line coincident with the South boundary line of the property of the said party of the first part, North 88° 28' West, one hundred twenty-eight and eight tenths feet to the place of beginning.

PARCEL 4:

A strip of land, in White Pine County, Nevada, 100 feet in width, described in documents recorded on March 5 and 12, 1907 in Book D, Pages 695 and 696 and Pages 715 and 716 and on August 3, 1907 in Book E, Pages 378 to 380 Inclusive all in Real Estate Records of said White Pine County, also being 50 feet on each side of the center line of the Railroad as shown on the Right of Way-Station and Track Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California and over and across a portion of the following described land:

TOWNSHIP 21 NORTH, RANGE 63 EAST, M.D.B. & M.

Section 24: SE1/4
Section 12: SE1/4 SW1/4
Section 36: E1/2 SW1/4

TOWNSHIP 20 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 6: E1/2 NE1/4

TOWNSHIP 20 NORTH, RANGE 63 EAST, M.D.B. & M.

Section 25: SW1/4 NW1/4

TOWNSHIP 18 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 18: W1/2 W1/2
Section 19: W1/2 W1/2
Section 30: W1/2; SW1/4 SE1/4

II. FEE PROPERTIES

Those certain real properties in Elko County, State of Nevada, described in document recorded November 15, 1912 in Book 34, Page 130 records of said Elko County and in document recorded February 12, 1906 in Book C, Pages 765 and 766, Real Estate

Records of White Pine County, said State of Nevada, more particularly described as follows:

PARCEL 1:

TOWNSHIP 37 NORTH, RANGE 67 EAST, M.D.B. & M.

Section 9: A portion of the Northeast quarter (NE1/4) lying southerly and southwesterly of a line parallel with and 200 feet southerly and southwesterly from the center line of the main track of Southern Pacific Transportation Company's, a successor in interest to the Central Pacific Railway Company, railroad as now located and constructed across said Northeast quarter and as shown on the Right of Way-Station and Track Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California.

PARCEL 2:

TOWNSHIP 28 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 27: E1/2 SE1/4 SW1/4 SW1/4

III. FEDERAL RIGHT OF WAY GRANT

All right, title and interest under all rights-of-way granted to the Nevada Northern Railway Company by the United States of America, or any agency or department thereof, for any purpose (including, without limitation, railroad tracks, station buildings, depots, machine shops, side tracks, turnouts and water stations), located in Elko County, Nevada and White Pine County, Nevada, lying between Cobre Junction, Nevada (being Mile Post 0.9 of the Nevada Northern Railway located in the Northeast Quarter of Section 9, Township 37 North, Range 67 East M.D.B. & M.) and Mile Post 127.00 of the main line of the Nevada Northern Railway located in the Southeast Quarter of Section 30, Township 18 North, Range 64 East, M.D.B. & M.) and any

interest of Seller in the real property situated within the boundaries of such rights-of-way.

Excepting therefrom all of the Department of Water and Power of the City of Los Angeles's right, title and interest in and to water rights and mineral rights, if any, of any nature or type, over, under, across or associated with any of the properties described in Parts I, II and III above.

The above described metes and bounds descriptions previously appeared in that Corporation Grant, Bargain, Sale Deed dated September 27, 2005, and recorded in the Office of the County Recorder for Elko County, Nevada on February 27, 2006, as Document Number 549418, Official Records. The above described metes and bounds descriptions also previously appeared in that Corporation Grant, Bargain, Sale Deed dated September 27, 2005, and recorded in the Office of the County Recorder for White Pine County, Nevada on February 27, 2006, as Document number 331989, Official Records.

EXHIBIT "A-2"

PARCEL 1:

That certain Station Grounds at Cobre, Nevada, in the SE1/4 of the SE1/4 of the SW1/4 and in the SW1/4 of the SE1/4 of Section, 4, Township 37 North, Range 67 East, M.D.M. in Elko County, Nevada, granted to the Nevada Northern Railway Company by the Department of the Interior by Right-of-Way Grant Nev. 043230 as shown on the Plat showing Station Grounds in Section 4, T37N, R67E M.D.B. & M. in Elko County, Nevada filed with the U.S. Land Office in Carson City, Nevada on August 22, 1905.

EXCEPTING THEREFROM that portion lying northeasterly of a line parallel with and distant 200 feet southwesterly from the center line of the Southern Pacific Transportation Company's, a successor in interest to the Central Pacific Railway Company, railroad as now located and constructed, as shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 2:

That portion of Section 6, Township 34 North, Range 67 East, M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043230, as shown on the Map of Definite Location of the Nevada Northern Railway – Section H – in Elko County, Nevada, filed with the U.S. Land Office in Carson City, Nevada, on August 22, 1905, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 3:

Those portions of the NW1/4 of the NE1.4 of Section 27, Township 32 North, Range 66 East and of the NE1/4 of the NW1/4 of Section 21, Township 31 North, Range 66 East both M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043230, as shown on the Map of Definite Location of the Nevada Northern Railway – Section G – in Elko County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on August 31, 1905, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 4:

Those portions of the SE1/4 of Section 20 and the N1/2 of the N1/2 of Section 29, Township 31 North, Range 66 East, M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043231, as shown on the Map of Definite Location of the Nevada Northern Railway – Section F – in Elko County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on October 17, 1905, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Divisions' Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 5:

That portion of the SE1/4 of Section 20, Township 31 North, Range 66 East, M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043240, as shown on the Plat of Station Grounds At Antelope, Elko County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on April 19, 1907, said Station Grounds being shown as

Dolly Varden on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 6:

Those portions of the SE1/4 of the SW1/4 of Section 22, of the NE1/4 of the SW1/4 and the SE1/4 of the SW1/4 of Section 27 and the E/12 of the SE1/4 of Section 33, Township 28 North, Range 64 East, M.D.M. and the E1/2 of the NE1/4 and the SW1/4 of the NE1/4 of Section 4, Township 27 North, Range 64 East, M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043232 as shown on Map of Amended Definite Location of the Nevada Northern Railway in Elko County and White Pine County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on February 9, 1906, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 7:

That portion of the E1/2 of the NE1/4 of Section 20, Township 25 North, Range 64 East, M.D.M. in White Pine County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant CC 05887, approved on September 13, 1911, as shown on the Map of Supplemental Survey of the Nevada Northern Railway Portion of Definite Location Section – E – in White Pine County, Nevada said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 8:

Those portions of Section 11, Township 22 North, Range 63 East M.D.M. of the W1/2 of the W1/2 of Section 7 and the W1/2 of the NW1/4 of Section 18, Township 21 North, Range 64 East, M.D.M. all in White Pine County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043234, as shown on the Map of Definite Location of the Nevada Northern Railway Section – C – in White Pine County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on December 19, 1905, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 9:

Those portions of the E1/2 of the NE1/4 of Section 24 and of the N1/2 of the NE1/4 and the W1/2 of the SE1/4 of Section 25, Township 21 North, Range 63 East, M.D.M. and of Lots 2 and 3, Section 7, Township 20 North, Range 64 East, M.D.M., all in White Pine County Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043230, as shown on the Map of Definite location of the Nevada Northern Railway Section – B – in White Pine County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on August 22, 1905, Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 10:

Those portions of the SW1/4 of the SW1/4 of Section 24, Township 20 North, Range 63 East, M.D.M. and of the NW1/4 of the SW1/4 of Section 7, Township 18 North, Range 64 East, M.D.M. all in White Pine County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern

Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043230, as shown on the Map of Amended Definite Location of the Nevada Northern Railway in Elko County and White Pine County, Nevada filed with the U.S. Land Office in Carson City, Nevada on October 23, 1906, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 11:

An easement over those portions of the E1/2 of the SE1/4 of Section 12, Township 18 North, Range 63 East, M.D.M., and of the S1/2 of the SW1/4 of Section 7, Township 18 North, Range 64 East, M.D.M. in White Pine County, Nevada according to the Official Plat filed in the District Land Office included within a strip of land 100 feet wide lying 50 feet on each side of the center line of the Railroad as shown on the Right of Way-Station and Tack Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California.

PARCEL 12:

That portion of the NW1/4 of the NW1/4 of Section 34, Township 28 North, Range 64 East, M.D.M. in Elko County, Nevada according to the Official Plat filed in the District Land Office described as follows:

Beginning at a point on the easterly boundary line of the right of way of the Nevada Northern Railway Company, which point is distant fifty feet from the center line of the main track, as presently laid, of said Company, and from which point the section corner common to Sections 27, 28, 33 and 34 of Township 28 North, Range 64 East, M.D.B. & M., bears North 67° 3' 17" West 1056.8 feet distant; thence South 18° 51' 30" West, along the said easterly boundary of said right of way, 975.7 feet; thence South 89° 28' 30" East, 210.7 feet; thence North 18° 51' 30" East 909.4 feet;

thence North 71° 8' 30" West 200 feet; more or less to the point of beginning, containing 4.327 acres, more or less.

PARCEL 13:

All of the N1/2 of the NW1/4 of Section 7, Township 20 North, Range 64 East, M.D.B. & M. in White Pine County Nevada.

Excepting therefrom all of the Department of Water and Power of the City of Los Angeles's right, title and interest in and to water rights and mineral rights, if any, of any nature or type, over, under, across or associated with any of the properties described as Parcels 1 through 13 above.

The above described metes and bounds descriptions previously appeared in that Quitclaim Deed dated September 27, 2005, and recorded in the Office of the County Recorder for Elko County, Nevada on February 27, 2006, as Document Number 549417, Official Records. The above described metes and bounds descriptions also previously appeared in that Quitclaim Deed dated September 27, 2005, and recorded in the Office of the County Recorder for White Pine County, Nevada on February 27, 2006, as Document Number 331988.

EXHIBIT "A-3"

The following described land previously authorized for use for purposes of a railroad under rights-of-way NVE-03009, NEVE-03514, Nev-043230, Nev-043231, Nev-043232, Nev-043234, Nev-043240, and NVCC-05887 (and, for the avoidance of doubt, excluding any interest south of and Mile Post 127.00 of the main line of the Nevada Northern Railway located in the Southeast Quarter of Section 30, Township 18 North, Range 64 East, M.D.B. & M.):

T. 18 N., R. 63 E.,

- sec. 1, Lot 1, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$;
- sec. 12, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 19 N., R. 63 E.,

- sec. 1, Lot 3, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$;
- sec. 12, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
- sec. 13, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$;
- sec. 13, NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$
(within);
- sec. 24, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,
SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$;
- sec. 24, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ (within);

T. 36 N., R. 67 E.,

sec. 6, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;

sec. 18, Lots 6, 7, 10, 15, 17, 18;

sec. 30, Lots 1 to 4, inclusive.

T. 37 N., R. 67 E.,

sec. 16, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,

SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,

NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$;

sec. 28, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$,

NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$;

sec. 32, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,

NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

EXHIBIT C
PROMISSORY NOTE

PROMISSORY NOTE

\$2,000,000.00

_____, 2020
_____, Nevada

For value received, S & S Shortline Leasing, LLC, a Utah limited liability company, ("Borrower"), does hereby promise to pay to the order of the City of Ely, Nevada, a Nevada municipal corporation, at 501 Mill Street, Ely, Nevada, 89301, as to an undivided fifty percent (50%) interest, and Nevada Northern Railway Foundation, Inc., a Nevada nonprofit corporation, at 1100 Avenue A, Ely, Nevada, 89301, as to an undivided fifty percent (50%) interest (together with their respective successors and assigns, individually or collectively as the context requires, as "Lender"), without presentment, demand, or setoff, the principal sum of Two Million Dollars (\$2,000,000.00), in lawful immediately available money of the United States, together with interest at the rate of five percent (5%) per annum ("Interest Rate"), or the Default Rate hereafter defined if applicable, on the declining principal balance, compounded annually. Borrower acknowledges and agrees that the provisions of this Promissory Note and the Security Instrument which secures this Promissory Note shall result in compounding interest and Borrower agrees thereto pursuant to the provisions of Nevada Revised Statutes Section 99.050.

1. Payment of Principal and Interest. Principal and interest shall be payable as follows:

(a) One year after the date of this Promissory Note, a payment of One Million Three Hundred Seventy-Five Thousand and 00/100 Dollars (\$1,375,000.00) shall be due and payable to Lender, representing One Million Two Hundred Seventy-Five Thousand 00/100 Dollars (\$1,275,000.00) in principal and One Hundred Thousand Dollars (\$100,000.00) in interest.

(b) One year and nine months after the date of this Promissory Note, a payment of Seven Hundred Fifty-Two Thousand One Hundred Eighty-Seven and 50/100 Dollars (\$752,187.50) shall be due and payable to Lender, representing Seven Hundred Twenty-Five Thousand 00/100 Dollars (\$725,000.00) in principal and Twenty-Seven Thousand One Hundred Eighty-Seven 50/100 Dollars (\$27,187.50) in interest.

2. Final Maturity Date. The entire unpaid principal balance and all unpaid accrued interest shall be paid in full on or before one year and nine months following the date of this Promissory Note ("Maturity Date").

3. Application of Payments. Each payment under this Promissory Note shall be applied in the following order and priority: (i) late charges, (ii) interest at the Default Rate (hereinafter defined), (iii) interest at the Interest Rate set forth above on the unpaid principal balance, and (iv) the unpaid principal balance. All prepayments shall be applied first to the items in the order set forth in clauses (i), (ii), and (iii) above, and then to future installments, at the election of Lender, in the inverse order of maturity.

4. Prepayments. All or any portion of the unpaid principal balance of this Promissory Note may be prepaid at any time without penalty. In the event Borrower prepays all or any part of the principal obligation of this Promissory Note, at Lender's option, all prepayments shall be applied to future installments in the inverse order of maturity.

5. Collateral. This Promissory Note is secured by, among other things, the collateral described in a Deed of Trust, Security Agreement, Fixture Filing and Assignment of Rents dated as of the date herewith executed by Borrower for the benefit of Lender (the "Security Instrument"), which Security Instrument, as it may be amended by from time to time, is by this reference incorporated herein and made a part hereof. Reference is made to the Security Instrument for a statement of its terms and conditions and to that certain Settlement, Sale, and Mutual Release Agreement dated of even date hereof between Lender, Borrower, guarantors hereof, and Avory

Beggs (the "Settlement Agreement") for a statement of its terms and conditions. Unless otherwise defined herein, the capitalized terms herein shall have the meanings given such terms in the Security Instrument.

6. Default Rate and Late Charges. Borrower agrees that it would be extremely difficult or impracticable to fix the actual damages of Lender in the event any installment of interest or principal hereunder is not paid when due and that Lender will incur extra administrative expenses and loss of use of funds; therefore, Borrower agrees to pay Lender, in the event a payment is not made and received by Lender within ten days of the date it was due, an amount equal to five percent (5%) of such late installment. Acceptance of such amount by the holder shall be in lieu of its actual damages for any such delinquent payment of an installment. Nothing in this Promissory Note shall be construed as an express or implied agreement by Lender to forbear in the collection of any delinquent payment, or be construed as in any way giving the Borrower the right, express or implied, to fail to make timely payments hereunder, whether upon payment of such damages or otherwise. The right of the holder hereof to receive payment of such damages, and receipt thereof, are without prejudice to the right of such holder to collect such delinquent payments and any other amounts provided to be paid hereunder or under any Loan Documents or to declare a default hereunder or under any Loan Documents.

Upon default hereunder or any Event of Default under the Security Instrument ("Event of Default"), the total of the unpaid balance of the principal and the then accrued and unpaid interest shall collectively commence accruing interest at a default rate equal to twelve percent (12%) per annum, compounded annually (the "Default Rate") until such time as all payments and additional interest then due are paid in full, together with the curing of any other Event of Default which may have occurred, at which time the interest rate shall revert to the Interest Rate.

7. Maximum Lawful Rate. At no time shall the Interest Rate or the Default Rate exceed the legal rate of interest permitted to be charged by the Lender. In the event any law precludes Lender from charging the Interest Rate or Default Rate otherwise permitted hereunder, the Interest Rate or Default Rate for the period during which such rate is unlawful shall be the highest rate permitted by law. The Interest Rate or Default Rate shall immediately increase to the rate permitted hereunder as soon as permitted by law. Any interest which would otherwise have become due to Lender but for the application of any law, shall, to the extent legally permitted, be repaid to Lender in equal monthly installments above the interest otherwise due at any such time, so that the interest otherwise due Lender hereunder, but not permitted by law, shall be fully repaid to Lender by the Maturity Date. Such payments shall be made at the time and in the manner set forth herein for the payment of interest.

8. Waiver. To the maximum extent permitted under Nevada law, the undersigned, and any endorsers and guarantors hereof, severally waive diligence, presentment, protest and demand and notice of protest, demand, dishonor, acceleration, intent to accelerate, and nonpayment of this Note, and expressly agree that this Note, or any payment hereunder, may be extended from time to time without notice, and consent to the acceptance of further security or the release of any security for this Note, all without in any way affecting the liability of the undersigned and any endorsers or guarantors hereof. No extension of time for the payment of this Note or any installment hereof, made by agreement of the holder hereof with any Person now or hereafter liable for the payment of this Note, shall affect the liability of any Person or Persons liable for payment of this Note, even if such Person or Persons are not a party to such agreement. As used herein "Person" shall mean any individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof. No delay or omission on the part of the holder hereof in exercising any rights under this Note, under the Security Instrument, the Settlement Agreement, or any other document given to secure this Note, on default by Borrower, shall operate as a waiver of such right or of any other right under this Note or other agreement or any other instrument now or hereafter given to secure this Note for the same default or any other default.

9. Due on Sale and Encumbrance. The Borrower acknowledges and agrees that the Security Instrument contains a due on sale clause and due on encumbrance clause. Any sale,

imposition of any additional lien or encumbrance of any kind affecting title to the Secured Property, transfer, alienation or other disposition of all or any portion of the Secured Property or any interest therein, whether voluntary or involuntary, without the prior written consent of Beneficiary constitutes an Event of Default.

10. Acceleration. Borrower promises and agrees that upon the occurrence of a default under this Note or the occurrence of any Event of Default as defined in the Security Instrument, which shall continue beyond the applicable cure period, the holder of this Promissory Note may, at the option of the holder, in addition to the exercise of any other rights or remedies provided by law or under the Security Instrument, or by any other instrument now or hereafter securing payment of this Promissory Note, declare all amounts then unpaid under this Promissory Note and the Security Instrument and any other instrument now or hereafter securing payment of this Promissory Note, immediately due and payable, although the time of maturity may not have arrived.

11. Collection Costs. In the event of the occurrence of an Event of Default as defined in the Security Instrument or if any installment under this Promissory Note is not otherwise paid when due, whether at the time specified herein for the making of installments, or at maturity or by acceleration, or if it is collected through a bankruptcy, probate or other court, whether before or after maturity, Borrower agrees to pay all costs of collection, including, but not limited to, reasonable attorneys' fees incurred by the holder hereof.

12. Entire Agreement. This Promissory Note, together with all Loan Documents, sets forth the entire agreement between the parties hereto and fully supersedes any prior agreements and understandings, written or oral, between the parties hereto pertaining to the subject matter hereof.

13. Cumulative Remedies. All rights and remedies provided in this Promissory Note are cumulative and not exclusive, and the exercise by any party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

14. Assignment. This Promissory Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Promissory Note or any proceeds of it, or assign or delegate any of its rights or obligations under it, without Lender's prior written consent in each instance. Lender in its sole and absolute discretion may transfer this Promissory Note, and may sell or assign participations or other interests in all or any part of this Promissory Note, all without notice to or the consent of Borrower.

15 Jury Trial Waiver. BORROWER WAIVES FULLY ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY IN EACH AND EVERY TRIAL OR OTHER PROCEEDING IN WHICH ONE OR MORE CAUSES OF ACTION OR ISSUES ARE RAISED WHICH RESULT FROM OR ARISE OUT OF THIS PROMISSORY NOTE. BORROWER REPRESENTS THAT THIS PROMISSORY NOTE IS EXECUTED, KNOWINGLY, FREELY, AND VOLUNTARILY AFTER HAVING BEEN FULLY AND COMPLETELY READ AND UNDERSTOOD BY BORROWER OR ITS AUTHORIZED OFFICERS, AND THAT BORROWER UNDERSTANDS THE NATURE OF THE RIGHT BEING WAIVED AND THAT IT HAS HAD THE ADEQUATE OPPORTUNITY TO DISCUSS THIS WAIVER WITH ITS COUNSEL.

16. Governing Law, Jurisdiction, and Venue. The parties agree that the laws of the State of Nevada shall govern the terms, interpretation, and enforcement of this Promissory Note and all matters or documents arising out of or in any way related to this Promissory Note, without regard to any conflict-of-law provisions to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Nevada. Each party irrevocably submits to the exclusive jurisdiction and venue of the state courts located in White Pine County, Nevada, in any legal or equitable suit, action, or proceeding arising out of or based

upon this Promissory Note. If for any reason the state courts of White Pine County, Nevada, are unable to adjudicate a dispute under this Promissory Note, then the parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada. It is not the intent of the parties to adjudicate any dispute under this Promissory Note in federal court. However, should for any reason a legal or equitable suit, action, or proceeding arising out of or based upon this Promissory Note occur in federal court, the parties agree that the federal courts in Washoe County, Nevada, have exclusive jurisdiction and shall be the exclusive venue for any legal or equitable suit, action, or proceeding arising out of or based upon this Promissory Note.

Borrower has executed this Promissory Note as of this _____ day of _____, 2020.

S & S Shortline Leasing, LLC, a Utah limited liability company

By: _____

Name: Michael Williams

Title: Manager

EXHIBIT D
GUARANTY AGREEMENT

GUARANTY AGREEMENT

This Guaranty Agreement is entered into by Michael Williams and Tammy Williams, husband and wife, jointly and severally as "Guarantor," for the benefit of the City of Ely, Nevada, a Nevada municipal corporation, as to an undivided fifty percent (50%) interest, and the Nevada Northern Railway Foundation, Inc., a Nevada nonprofit corporation, as to an undivided fifty percent (50%) interest (together with their respective successors and assigns, individually or collectively as the context requires, as "Lender"). This Guaranty Agreement is entered into pursuant to a Settlement, Sale, and Mutual Release of All Claims Agreement ("Settlement Agreement") entered into by and among S & S Shortline Leasing, LLC, a Utah limited liability company ("S & S"), Guarantor, and Lender. Guarantor is the owner of S & S.

1. Guaranty of Payment and Performance. In order to induce Lender to loan S & S ("Borrower") the sum of Two Million Dollars (\$2,000,000.00) (the "Loan"), which is made pursuant to the Settlement Agreement, and which is evidenced by a Promissory Note of this same date (the "Note"), executed by Borrower and payable to the order of Lender, Guarantor, jointly, severally, unconditionally, and irrevocably guarantees to Lender and to its successors, endorsees, and assigns, the full and prompt payment of the Note in accordance with its terms, when due, by acceleration or otherwise, and any renewals, modifications, extensions or replacements of the Note, and the full, prompt, and complete performance of all obligations of Borrower set forth in the Note. The Promissory Note, Security Instrument, and Settlement Agreement are hereafter referred to as the "Loan Documents."

2. Modifications of Loan Documents. Guarantor shall continue to be liable under this Guaranty, and its provisions shall remain in full force and effect notwithstanding: (a) any modification, agreement, or stipulation between any Borrower and Lender or their respective successors and assigns, with respect to the Loan Documents; (b) Lender's waiver of or a failure to enforce any of the terms, covenants, or conditions contained in the Loan Documents, or any modification of the Loan Documents; or (c) any release of any real property, fixtures, personal property, or other collateral then held by the Lender as security for the performance of the obligations guaranteed hereby.

3. Additional Credit. Guarantor hereby agrees that additional credit may be advanced to Borrower under the Loan Documents from time to time and without further authorization from or notice to Guarantor. Lender need not inquire into the power of Borrower or the authority of its members, managers, or agents acting or purporting to act on its behalf. Each advance of credit granted to Borrower pursuant to the Loan Documents shall be deemed to have been granted at the instance and request of Guarantor and in consideration of and in reliance on this Guaranty.

4. Liability of Guarantor. The liability of Guarantor pursuant to this Guaranty Agreement is a guarantee of payment and performance and not of collectability, and is not conditional or contingent on the genuineness, validity, regularity, or enforceability of the Loan Documents or other instruments relating to the obligations hereby guaranteed or the pursuit by Lender of any remedies that it now has or may hereafter have with respect thereto.

5. Effect of Bankruptcy. The liability of Guarantor under this Guaranty Agreement shall in no way be affected by: (a) the release or discharge of Borrower in any creditor proceeding, receivership, bankruptcy, or other proceeding; (b) the impairment, limitation, or modification of the liability of Borrower or the estate of Borrower, or of any remedy for the enforcement of Borrower's liability, resulting from the operation of any present or future provision of the Bankruptcy Code (Title 11 of the United States Code, as amended; 11 USC Sections 101-1301) or any bankruptcy, insolvency, debtor relief statute (state or federal), or any

other statute, or from the decision of any court; (c) the rejection or disaffirmance of the indebtedness, or any portion of the indebtedness, in any such proceeding; or (d) the cessation, from any cause whatsoever, whether consensual or by operation of law, of the liability of Borrower to Lender.

6. Claims in Bankruptcy. Guarantor will file all claims against Borrower in any bankruptcy or other proceeding in which the filing of claims is required by law on any indebtedness of Borrower to the Guarantor, and will assign to Lender all rights of Guarantor on any such indebtedness. If Guarantor does not file any such claim, Lender, as attorney-in-fact for Guarantor, is authorized to do so in the name of Guarantor, or, in Lender's discretion, to assign the claim and to file a proof of claim in the name of Lender's nominee. In all such cases, whether in bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Lender the full amount of any such claim, and, to the full extent necessary for that purpose, Guarantor assigns to Lender all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled.

7. Waiver of One-Action Rule, Subrogation Rights and Other Suretyship Defenses. Guarantor agrees that Lender may enforce this Guaranty without the necessity of resorting to or exhausting any collateral serving as security under the Loan Documents, and Guarantor waives the right to require Lender to proceed against any Borrower, to foreclose any lien on any real or personal property, to exercise any right or remedy under the Loan Documents, to pursue any other remedy, or to enforce any other right. Guarantor expressly agrees that Lender may enforce this Guaranty without first pursuing any of the foregoing. Guarantor further agrees that nothing contained in this Guaranty shall prevent Lender from suing on the Note or from exercising any rights available to it thereunder or under any of the Loan Documents, and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor. Guarantor understands and acknowledges that the exercise by Lender of certain rights and remedies contained in the Loan Documents may affect or eliminate Guarantor's right of subrogation against Borrower and that Guarantor may therefore succeed to a partially or totally nonreimbursable liability hereunder. Notwithstanding the foregoing, Guarantor hereby authorizes and empowers Lender to exercise, in Lender's sole and absolute discretion, any rights and remedies, or any combination thereof, which may then be available, since it is the intent and purpose of Guarantor that the obligations hereunder shall be absolute, independent, and unconditional under any and all circumstances.

Without limiting the generality of the foregoing, Guarantor expressly waives, to the fullest extent allowed by law, any and all rights and benefits provided to guarantors under Nevada Revised Statutes Sections 40.430 through 40.495, inclusive, and Guarantor agrees that Lender shall be entitled to commence and maintain an action for the enforcement of this Guaranty separately and independently from any action to enforce Borrower's obligations under the Loan Documents, any action to foreclose the lien of the Security Instrument, or any other action or proceeding to enforce the Lender's legal rights and remedies under the Loan Documents, all as authorized pursuant to Nevada Revised Statutes Section 40.495. Notwithstanding any foreclosure of the lien of the Security Instrument with respect to any or all of the real or personal property collateral securing the indebtedness guaranteed hereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure, by an acceptance of a deed in lieu of foreclosure, or by any other remedy provided by law, Guarantor shall remain bound under this Guaranty.

8. Waiver of Other Defenses. Guarantor hereby expressly waives the following: (a) diligence and demand of payment; (b) all notices to Guarantor, to any Borrower, or to any other person, including, but not limited to, notices of the acceptance of this Guaranty, or the creation, renewal, extension, modification, or approval of any obligations contained in the Loan

Documents or notice of any other matters relating thereto; (c) all demands whatsoever; (d) any statute of limitations affecting liability under this Guaranty or the enforcement of this Guaranty; (e) any duty on the part of the Lender to disclose to Guarantor any facts it may now or hereafter know about Borrower, regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or has reason to believe that such facts are unknown to Guarantor, or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Borrower and of all circumstances bearing on the risk of non-payment of any indebtedness hereby guaranteed; (f) all principles or provisions of law that conflict with the terms of this Guaranty. Moreover Guarantor agrees that its obligation shall not be affected by any circumstances that constitute a legal or equitable discharge of a guarantor or surety.

9. Subordination of Guarantor's Rights. Until all terms, covenants, and conditions of the Loan Documents on the Borrower's part to be performed and observed are fully performed and observed, Guarantor: (a) shall have no right of subrogation against Borrower by reason of any payments or acts of performance by Guarantor in compliance with the obligations of Guarantor under this Guaranty; (b) waives any right to enforce any remedy that Guarantor shall have against Borrower by reason of any one or more payments or acts of performance and compliance with the obligations of Guarantor under this Guaranty; and (c) subordinates any liability or indebtedness of Borrower held by Guarantor to the obligations of Borrower to Lender under any of the Loan Documents or any other instrument of indebtedness, including, without limitation, any indebtedness of Borrower to Guarantor for any management fees and other compensation.

10. Applications of Payments And Refunds. With or without notice to Guarantor, Lender, in its sole and absolute discretion and at any time from time to time and in such manner and on such terms as it deems fit may: (a) apply any or all payments or recoveries from Borrower, from Guarantor, or from any other guarantor or endorser under this or any other instrument, or payments or recoveries realized from any security, in such manner, order, or priority as Lender sees fit, to the indebtedness of Borrower to the Lender under the Loan Documents, whether such indebtedness is guaranteed by this Guaranty or is otherwise secured or is due at the time of such application; and (b) refund to Borrower any payment received by Lender on any indebtedness hereby guaranteed and payment of the amount refunded shall be fully guaranteed hereby. Any recovery realized from any other guarantor under this or any other instrument shall be first credited on that portion of the indebtedness of Borrower to Lender that exceeds the maximum liability, if any, of Guarantor under this Guaranty.

11. Financing Statements. Guarantor shall, and Lender is hereby authorized in the name of Guarantor from time to time to, execute and file financing statements and continuation statements and execute such other documents and take such other action as Lender deems necessary or appropriate to perfect, preserve and enforce its rights hereunder.

12. Authorization. It is not necessary for Lender to inquire into the powers of Borrowers or any officers, directors, partners, managers, members, or agents acting or purporting to act in their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

13. Indemnification. Guarantor agrees to indemnify Lender from all loss, damage and expense, including reasonable legal fees and expenses, and the costs of any settlement or judgment, incurred in connection with (a) any suit or proceeding in or to which Lender may be made a party for the purpose of protecting any lien securing the balance due under the Note, or

(b) any breach by Borrower of the Note. This indemnification shall be a personal obligation of the Guarantor and shall survive any foreclosure sale of any encumbered property.

14. Joint and Several Liability. Should this Guaranty be executed by more than one party as Guarantor, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Guaranty Agreement as Guarantor.

15. Governing Law, Jurisdiction, and Venue. The parties agree that the laws of the state of Nevada shall govern the terms, interpretation, and enforcement of this Guaranty Agreement and all matters or documents arising out of or in any way related to this Guaranty Agreement, without regard to any conflict-of-law provisions to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Nevada. Each party irrevocably submits to the exclusive jurisdiction and venue of the state courts located in White Pine County, Nevada, in any legal or equitable suit, action, or proceeding arising out of or based upon this Guaranty Agreement. If for any reason the state courts of White Pine County, Nevada, are unable to adjudicate a dispute under this Guaranty Agreement, then the parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada. It is not the intent of the parties to adjudicate any dispute under this Guaranty Agreement in federal court. However, should for any reason a legal or equitable suit, action, or proceeding arising out of or based upon this Guaranty Agreement occur in federal court, the parties agree that the federal courts in Washoe County, Nevada, have exclusive jurisdiction and shall be the exclusive venue for any legal or equitable suit, action, or proceeding arising out of or based upon this Guaranty Agreement.

16. Jury Trial Waiver. GUARANTOR WAIVES FULLY ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY IN EACH AND EVERY TRIAL OR OTHER PROCEEDING IN WHICH ONE OR MORE CAUSES OF ACTION OR ISSUES ARE RAISED WHICH RESULT FROM OR ARISE OUT OF THIS GUARANTY AGREEMENT. GUARANTOR REPRESENTS THAT THIS GUARANTY AGREEMENT IS EXECUTED, KNOWINGLY, FREELY, AND VOLUNTARILY AFTER HAVING BEEN FULLY AND COMPLETELY READ AND UNDERSTOOD BY GUARANTOR OR ITS AUTHORIZED OFFICERS, AND THAT GUARANTOR UNDERSTANDS THE NATURE OF THE RIGHT BEING WAIVED AND THAT IT HAS HAD THE ADEQUATE OPPORTUNITY TO DISCUSS THIS WAIVER WITH ITS COUNSEL.

17. Successors and Assigns. This Guaranty Agreement inures to and binds the heirs, legal representatives, successors, and assigns of Guarantor and Lender; provided, however, that Guarantor may not assign this Guaranty Agreement or any proceeds of it, or assign or delegate any of its rights or obligations under it, without Lender's prior written consent in each instance. Lender in its sole and absolute discretion may assign its rights under the Guaranty Agreement without notice to or the consent of Guarantor.

18. Miscellaneous. Lender and Guarantor incorporate by reference as if set forth fully within this Guaranty Agreement all of the Miscellaneous provisions in Article III, Section R. of the Settlement Agreement to the extent such provisions do not otherwise conflict with this Guaranty Agreement.

Dated _____, 2020.

GUARANTOR

Michael Williams

Tammy Williams

STATE OF MISSOURI)
 :SS
COUNTY OF _____)

 This Guaranty Agreement was acknowledged before me on the _____ day of _____, 2020, by Michael Williams.

Notary Public

STATE OF MISSOURI)
 :SS
COUNTY OF _____)

 This Guaranty Agreement was acknowledged before me on the _____ day of _____, 2020, by Tammy Williams.

Notary Public

EXHIBIT E
DEED OF TRUST

ELKO COUNTY APNS:
WHITE PINE COUNTY APNS:

**RECORDING REQUESTED BY AND
UPON RECORDATION RETURN TO:**

City of Ely, Nevada
Attn: Jennifer Lee, City Clerk
501 Mill Street
Ely, Nevada 89301

Nevada Northern Railway Foundation, Inc.
Attn: Mark Bassett, President
1100 Avenue A
Ely, Nevada 89301

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS § 239B.030)

*SPACE ABOVE THIS LINE FOR RECORDER'S USE; THIS DEED OF TRUST IS BEING EXECUTED IN
DUPLICATE FOR RECORDING IN BOTH ELKO AND WHITE PINE COUNTIES*

**DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF
RENTS**

THIS DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF RENTS (this "Security Instrument") effective as of _____, 2020, by S & S Shortline Leasing, LLC, a Utah limited liability company (together with its permitted successors and assigns, "Grantor"), having an address at 10100 N Ambassador Drive, Suite 105, Kansas City, Missouri, 64153, to Stewart Title Company, a Delaware corporation, as Trustee, having an address at 810 Idaho, Street, Elko, Nevada, 89801 (together with its successors and assigns, "Trustee"), for the benefit of the City of Ely, Nevada, a Nevada municipal corporation ("City"), having an address at 501 Mill Street, Ely, Nevada, 89301, as to an undivided fifty percent (50%) interest, and Nevada Northern Railway Foundation, Inc., a Nevada nonprofit corporation ("Foundation"), having an address at 1100 Avenue A, Ely, Nevada, 89301, as to an undivided fifty percent (50%) interest (together with their respective successors and assigns, individually or collectively as the context requires, "Beneficiary").

RECITALS:

A. Grantor acquired all of Grantor's right, title, and interest in and to the Land and the Improvements (defined below) pursuant to a Settlement, Sale, and Mutual Release of All Claims Agreement ("Settlement Agreement") entered into by and among Grantor and Beneficiary, subject to a reserved non-exclusive easement in favor of the City of Ely and further subject to the lien and encumbrance of this Security Instrument.

B. Grantor executed a Promissory Note dated concurrently herewith as Borrower, payable to the order of Beneficiary in the original principal amount of Two Million Dollars (\$2,000,000.00) ("Promissory Note" or "Note"), which is secured by this Security Instrument.

C. This Security Instrument is being executed in duplicate, with one duplicate original to be recorded in the Official Records of Elko County, Nevada, with respect to the portion of the Secured Property (as defined in Section 1.1 hereof) that is located in Elko County, Nevada, and one duplicate original to be recorded in the Official Records of White Pine County, Nevada, with respect to the portion of the Secured Property located in White Pine County, Nevada.

D. This Security Instrument is executed pursuant to the Settlement Agreement, and payment, fulfillment, and performance of the Secured Obligations are secured by and in accordance with the terms of this Security Instrument.

ARTICLE 1 GRANTS OF SECURITY

1.1 Secured Property. Grantor, for good and valuable consideration, irrevocably grants, bargains, sells, pledges, assigns, warrants, transfers, and conveys a security interest to Trustee, its successors and assigns in trust, with the power of sale and right of entry, for the benefit of Beneficiary and its successors and assigns, all right, title, and interest of Grantor in and to the following property, rights, interests and estates, each to the extent now owned, or hereafter acquired, by such Grantor (collectively, "Secured Property"):

(a) Land. The real property located in the County of White Pine, Nevada and the County of Elko, Nevada, more particularly described in Exhibit A1-A3, attached hereto and made a part of this Security Instrument, together with all tenements, hereditaments, and appurtenances thereunto belonging, including without limitation all water and water rights, and minerals and mineral rights, if any (collectively, the "Land").

(b) Improvements. The rail, ties, ballast, bridges, crossings, culverts, and other track materials, structures, fixtures, additions, alterations, appurtenances, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "Improvements").

(c) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating

or pertaining to the Land and the Improvements which are owned by Grantor, and the reversions and remainders.

(d) Fixtures and Personal Property. All of Grantor's right, title, and interest in and to all materials, supplies, equipment, apparatus, and other items now or hereafter attached to or installed on the Land, or which in some fashion are deemed to be fixtures under the laws of the State of Nevada, including the Nevada Uniform Commercial Code, which are hereafter referred to as the "Fixtures," including without limitation, all rail, ties, ballast, bridges, crossings, culverts, and other track materials, whether deemed Fixtures or personal property, which may be subject to any security interests, as defined in the Nevada Uniform Commercial Code. All of Grantor's interest in any rail, ties, ballast, bridges, crossings, culverts, and other track materials to the extent ever considered personal property, and all accessions and renewals, replacements and substitutions of such property, now or hereafter located upon the Land, or appurtenant thereto, or used in connection with the present or future planning, development, use, operation and occupancy of the Land and the Improvements, which may be subject to any security interests, as defined in the Nevada Uniform Commercial Code collectively called the "Personal Property".

(e) Leases and Rents. Subject to the terms of Section 1.2 of this Security Instrument, all existing or future leases, subleases, rental agreements and other agreements whether or not in writing for the use or occupancy of the Land and/or the Improvements, or any part of such leases or agreements existing now or entered into in the future and all extensions, renewals, amendments, replacements, and modifications of such leases or agreements, and each existing or future guaranty of payment or performance thereunder, whether before or after the filing by or against Grantor of any petition for relief under Debtor Relief Laws (collectively, the "Leases") and all right, title and interest of Grantor, its successors and assigns in and under the Leases, including, without limitation, any guaranties of the lessees' obligations thereunder ("Lease Guaranties"), cash or securities deposited or letters of credit delivered thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, bonuses, revenues, issues, proceeds, and profits (including all rents, revenues, bonus money, royalties, rights, and benefits accruing to Grantor under all present and future oil, gas and mineral leases on any parts of the Land and the Improvements) from the Land and the Improvements, all income, rents, issues, profits, revenues, deposits, accounts and other benefits from operation of the Improvements on the Land and/or the Improvements, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, Lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Land or Improvements (or both), or personalty located thereon, or rendering of services by Grantor or any operator or manager of the Improvements or the commercial space located in the Improvements or acquired from others including, without limitation, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land or the Improvements (or both) whether paid or accruing before or after the filing by or against Grantor of any petition for relief under Debtor Relief Laws and all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Secured Property (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness.

(f) Insurance Proceeds. All insurance proceeds in respect of the Secured Property under any insurance policies covering the Secured Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu of such proceeds, for damage to the Secured Property (collectively, the "Insurance Proceeds").

(g) Condemnation Awards. All condemnation awards, including accrued interest on such awards, which may be made now or in the future with respect to the Secured Property by reason of any taking or condemnation, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Secured Property (collectively, the “Awards”). Any Awards that result from a condemnation will be payable to Beneficiary and used to reduce the outstanding principal balance on the Loan. The City will not institute condemnation or eminent domain proceedings during the term of this Deed of Trust.

(h) Tax Credits and Rebates. All tax credits and/or related assignments in connection with the Land or use thereof, including without limitation, railroad track maintenance credits and/or assignments under 26 U.S. Code 45G as amended, and all refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Secured Property as a result of any applications or proceedings for reduction. Provided that Grantor is not in default under the Settlement Agreement, Security Instrument, or Promissory Note, then any refunds, rebates and/or credits will go to the benefit of the Grantor.

(i) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, and other documents, now or hereafter entered into, and all rights in and to such documents, respecting or pertaining to the ownership, purchase, purchase options, sale, use, occupation, design, construction, development, management or operation of the Land and any part of the Land (including, without limitation, all permits, licenses, variances and other rights and approvals issued by or obtained from any governmental authority or other Person in connection with the development of the Land or the construction or repair of the Improvements) and all right, title and interest of Grantor therein and thereunder, including, without limitation, the right, upon the occurrence or during the continuance of an Event of Default, to receive and collect any sums payable to Grantor thereunder.

(j) Miscellaneous. All (i) plans and specifications (to the extent owned or assignable by Grantor, and without any representation or warranty) for the Improvements; (ii) Grantor’s rights, but not liability for any breach by Grantor, under all insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Security Instrument or from or through any state or federal government sponsored program or entity); (iii) to the extent assignable deposits and deposit accounts arising from or related to any transactions related to the Land or the Improvements (including but not limited to Grantor’s rights in deposits with respect to utility services to the Land or the Improvements), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Land or the Improvements, and any account or deposit account from which Grantor may from time to time authorize Beneficiary to debit and/or credit payments due with respect to the Loan; (iv) to the extent assignable permits, and without any representation or warranty, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Land or the Improvements; (v) subject to the rights of others therein, as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vi) engineering, title, and other related data concerning the Secured Property which are in the possession of Grantor and in which Grantor can grant a security interest, without any representation or warranty,).

(k) Proceeds. All proceeds of any of the foregoing items set forth in Section, 1.1(a) through (j).

1.2 Assignment of Rents. Grantor further irrevocably grants, transfers, and assigns to Beneficiary the rents, income, issues, and profits from the Secured Property, absolutely and unconditionally, and not merely as additional security for the indebtedness secured by this Security Instrument. Prior to the occurrence of an Event of Default under this Security Instrument, Grantor reserves to itself the right to collect and retain the rents, income, issues, and profits of the Secured Property as they become due and payable. In the Event of Default under the Note or this Security Instrument, Beneficiary may, with or without taking possession of the Secured Property, collect all such rents, income, issues, and profits, and may either personally or by attorney or agent, without bringing any action or proceeding, or by a receiver to be appointed by the court, enter into possession and control of the Secured Property, make, cancel, enforce, and modify leases and licenses, obtain and evict tenants, and set and modify rents and terms of payment of rent. Beneficiary may sue for and collect all or any part of the rents, income, issues, and profits of the Secured Property, and after payment of all costs of maintenance, operation, and collection, including reasonable attorneys' fees, that Beneficiary may deem proper, apply the balance to the indebtedness then secured by this Security Instrument. The receipt and application by Beneficiary of such rents, income, issues, and profits, after execution and delivery of a Notice of Default and Election to Sell or during the pendency of the Trustee's sales proceedings under this Security Instrument, will not cure such breach or default nor affect the sale proceedings or any sale made pursuant to this Security Instrument. All such rents, income, issues, and profits, less the costs of operation, maintenance, and collection and reasonable attorneys' fees, when received by Beneficiary, are to be applied in reduction of the indebtedness from time to time outstanding that is secured by this Security Instrument in such order as Beneficiary may determine. If the rents, income, issues, and profits of the Secured Property are not sufficient to satisfy the costs, if any, of taking possession and control of and managing the Secured Property and collecting the rents, income, issues, and profits thereof, any funds expended by Beneficiary for such purposes are to become additional indebtedness of Grantor to Beneficiary that is secured by this Security Instrument. Such amounts are to be repayable to Beneficiary upon demand and are to bear interest from the date of the disbursement at the "Interest Rate," as that term is defined in the Note. In addition to the foregoing rights and remedies with respect to the rents, income, issues and profits of the Secured Property, Beneficiary shall also be entitled to all rights and remedies of an Assignee under and pursuant to the provisions of Chapter 107A of the Nevada Revised Statutes and any substitute provisions hereafter applicable to the Secured Property and this Security Instrument.

1.3 Security Agreement. This Security Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Secured Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Secured Property. By executing and delivering this Security Instrument, Grantor grants to Trustee, for the benefit of Beneficiary, as security for the Indebtedness (defined below), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code. This Security Instrument shall also be effective as a financing statement covering as-extracted minerals or the like (including oil and gas) and accounts subject to Section 9-502 of the Nevada Uniform Commercial Code, as amended, and is to be filed for record in the real estate records of the county where the Secured Property is situated. The mailing address of Grantor and the address of Beneficiary from which information concerning the security interest may be obtained are set forth above.

1.4 Fixture Filing. This Security Instrument is intended to be a fixture filing under Nevada Revised Statutes Section 104.9502. Without in any manner limiting the generality of any of the other provisions of this Security Instrument: (a) some portions of the goods described or to which reference is made in this Security Instrument are or are to become fixtures on the Land described or to which reference is made in this Security Instrument or on Exhibit A1-A3 attached to this Security Instrument; (b) this Security Instrument is to be filed of record in the real estate records as a financing statement and shall constitute a “fixture filing” for purposes of the Uniform Commercial Code; and (c) Grantor is the record owner of the real estate or interests in the real estate constituting the Secured Property hereunder. Information concerning the security interest granted in this Security Instrument may be obtained at the addresses set forth on the first page of this Security Instrument. Additional fixture filing information is set forth on Exhibit B.

1.5 Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Secured Property unto Trustee and its successors and assigns for and on behalf of Beneficiary and to the use and benefit of Beneficiary, as described in this Security Instrument, and its successors and assigns, forever; IN TRUST, WITH POWER OF SALE, to secure payment to Beneficiary of the Secured Obligations, PROVIDED, HOWEVER, these presents are upon the express condition that, if Beneficiary shall be paid the Indebtedness at the time and in the manner provided in the Promissory Note and this Security Instrument, and if Grantor shall perform its other obligations as set forth in this Security Instrument “Other Obligations”, these presents and the estate hereby granted shall cease, terminate and be void, and Beneficiary shall promptly execute and deliver to Grantor for recording at Grantor’s expense among the appropriate public records a release of this Security Instrument in recordable form.

ARTICLE 2 DEBT AND OBLIGATIONS SECURED

2.1 Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following obligations of Grantor to Beneficiary (“Indebtedness”):

(a) Payment of the indebtedness evidenced by the Promissory Note (the “Note”) of this same date executed by Grantor and payable to the order of Beneficiary in the principal sum of Two Million Dollars (\$2,000,000.00), bearing interest at the rate of Five Percent (5%) per annum, together with all modifications, extensions, and renewals of the Note;

(b) The performance of each obligation, covenant, and agreement of Grantor contained in the Note, this Security Instrument, and any other agreement or instrument executed by Grantor in connection with the indebtedness evidenced by the Note; and

(c) Payment of such additional sums, with interest thereon, that (i) may hereafter be loaned by Beneficiary to Grantor or the then record owner of the Land when evidenced by a promissory note reciting that it is secured by this Deed of Trust; (ii) may be incurred, paid, or advanced by Beneficiary, or that may otherwise be due to Trustee or Beneficiary, under any provision of the Note, this Security Instrument, any other Loan Document, and any modification, amendment, extension, or renewal thereof; and (iii) may otherwise be paid or advanced by Beneficiary that are reasonably necessary to protect the security or priority of this Security Instrument or Beneficiary's rights and interests under the Loan Documents. This Security Instrument is not governed by NRS 106.300 through NRS 106.400. Grantor

makes no representation as to the priority of any “future advance” made by Beneficiary to Grantor as defined in NRS 106.320.

Grantor and Beneficiary acknowledge and agree that the Note evidences Grantor’s obligation to pay Beneficiary the balance of the purchase price for the Land and Improvements encumbered by this Security Instrument pursuant to the Settlement Agreement entered into between Beneficiary, as Seller, and Grantor, as Buyer, and that this Security Instrument is entitled to purchase money priority as provided in Nevada Revised Statutes Section 107.026.

2.2 Guaranty and Unsecured Environmental Obligations. Notwithstanding anything in this Security Instrument and the Loan Documents to the contrary, this Security Instrument shall not secure any obligations under any guaranty, including without limitation the Guaranty Agreement executed by Michael Williams and his spouse concurrently herewith (“Guaranty”), or unsecured environmental agreements.

2.3 Other Obligations. Grantor’s obligations for the payment of the Indebtedness and the performance by Grantor of the Other Obligations shall be referred to collectively in this Security Instrument as the “Secured Obligations.”

2.4 Payment of Obligations and Final Maturity Date. Grantor will pay the Indebtedness at the time and in the manner provided in the Note and this Security Instrument.

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

Grantor covenants and agrees that:

3.1 Insurance. During the term of this Security Instrument, Grantor agrees to procure and maintain at all times the following policies of insurance: (i) fire, extended coverage, and, during all periods of construction of Improvements on the Secured Property, builders risk insurance (including, without limitation, windstorm, explosion and such other risks usually insured against by owners of similar properties) on the Improvements being constructed or already located on the Secured Property in such amounts as are satisfactory to Beneficiary and equal to one hundred percent (100%) of the full insurable value of the Improvements; (ii) comprehensive public liability insurance insuring against loss, damage, or liability for injury or death to persons and loss and damage to Secured Property occurring from any cause whatsoever on, in, or about the Secured Property, with single combined liability limit of at least Five Million Dollars (\$5,000,000); (iii) workmen's compensation insurance for Grantor and any contractors performing work on or with respect to the Secured Property; and (iv) environmental liability insurance insuring claims for bodily injury or property damages and clean up costs stemming from the presence, escape, release or exacerbation of pollutants at or from the Secured Property, with single combined liability limit of at least Five Million Dollars (\$5,000,000). Each insurance policy issued in connection herewith shall provide by way of endorsements, riders or otherwise that (a) with respect to liability and environmental insurance, it shall name Beneficiary as an additional insured, with respect to the other insurance, it shall be payable to Beneficiary as a mortgagee and not as coinsured; (b) the coverage of Beneficiary shall not be terminated, reduced, or affected in any manner regardless of any breach or violation by Grantor of any warranties, declarations, or condition in such policy; (c) no such insurance policy shall be canceled, endorsed, altered, or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insurer shall have first given Beneficiary thirty (30) days' prior written notice thereof; and (d) Beneficiary may, but

shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration, or reissuance, and such payments shall be accepted by the insurer to prevent same. Beneficiary shall be furnished with the original of each such initial policy coincident with the execution of this Security Instrument and the original of each renewal policy not less than ten (10) days prior to the expiration of the initial, or each immediately preceding renewal policy, together with receipts or other evidence that the premiums thereon have been paid for one (1) year. Grantor shall furnish to Beneficiary, on or before thirty (30) days after the close of each of Grantor's fiscal years, a statement certified by Grantor or a duly authorized officer of Grantor of the amounts of insurance maintained in compliance herewith, of the risks covered by such insurance and of the insurance company or companies which carry such insurance. Grantor must notify Beneficiary, in writing, of any loss to the Secured Property covered by insurance, and Grantor hereby directs each insurance company to make payment for such loss jointly to Grantor and Beneficiary. Grantor agrees that any payment which is delivered, for any reason, to Grantor is to be held in trust for Beneficiary and applied in accordance with the provisions of this Security Instrument. Grantor shall obtain and maintain, or cause to be obtained and maintained, in full force and effect at all times insurance with respect to Grantor and the Secured Property as required pursuant to this Security Instrument.

3.2 Maintenance, Preservation of Secured Property, Restoration and Repair. Grantor shall: (i) maintain the Secured Property in good, safe, and insurable condition and repair, subject to ordinary wear and tear, and not to commit or suffer waste; (ii) not remove or demolish any of the Secured Property or Improvements without Beneficiary's prior written consent to any proposed rehabilitation plan in Section 6.1. below and in accordance with applicable law as contemplated hereby; (iii) repair or restore promptly in a good and workmanlike manner any of the Secured Property which may be damaged or destroyed or which may be affected by any condemnation or eminent domain proceeding; (iv) comply with all laws, ordinances, regulations, and standards applicable to the Secured Property, and such additional requirements or conditions imposed by governmental or quasi-governmental entities in connection with the Secured Property, and all requirements of insurance companies for insurability of the Secured Property and Grantor's use thereof; (v) not alter the use, zoning or land use classification of the Secured Property without the prior written consent of Beneficiary; (vi) not abandon the Secured Property; and (vii) refrain from impairing or diminishing the value of the Secured Property or the security of this Deed of Trust. If any Improvement now or hereafter constructed on the Land should be destroyed or damaged by fire or any other cause, whether insured or uninsured, and if Grantor is not then in default under the terms of this Security Instrument, any insurance proceeds or recovery related to said loss, to the extent of the cost of restoration or rebuilding, shall be applied by Grantor to restore or rebuild such improvement with materials and workmanship of as good quality as existed before such damage and destruction to substantially their former state, and Grantor shall commence the work of restoration or rebuilding as soon as possible and proceed diligently until completion. If Grantor shall be in default under the terms of this Security Instrument at the time of such damage or destruction, Beneficiary shall have the right to apply any insurance proceeds or other recovery related to said loss to a reduction of the indebtedness hereby secured (without prepayment penalty) or, alternatively, to require Grantor to restore or rebuild such building or other improvements as provided above. Plans and specifications for the restoration as herein required must be submitted to Beneficiary prior to commencement of the work and are subject to reasonable approval by Beneficiary.

3.3 Taxes and Other Charges. Grantor shall pay all real estate and personal property taxes, assessments, water rates or sewer rents (collectively, "Taxes"), maintenance charges, impositions (other than Taxes), and any other charges, including, without limitation, license fees related to the Secured Property (collectively, "Other Charges"), now or hereafter levied or assessed or imposed against the Secured Property or any part thereof in accordance with the Loan Documents.

3.4 Defense of Title. Grantor shall forever defend and preserve the title and the validity and first position of the lien of this Security Instrument and shall forever warrant and defend the same to Beneficiary against the claims of all other persons or entities.

3.5 Additions to Security. All right, title and interest of Grantor in and to all Improvements hereafter constructed or placed on the Secured Property and in and to any replacements to the Secured Property hereafter acquired shall, without any further pledge, conveyance, assignment or other act by Grantor, become subject to the lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the granting clauses of this Security Instrument. Grantor agrees, however, to execute and deliver to Beneficiary such further documents as may be required to confirm the additional security.

3.6 Organization of Grantor; Authority to Enter into Agreement. Grantor is a limited liability company, duly formed and validly in existence and in good standing under the laws of the State of Utah. Grantor is duly qualified to do business and is in good standing in each jurisdiction where the nature of its business makes such qualification necessary and where the failure to so qualify permanently precludes Grantor from enforcing its contracts. Grantor has the right and power to own and occupy the Secured Property, and has full power and authority to enter into, execute, and carry out the provisions of this Security Instrument. The execution, delivery and performance of the Promissory Note, Security Instrument, and Settlement Agreement, as applicable to Grantor, have been duly authorized by all necessary action of Grantor and no other action of Grantor is required for the execution, delivery and performance of the documents applicable to Grantor. The Loan Documents which have been executed and delivered by Borrower or Grantor constitute, or, if not yet executed or delivered, will when so executed and delivered, constitute valid and binding obligations of Grantor, each enforceable in accordance with its respective terms.

3.7 Compliance with Laws. Grantor has complied and will continue to comply with all applicable laws, rules, and regulations to be complied with in connection with or affecting the Secured Property, including, without limitation, all laws, statutes, rules, and regulations regarding environmental matters, the Americans with Disabilities Act and other similar access laws, the Federal Railroad Administration ("FRA") rules and regulations, the Department of Transportation Act of 1966 as amended, the Surface Transportation Board ("STB") rules, regulations and decisions, and historical preservation acts and regulations. All permits, consents, approvals or authorizations by, or registrations, declarations, withholding of objections or filings with any governmental body or private entity necessary in connection with the valid execution, delivery and performance of this Security Instrument, the Loan Documents, and any and all other documents executed in connection with any of the foregoing, or presently necessary for the commencement of construction of the Improvements, will be obtained prior to the commencement of the construction of any part of the Improvements and will be valid, adequate and in full force and effect. Construction of the Improvements and the intended use thereof will in all respects conform to and comply with all Covenants.

3.8 Hazardous Substances and Environmental Covenants. For purposes of this Agreement, the term "Hazardous Substances" shall mean any hazardous or toxic substances, materials, or wastes the removal of which is required, the storage, maintenance, or transport of which is prohibited or penalized, or for which a permit is required under applicable law, including, but not limited to, any substance, material or waste which is defined as a "hazardous substance" in Section 40.504 of the Nevada Revised Statutes as amended from time to time. To the knowledge of Grantor, no Hazardous Substances are now located on,

in, or under the Secured Property, and Grantor has never in the past, and shall not during the term of this Security Instrument, cause or permit any Hazardous Substances to be placed, held, used, stored, released, generated, located or disposed of on, in or under the Secured Property, or any part thereof, nor cause or allow an Environmental Condition to exist on, in or under the Secured Property. Grantor shall not cause or permit the unlawful release, discharge or disposal, nor the unlawful presence, use, generation or storage, of any Hazardous Substance in, on or about the Secured Property. Grantor shall test for, investigate and remove, at Grantor's sole cost and expense, all Hazardous Substances unlawfully present in, on or about the Secured Property upon demand of any federal, state, or local governmental agency, court or the Beneficiary at any time prior to full repayment of the Note. "Environmental Condition" means any condition involving or relating to Hazardous Substances and/or the environment affecting the Secured Property, whether or not yet discovered, which results in any damage, loss, cost, expense, claim, demand, order, or liability to or against Grantor or Beneficiary by any third party (including, without limitation, any government entity), including, without limitation, any condition resulting from the operation of Grantor's business and/or operations in the vicinity of the Secured Property and/or any activity or operation formerly conducted by any person or entity on or off the Secured Property. Grantor shall comply with all applicable federal, state, or local environmental laws, rules, or regulations applicable to the Secured Property. Grantor, and its successors and assigns, covenant and agree to defend, indemnify, and hold harmless Beneficiary, and its successors and assigns, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, directly or indirectly relating to any Hazardous Substances or harmful or toxic substances heretofore or hereafter in, at, about, or under the Secured Property. The obligations of Grantor under this section 3.8 shall be independent of Grantor's other obligations under this Security Instrument, the Note, and the other Loan Documents, and Grantor's obligations under this section 3.8 may be enforced independently of or concurrently with Grantor's obligations under the other Loan Documents and the other provisions of this Security Instrument. The obligations of the Grantor under this section 3.8 shall survive the repayment of the Note, the reconveyance of this Deed of Trust, or the Beneficiary's acquisition of the Secured Property by foreclosure, deed in lieu of foreclosure or by any other manner whatsoever. Grantor acknowledges and agrees that the provisions of this Section 3.8 are intended to constitute an "environmental provision" as such term is defined in Section 40.502 of the Nevada Revised Statutes and that Beneficiary shall be entitled to the remedies set forth in Section 40.501 through 40.512 of the Nevada Revised Statutes, as amended from time to time, in addition to any and all other remedies authorized by the Security Instrument, Settlement Agreement, Note, the Guaranty executed in connection with the Note, or otherwise provided by law. Nothing contained in this section is intended in any way to limit, impair, or otherwise affect whatsoever any rights and remedies of the Beneficiary under any other Loan Documents, under any other provisions of this Security Instrument or otherwise provided by law.

3.9 Government Lists. Grantor is (i) not listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Order (such other lists are referred to herein, collectively, as the "Other Lists"; the SDN List and the Other Lists are referred to herein, collectively, as the "Lists"), and none of its direct and indirect non-publicly traded stockholders, members, partners and other investors are listed on the Lists, (ii) not a person who has been determined by competent authority to be subject to the prohibitions contained in Executive Order No. 133224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Executive Orders in respect thereof, (iii) not owned or controlled by, nor does it act for or on behalf of, any person on the Lists or any other person who has been determined by competent authority

to be subject to the prohibitions contained in Executive Order No. 133224 (Sept. 23, 2001) or similar prohibitions contained in the rules and regulations of OFAC or any enabling legislation or other Executive Orders in respect thereof, and (iv) in material compliance with all laws, statutes, rules and regulations of any federal, state or local governmental authority in the United States of America that are applicable to it, including, without limitation, being in strict and full compliance with the requirements of Executive Order No. 133224 (Sept. 23, 2001) and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Executive Orders in respect thereof. Grantor understands and acknowledges that Beneficiary may perform background checks to confirm that the representations in this section are accurate and that Grantor; Grantor's direct and indirect non-publicly traded stockholders, members, partners and other investors; and any person owning or controlling Grantor or for which Grantor acts for or on behalf of are not listed on any List and are not subject to or in violation of the prohibitions contained in Executive Order No. 133224 (Sept. 23, 2001) and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Executive Orders in respect thereof.

3.10 Solvency. To induce Beneficiary to extend credit to Grantor as evidenced by the Note secured by this Security Instrument, Grantor represents that Grantor is currently solvent and has no intention to file or acquiesce in any bankruptcy or insolvency proceeding at any time any portion of the Note remains outstanding and unpaid. Accordingly, in consideration of the indebtedness evidenced by the Note and for other good and valuable consideration, Grantor hereby agrees that in the event Grantor shall (i) file with any bankruptcy court or be the subject of any petition under Title 11, U.S. Code ("Bankruptcy Code"), (ii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iii) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (iv) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, subject to court approval, Beneficiary shall thereupon be entitled and Grantor irrevocably consents to relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Beneficiary and Grantor hereby irrevocably waives any right to object to such relief.

3.11 Survival of Representations. All representations, warranties and covenants contained in this Article 3 shall survive the delivery of the Note and the Security Instrument.

ARTICLE 4 FURTHER ASSURANCES

4.1 Authorization to File Financing Statements; Power of Attorney. Grantor authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Personal Property and as necessary or required in connection herewith. For purposes of such filings, Grantor agrees to furnish any information reasonably requested by Beneficiary promptly upon request by Beneficiary. Grantor irrevocably constitutes and appoints Beneficiary and any officer or agent of Beneficiary, with full power of substitution, as Grantor's true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor's own name to execute in Grantor's name any such documents and otherwise to carry out the purposes of this Section 4.1, to the extent that Grantor's

authorization above is not sufficient and Grantor fails or refuses to promptly execute such documents. This power of attorney is a power coupled with an interest and shall be irrevocable.

ARTICLE 5
DUE ON SALE/ENCUMBRANCE

5.1 No Sale/Encumbrance. Except for a transfer permitted by written consent of Beneficiary, Grantor shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Secured Property or any part thereof.

ARTICLE 6
RESTRICTIONS ON WORK AND RELEASE OF PROPERTY

6.1 Restrictions on Work. Grantor may not perform any removal, scrapping, or rehabilitation work on the Secured Property without first providing notice to the Beneficiary of the proposed rehabilitation plans and obtaining the Beneficiary's prior approval. The Beneficiary will not unreasonably withhold their consent to the proposed removal, scrapping, or rehabilitation work on the Secured Property; provided, however, that the Beneficiary will not be deemed to be unreasonably withholding their consent if the proposed plan does not, at a minimum, provide that: (i) all removed and/or scrapped Improvements will be replaced within six months; provided, however, that Grantor will not be deemed to have breached any plan if a written order from any federal or state agency or any court that in any manner reasonably hinders, slows, or halts Grantor's Improvements replacement efforts is the proximate cause of Grantor not being able to comply with the requirement to replace all removed and/or scrapped Improvements within six months; (ii) all removed and/or scrapped Improvements will be rehabilitated to Class I FRA standards; (iii) only ten miles of Improvements may be taken out of service, removed, and/or scrapped at one time and must be completely rehabilitated in accordance with this Section 6.1 before another segment may be taken out of service, removed, and/or scrapped; (iv) any petitions by Grantor to the FRA for a waiver of all or any requirements must first be approved by the Beneficiary; and (v) Grantor may not, as part of any rehabilitation plan or otherwise, petition the FRA or STB to abandon any section of the Secured Property from Mile Post 17.00 to Mile Post 127.00. Any breach of an approved rehabilitation plan would constitute a default under the Promissory Note and this Security Instrument. Beneficiary shall respond to a request by Grantor under this Section 6.1 within thirty (30) days of submittal of a proposed plan which meets all of the conditions set forth above. All Land and replacement Improvements relating to this Section 6.1 shall continue to constitute Secured Property until full payment of the Indebtedness as enumerated in Section 6.2 below.

6.2 Release of Property upon Satisfaction of Indebtedness. Upon payment in full of the Indebtedness, or such earlier time as may be permitted pursuant to the terms of the Loan Documents, Beneficiary shall deliver a satisfaction or release of this Security Instrument.

ARTICLE 7
DEFAULT

7.1 Event of Default. The term "Event of Default" as used in this Security Instrument means the occurrence of any one or more of the following:

(a) Non-Payment of Indebtedness. The failure, refusal, or neglect to pay, in full: (a) any regular installment of interest under the Note on or before the date such installment is due under the terms of the Note; (b) the entire unpaid balance of principal and accrued interest under the Note on or before the Maturity Date specified in the Note; or (c) real estate taxes, special assessments, insurance premiums, or other Secured Obligations on or before the date payment of the same is due, any of which are herein defined as a “Default in Payment.”

(b) Non-Performance Of Obligations. The failure, refusal, or neglect to perform and discharge fully and timely any covenant, promise, or other obligation of Grantor under this Security Instrument or the Note.

(c) Judgment. If any final money judgment is rendered against Grantor or Guarantor and the judgment is not paid or execution on the judgment is not stayed by perfection of an appeal or other appropriate action.

(d) Voluntary Debtor Protection Proceeding. If Grantor or Guarantor: (a) seeks entry of an order for relief as a debtor in a proceeding under the United States Bankruptcy Code; (b) seeks, consents to, or fails to contest the appointment of a receiver or trustee for itself or himself or for all or any part of its, his or her property; (c) files a petition seeking relief under the bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States, any state, or any other competent jurisdiction; (d) makes a general assignment for the benefit of its, his or her creditors; or (e) admits in writing its or his inability to pay its, his or her debts as they mature.

(e) Involuntary Debtor Protection Proceeding. If: (a) a petition is filed against Grantor or Guarantor seeking relief under the bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States, any state, or any other competent jurisdiction; or (b) a court of competent jurisdiction enters an order, judgment, or decree appointing, without the consent of Grantor or Guarantor, a receiver or trustee for it, him or her, or for all or any part of its, his or her property; and (c) such petition, order, judgment, or decree is not discharged or stayed within a period of sixty (60) days after its entry.

(f) Foreclosure Of Other Liens. If the holder of any lien or security interest on the Secured Property institutes foreclosure or other proceedings for the enforcement of its remedies thereunder and the same is not dismissed within thirty (30) days thereafter. Beneficiary's consent to the existence, placement, creation, or allowance of any lien or security interest is not to be implied by this provision.

(g) Sale, Exchange, Further Encumbrance, or Other Disposition. Any sale, imposition of any additional lien or encumbrance of any kind affecting title to the Secured Property, transfer, alienation or other disposition of all or any portion of the Secured Property or any interest therein, whether voluntary or involuntary, without the prior written consent of Beneficiary.

(h) Change of Ownership. Any voluntary or involuntary transfers or series of transfers of shares of membership interests or other equity or voting interests in Grantor, without the prior written consent of Beneficiary; provided, however, that any voluntary or involuntary transfers or series of transfers that result in a cumulative transfer of less than fifteen percent (15%) of the equity or voting interest shall not constitute an Event of Default.

(i) Death of Guarantor. The death of Guarantor without replacement by a person satisfactory to Beneficiary, in Beneficiary's sole and absolute discretion, within sixty (60) days thereafter;

(j) Title and Lien Priority. If title of Grantor to all or any portion of the Secured Property or the status of this Security Instrument as a purchase money first lien and security interest on the Secured Property is endangered by any party or in any manner whatsoever, and Grantor fails to immediately cure the same upon demand by Beneficiary.

(k) Dissolution or Failure. The dissolution, merger or similar event affecting the Grantor or any guarantor of the obligations or indebtedness secured hereby.

(l) Levy on Assets. A levy on any of the assets of Grantor or any Guarantor, and such levy is not stayed or abated within twenty (20) days thereafter.

(m) Other Defaults. The occurrence of an event of default, as described in the Note.

7.2 Notice and Cure. A Default in Payment may be cured (and no Event of Default will be deemed to have occurred) if Grantor cures the default by making payment within ten (10) days of the date said payment was due (written notice of default from Beneficiary to Grantor shall not be required for any Default in Payment). If any default, other than a Default in Payment, is curable, the default may be cured (and no Event of Default will be deemed to have occurred) if Grantor, after receipt of written notice from Beneficiary demanding cure of the default (a) cures the default within thirty (30) days, or (b) if the cure requires more than thirty (30) days, Grantor promptly initiates steps which Beneficiary deems in Beneficiary's sole and absolute discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

7.3 Rights of Both Beneficiaries. Both Beneficiaries shall have an independent right to declare an Event of Default and to exercise rights and remedies upon the occurrence of an uncured Event of Default.

ARTICLE 8 RIGHTS AND REMEDIES UPON DEFAULT

8.1 Remedies. Upon the occurrence of an uncured Event of Default, Beneficiary may exercise all rights and remedies provided by law on the date of the default, including, but not limited to, the following:

(a) Acceleration. Beneficiary may, at Beneficiary's option, declare immediately due and payable any one or more of the obligations of Grantor to Beneficiary which are secured hereby, and, to the extent permitted by law, the same are, upon notice to or demand on Grantor, to become immediately due and payable.

(b) Possession And Collection Of Rent. Beneficiary may, at its option, acting through its agents or attorneys, either with or without process of law, enter upon and take possession and control of the Secured Property, or any part thereof, perform such acts of repair or protection as may be necessary or proper to preserve the value thereof, evict or remove any persons occupying or personal property located on the Secured Property, manage, operate, and control the Secured Property, and collect all the rents, income, issues, and profits as provided in Section 1.2 above.

(c) Appointment Of Receiver. Beneficiary may, through the Trustee or on behalf of Beneficiary, apply to a court of competent jurisdiction for appointment of a receiver for the Secured Property, and Grantor hereby irrevocably consents to such appointment and expressly waives any right to require a bond of the receiver, to receive notice of application for such appointment, and the right to a hearing prior to such appointment. Any receiver appointed by the court is to have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain, and operate the Secured Property upon such terms as may be approved by the court, and to apply such rents in accordance with the provisions hereof or as otherwise directed by the court.

(d) Foreclosure and Sale. Beneficiary may request that Trustee sell the Secured Property pursuant to the power of sale granted Trustee herein in accordance with the laws of the State of Nevada, or Beneficiary may foreclose this Security Instrument by judicial action pursuant to the laws of the State of Nevada. Beneficiary may, at its option, accomplish all or any of the aforesaid in such manner as permitted or required by the Nevada Revised Statutes regarding foreclosure of real estate and the Nevada Uniform Commercial Code. Nothing contained in this section shall be construed to limit in any way Trustee's right to sell the Secured Property by private sale if, and to the extent that such private sale is permitted under the laws of the state where the Secured Property (or that portion thereof to be sold) is located or by public or private sale after entry of a judgment by any court of competent jurisdiction ordering same. At any such sale:

(i) Whether made under the power herein contained, any other applicable law or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to have physically present, or to have constructive possession of, the Secured Property (Grantor shall deliver to Trustee any portion of the Secured Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale;

(ii) Each and every recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including without limitation, nonpayment of the Indebtedness, advertisement and conduct of such sale in the manner provided herein and otherwise by law and appointment of any successor Trustee hereunder;

(iii) Any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed;

(iv) the receipt of Trustee or of such other party or officer making the sale shall be sufficient to discharge the purchaser or purchasers for his or their purchase money, and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof;

(v) to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar, both at law and in equity, against Grantor and against all other persons claiming or to claim the property sold or to any part thereof by, through or under Grantor;

(vi) to the extent and under such circumstances as permitted by law, Beneficiary may be a purchaser at any such sale; and

(vii) to the extent and under such circumstances as permitted by law, Beneficiary may request Trustee to conduct a unified sale of the Secured Property located in both Elko County and White Pine County in the public location in Elko County, Nevada designated by the governing body of Elko County for that purpose; or in the sole and absolute discretion of Beneficiary, to request the Trustee to conduct separate sales of the Secured Property located in Elko County, Nevada the public location in Elko County, Nevada designated by the governing body of Elko County for that purpose, and to conduct a sale of the Secured Property located in White Pine County, Nevada the public location in White Pine County, Nevada designated by the governing body of White Pine County for that purpose. To the extent permitted by law, Grantor hereby consents to both the unified and separate foreclosure sales.

(e) Remedies With Respect To Personal Property. To the extent that this Security Instrument encumbers both real and personal property, Beneficiary may, in the sole and absolute discretion of Beneficiary, either alternatively, concurrently, or consecutively in any order, proceed with any of the following rights and remedies:

(i) Proceed as to both the real property and personal property in accordance with Beneficiary's rights and remedies in respect to real property; or

(ii) Proceed as to the real property in accordance with Beneficiary's rights and remedies in respect to real property and proceed as to the personal property in accordance with Beneficiary's rights and remedies in respect to personal property. Beneficiary may, in the sole and absolute discretion of Beneficiary, appoint Trustee as the agent of Beneficiary for the purpose of disposition of the personal property in accordance with the Nevada Uniform Commercial Code. Grantor hereby authorizes Trustee to act accordingly.

If Beneficiary should elect to proceed as to both the real and personal property collateral in accordance with Beneficiary's rights and remedies in respect to real property, then the following shall occur: (a) The real property and all of the personal property secured by the Security Instrument may be foreclosed upon and sold by either private sale or judicial action, in the manner provided in this Security Instrument, in one lot, or in separate lots consisting of any combination or combinations of real and personal property, as the Beneficiary may elect, in the sole and absolute discretion of Beneficiary; and (b) Grantor acknowledges and agrees that a disposition of the personal property in accordance with Beneficiary's rights and remedies in respect to real property, as hereinabove provided, is a commercially reasonable disposition of the personal property. Beneficiary may, in the sole and absolute discretion of Beneficiary appoint Trustee as the agent of Beneficiary for the purpose of disposition of the personal property in accordance with Beneficiary's rights and remedies in respect to real property. Grantor hereby authorizes Trustee to act accordingly.

If Beneficiary should elect to proceed as to the personal property in accordance with Beneficiary's rights and remedies in respect to personal property, Beneficiary shall have all of the rights and remedies conferred upon a secured party by the Nevada Uniform Commercial Code.

(f) Right To Deficiency. If the proceeds of any foreclosure sale conducted pursuant to the provisions of this Security Instrument are not sufficient to satisfy all obligations and indebtedness to

Beneficiary secured hereby, Beneficiary may recover the deficiency from Grantor and Guarantor in accordance with applicable law.

(g) Remedies Cumulative. Each and every remedy provided to Beneficiary by the terms of this Deed of Trust is separate and distinct from and is cumulative to all other rights and remedies provided by this Deed of Trust, by the other Loan Documents, or by law, and each remedy may be exercised concurrently, independently, or successively, in any order Beneficiary may determine. The exercise of any one or more such rights or remedies by Beneficiary, or by Trustee at the direction of Beneficiary, is not to be construed as an election of remedies or as a waiver of any other right or remedy which Beneficiary might have.

8.2 Actions and Proceedings. Subject to the terms and conditions of this Security Instrument, during the continuance of an Event of Default, Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Secured Property, and, after the occurrence and during the continuance of any Event of Default, to bring any action or proceeding, in the name and on behalf of Grantor, which Beneficiary, in its sole and absolute discretion, decides should be brought to protect its interest in the Secured Property.

8.3 Recovery of Sums Required to Be Paid. Upon the occurrence and during the continuance of an Event of Default, Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as the same become due, without regard to whether or not the balance of the Indebtedness shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for any Event of Default by Grantor existing at the time such earlier action was commenced.

8.4 Other Rights, etc.

(a) The failure of Beneficiary to insist upon strict performance of any term of this Security Instrument shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Beneficiary to comply with any request of Grantor or Guarantor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions of this Security Instrument, the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Secured Property, or of any Person liable for the Indebtedness or any portion of the Indebtedness, or (iii) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of the this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Secured Property is on Grantor, and Beneficiary shall have no liability whatsoever for decline in the value of the Secured Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Secured Property or any other Collateral not in Beneficiary's possession.

(c) Subject to applicable Legal Requirements, Beneficiary may resort for the payment of the Indebtedness to any other security held by Beneficiary in such order and manner as Beneficiary, in its sole and absolute discretion, may elect. Beneficiary may take action to recover the Indebtedness, or any

portion thereof, or to enforce any covenant of this Security Instrument without prejudice to the right of Beneficiary thereafter to foreclose this Security Instrument. The rights of Beneficiary and Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary or Trustee shall be construed as an election to proceed under any one provision in this Security Instrument to the exclusion of any other provision. Neither Beneficiary nor Trustee shall be limited exclusively to the rights and remedies in this Security Instrument but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

(d) In the event of a foreclosure sale the Personal Property and the Secured Property may, at the option of Beneficiary, be sold as a whole.

(e) Grantor and Beneficiary acknowledge that filings will likely have to be made with the STB for Beneficiary to exercise its rights under this Security Instrument upon the occurrence of an uncured Event of Default. Grantor covenants not to contest, impede, delay, or otherwise hinder any application by Beneficiary to the STB in connection with Beneficiary's exercise of its rights under this Security Instrument regardless of whether Grantor agrees with the basis of any such application by Beneficiary to the STB. Furthermore, Grantor shall execute any instruments and shall undertake all actions reasonably requested by Beneficiary in connection with facilitating Beneficiary's application to the STB to enforce any of Beneficiary's rights under this Security Instrument regardless of whether Grantor agrees with the basis of any such application by Beneficiary to the STB. In addition to the foregoing, upon the occurrence of an uncured Event of Default, Grantor irrevocably constitutes and appoints Beneficiary and any officer or agent of Beneficiary, with full power of substitution, as Grantor's true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor's own name to execute in Grantor's name any such documents with the STB to carry out the purposes of this Section 8.4(e), if Grantor fails or refuses to promptly execute such documents contemplated by this Section 8.4(e). This power of attorney is a power coupled with an interest and shall be irrevocable.

8.5 Right to Release Any Portion of the Property. Beneficiary may release any portion of the Secured Property for such consideration as Beneficiary may require without, as to the remainder of the Secured Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Secured Property.

8.6 Right of Entry. Upon reasonable notice to Grantor and subject to the rights of any tenants or other occupants then in occupancy of all or any part of the Secured Property, pursuant to the express terms of their Leases and this Security Instrument, Beneficiary and its agents shall have the right to enter and inspect the Secured Property.

8.7 Attorney Fees and Expenses. Grantor agrees to pay on demand all of Beneficiary's costs and expenses, including Beneficiary's attorney fees and legal expenses, incurred in connection with enforcement of this Agreement (defined below). Beneficiary may hire or pay someone else to help enforce this Security Instrument. Beneficiary may also use attorneys who are salaried employees of Beneficiary to enforce this Security Instrument. The undersigned shall pay all costs and expenses of all such enforcement.

In the event arbitration, suit, action or other legal proceeding is brought to interpret or enforce this Security Instrument, the undersigned agrees to pay all additional sums as the arbitrator or court may adjudge reasonable as Beneficiary's costs, disbursements, and attorney fees at hearing, trial, and on any and all appeals. As used in this paragraph "Agreement" means the Settlement Agreement, Note, Guaranty Agreement, Security Instrument, or other agreement, document, or instrument in which this paragraph is found, even if this document is also described by another name. Whether or not an arbitration or court action is filed, all reasonable attorney fees and expenses Beneficiary incurs in protecting its interests and/or enforcing this Security Instrument shall become part of the Indebtedness evidenced or secured by this Security Instrument, shall bear interest at the highest applicable rate under the promissory note or credit agreement, and shall be paid to Beneficiary by the other party or parties signing this Security Instrument on demand. The attorney fees and expenses covered by this paragraph include without limitation all of Beneficiary's attorney fees (including the fees charged by Beneficiary's in-house attorneys, calculated at hourly rates charged by attorneys in private practice with comparable skill and experience), Beneficiary's fees and expenses for bankruptcy proceedings (including efforts to modify, vacate, or obtain relief from any automatic stay), fees and expenses for Beneficiary's post-judgment collection activities, Beneficiary's cost of searching lien records, searching public record databases, on-line computer legal research, title reports, surveyor reports, appraisal reports, collateral inspection reports, title insurance, and bonds issued to protect Beneficiary's collateral, all to the fullest extent allowed by law.

8.8 Bankruptcy.

(a) Upon the occurrence and during the continuance of an Event of Default, Beneficiary shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code (defined below) or Debtor Relief Law (defined below).

(b) If there shall be filed by or against Grantor a petition under 11 U.S.C. §§ 101 *et seq.*, as the same may be amended from time to time (the "Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"), and Grantor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code or similar Debtor Relief Law, then Grantor shall give Beneficiary not less than ten (10) days' prior notice of the date on which Grantor shall apply to the bankruptcy court for authority to reject the Lease. Beneficiary shall have the right, but not the obligation, to serve upon Grantor within such ten day period a notice stating that (i) Beneficiary demands that Grantor assume and assign the Lease to Beneficiary pursuant to Section 365 of the Bankruptcy Code or similar Debtor Relief Law, and (ii) Beneficiary covenants to cure or provide adequate assurance of future performance under the Lease. If Beneficiary serves upon Grantor the notice described in the preceding sentence, Grantor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Beneficiary of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 9
WAIVERS

9.1 Marshalling and Other Matters. Subject to the terms and provisions of the Security Instrument, Grantor waives, to the extent permitted by applicable Legal Requirements, the benefit of all Legal Requirements now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Secured Property or any part of or any interest in such property. Further, to the extent permitted by law, Grantor by this Security Instrument expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Grantor, and on behalf of each and every Person acquiring any interest in or title to the Secured Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by applicable Legal Requirements.

9.2 Waiver of Notice. Subject to the terms and provisions hereof, to the extent permitted by applicable Legal Requirements, Grantor shall not be entitled to any notices of any nature whatsoever from Beneficiary or Trustee except with respect to matters for which this Security Instrument or any of the other Loan Documents specifically and expressly provides for the giving of notice by Beneficiary or Trustee to Grantor and except with respect to matters for which Grantor is not permitted by applicable Legal Requirements to waive its right to receive notice, and Grantor expressly waives the right to receive any notice from Beneficiary or Trustee with respect to any matter for which this Security Instrument or any of the other Loan Documents does not specifically and expressly provide for the giving of notice by Beneficiary or Trustee to Grantor.

9.3 Acknowledgment of Changed Terms. Grantor agrees that at any time and from time to time without notice, the terms of the Note and other Loan Documents may change by agreement between the parties thereto and without notice to or consent of Grantor, which Grantor hereby waives, and Grantor and any other person liable or to become liable with respect to the Secured Obligations shall nonetheless remain liable with respect to all Secured Obligations, even if the Secured Obligations are adversely affected by such change. Until payment in full of the Note, Grantor shall not have any right of subrogation and hereby waives any right to enforce any remedy which Beneficiary now has, or may hereafter have, against Grantor or Guarantor, and waives any benefit of, and any right to participate in, any security now or hereafter held by Beneficiary.

9.4 Waiver of Foreclosure Defense. To the extent permissible under applicable Legal Requirements, Grantor waives any defense Grantor might assert or have by reason of Beneficiary's failure to make any tenant or lessee of the Secured Property a party defendant in any foreclosure proceeding or action instituted by Beneficiary.

9.5 Jury Trial Waiver. GRANTOR WAIVES FULLY ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY IN EACH AND EVERY TRIAL OR OTHER PROCEEDING IN WHICH ONE OR MORE CAUSES OF ACTION OR ISSUES ARE RAISED WHICH RESULT FROM OR ARISE OUT OF THIS SECURITY INSTRUMENT OR ANY OF THE LOAN DOCUMENTS. GRANTOR REPRESENTS THAT THIS SECURITY INSTRUMENT IS EXECUTED, KNOWINGLY, FREELY, AND VOLUNTARILY AFTER HAVING BEEN FULLY AND COMPLETELY READ AND UNDERSTOOD BY GRANTOR OR ITS AUTHORIZED OFFICERS, AND THAT GRANTOR UNDERSTANDS THE NATURE OF THE RIGHT BEING WAIVED AND THAT IT HAS HAD THE ADEQUATE OPPORTUNITY TO DISCUSS THIS WAIVER WITH ITS COUNSEL.

ARTICLE 10
BENEFICIARY AND NOTICES

10.1 Failure to Act. Notwithstanding anything to the contrary contained in this Security Instrument or in any of the other Loan Documents, the failure of Beneficiary to take any action hereunder or under any of the other Loan Documents shall not (a) be deemed to be a waiver of any term or condition of this Security Instrument or any of the other Loan Documents, (b) materially adversely affect any rights of Beneficiary hereunder or under any of the other Loan Documents, or (c) relieve Grantor of any of Grantor's obligations hereunder or under any of the other Loan Documents.

10.2 Notices. All notices, requests, demands or documents which are required or permitted to be given or served under this Security Instrument shall be in writing and: (a) personally delivered to the party to be notified, in which instance notice shall be deemed to have been given and received upon actual delivery; (b) sent by certified United States mail, return receipt requested, postage prepaid, addressed to the party to be notified, in which instance notice shall be deemed to have been given upon deposit in the mail at any postal station and received twenty-four (24) hours after such deposit or such earlier date as may be shown on the return receipt; (c) sent by a reputable national overnight commercial courier service (such as Federal Express, but not including United States Postal Service Express Mail) addressed to the party to be notified, in which instance notice shall be deemed to have been given upon deposit with such courier service for delivery and received on the first (1st) business day after deposit; or (d) electronic mail (if a copy is sent within one (1) business day by one of the other means specified above). The addresses of the parties for notice by any of the foregoing means shall be as follows:

Grantor:

Address: Michael Williams, Manager
S & S Shortline Leasing, LLC
10100 N. Ambassador Dr. Ste. 105
Kansas City, MO 64153
Email: mw@rrmaterials.com

Beneficiary:

City:

Address: Jennifer Lee, City Clerk
City of Ely, Nevada
501 Mill Street
Ely, Nevada 89301
Email: jlee@elycity.com

Foundation:

Address: Mark Bassett, President
Nevada Northern Railway Foundation, Inc.
1100 Avenue A
Ely, Nevada 89301
Email: president@nnry.com

Trustee:

Address: Pamela Aguirre, Escrow Manager, Northern Nevada Division
Stewart Title Company
810 Idaho Street
Elko, NV 89801
Email: paguirre@stewart.com

Any person may change such person's address for notices or copies of notices by giving notice to the other party in accordance with this section.

ARTICLE 11
APPLICABLE LAW

11.1 Governing Law, Jurisdiction, and Venue. The parties agree that the laws of the State of Nevada shall govern the terms, interpretation, and enforcement of this Security Instrument and all matters or documents arising out of or in any way related to this Security Instrument, without regard to any conflict-of-law provisions to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Nevada. Each party irrevocably submits to the exclusive jurisdiction and venue of the state courts located in White Pine County, Nevada, in any legal or equitable suit, action, or proceeding arising out of or based upon this Security Instrument. If for any reason the state courts of White Pine County, Nevada, are unable to adjudicate a dispute under this Security Instrument, then the parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada. It is not the intent of the parties to adjudicate any dispute under this Security Instrument in federal court. However, should for any reason a legal or equitable suit, action, or proceeding arising out of or based upon this Security Instrument occur in federal court, the parties agree that the federal courts in Washoe County, Nevada, have exclusive jurisdiction and shall be the exclusive venue for any legal or equitable suit, action, or proceeding arising out of or based upon this Security Instrument.

11.2 Provisions Subject to Applicable Legal Requirements. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable Legal Requirements and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable Legal Requirements.

ARTICLE 12
DEFINITIONS

12.1 General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided in this Security Instrument, words used in this Security Instrument may be used interchangeably in singular or plural form, and the masculine gender includes the feminine and/or neuter.

(a) "Attorney fees," "legal fees," and "counsel fees" include any and all attorneys', paralegal, and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the

pre-trial, trial and appellate levels incurred or paid by Beneficiary in protecting its interest in the Secured Property, the Leases and the Rents and enforcing its rights hereunder.

(b) “Beneficiary” means Beneficiary and any of Beneficiary’s successors and assigns.

(c) “Grantor” means each Grantor and any subsequent owner or owners (or lessees, as applicable) of the Secured Property or any part of such property or any interest in this Security Instrument.

(d) “Guarantor” means Michael Williams and his spouse, and any subsequent or replacement guarantors.

(e) “Guaranty” means the Guaranty Agreement executed by Michael Williams and his spouse concurrently herewith, guaranteeing the payment and performance of the Secured Obligations, and any substitute or replacement guaranties.

(f) “Indebtedness” means the indebtedness evidenced by the Note or Loan Documents (excluding the Guaranty), and modifications, renewals or extensions of any of the foregoing, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Security Instrument or under any of the Loan Documents. Specifically, without limitation, indebtedness includes all amounts that may be indirectly secured by any cross-collateralization provision of this Security Instrument and any indebtedness, liabilities, or obligations, now existing or hereafter arising, due or to become due, absolute or contingent, of the Borrower to the Beneficiary and/or its affiliates.

(g) “Legal Requirements” means (i) any and all present and future judicial decisions, statutes, rulings, directions, rules, regulations, permits, certificates or ordinances of any governmental authority in any way applicable to Grantor, Grantor’s business operations, or the Secured Property and (ii) any and all leases and other contracts (written or oral) of any nature that relate, in any way, to the Secured Property and to which Grantor may be bound, including but not limited to any lease or other contract pursuant to which Grantor is granted a possessory interest in the Secured Property.

(h) “Loan Documents” means this Security Instrument, the Settlement Agreement, the Note, and the Guaranty.

(i) “Material Adverse Occurrence” means any occurrence of whatsoever nature (including, without limitation, any adverse determination in any litigation, arbitration or governmental investigation or proceeding) which materially impairs the ability of a Loan Party to perform its obligations under the Loan Documents and remains unsatisfied or is not discharged or eliminated after thirty (30) days following written notice from Beneficiary (or any longer cure period that is specified in any of the Loan Documents with respect to the applicable occurrence).

(j) “Person” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

(k) “Secured Property” includes any portion of the Secured Property and any interest in such property.

(l) “Trustee” means “Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument”.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Successors and Assigns. This Security Instrument inures to and binds the heirs, legal representatives, successors, and assigns of Grantor, Beneficiary, and Trustee; provided, however, that Grantor may not assign this Security Instrument or any proceeds of it, or assign or delegate any of its rights or obligations under it, without Beneficiary’s prior written consent in each instance. Beneficiary in its sole and absolute discretion may transfer this Security Instrument, and may sell or assign interests in all or any part of this Security Instrument, all without notice to or consent of Grantor.

13.2 Limitation on Beneficiary’s Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Secured Property upon Beneficiary, nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Secured Property by the tenants or any other Person, or for any dangerous or defective condition of the Secured Property, or for any negligence in the management, upkeep, repair or control of the Secured Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing in this Security Instrument shall be construed as constituting Beneficiary a “mortgagee in possession.”

13.3 Agreement of the Parties. GRANTOR SPECIFICALLY ACKNOWLEDGES AND AGREES (a) THAT IT HAS A DUTY TO READ THIS SECURITY INSTRUMENT AND THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS SECURITY INSTRUMENT, (b) THAT IT HAS IN FACT READ THIS SECURITY INSTRUMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS SECURITY INSTRUMENT, (c) THAT IT HAS BEEN REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS SECURITY INSTRUMENT AND HAS RECEIVED THE ADVICE OF SUCH COUNSEL IN CONNECTION WITH ENTERING INTO THIS SECURITY INSTRUMENT, AND (d) THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS SECURITY INSTRUMENT PROVIDE FOR (i) CERTAIN WAIVERS AND FOR (ii) THE ASSUMPTION BY ONE PARTY OF, AND/OR RELEASE OF THE OTHER PARTY FROM, CERTAIN LIABILITIES THAT SUCH PARTY MIGHT OTHERWISE BE RESPONSIBLE FOR UNDER THE LAW. GRANTOR FURTHER AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY SUCH PROVISIONS OF THIS SECURITY INSTRUMENT ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT SUCH PROVISIONS ARE NOT “CONSPICUOUS.”

13.4 Conflict. In the event of any inconsistencies between the terms and conditions of this Security Instrument and the terms and conditions of Grantor under the Settlement Agreement, as made applicable to Grantor, the terms and conditions of this Security Instrument shall control and be binding.

13.5 Statutory Covenants. Where not inconsistent with the other terms of this Security Instrument, the following covenants, Nos. 1; 2 (full replacement value); 3; 4 (Default Rate as defined in the Note); 5; 6; 7 (reasonable); 8 and 9 of NRS § 107.030 are adopted and made a part of this Security

Instrument. Upon the occurrence of any Event of Default, Beneficiary may (a) declare all sums secured immediately due and payable without demand or notice or (b) have a receiver appointed as a matter of right without regard to the sufficiency of said property or any other security or guaranty and without any showing as required by NRS § 107.100. All remedies provided in this Security Instrument are distinct and cumulative to any other right or remedy under this Security Instrument or afforded by law or equity and may be exercised concurrently, independently or successively. The sale of said property conducted pursuant to Covenant Nos. 6, 7, and 8 of NRS § 107.030 may be conducted either as to the whole of said property or in separate parcels and in such order as Trustee may determine.

13.6 Assignments of Rents Act. Without in any way limiting or restricting any of Beneficiary's other rights, benefits or privileges hereunder, Grantor expressly agrees that Beneficiary shall be entitled to all rights, benefits or privileges provided for in the Uniform Assignment of Rents Act found at NRS § 107A *et seq.*

13.7 Additional Miscellaneous. The parties to this Security Instrument incorporate by reference as if set forth fully within this Security Instrument all of the Miscellaneous provisions in Article III, Section R. of the Settlement Agreement to the extent such provisions do not otherwise conflict with this Security Instrument.

ARTICLE 14 STATUS OF GRANTOR

14.1 Status of Grantor. Grantor's exact legal name is correctly set forth in the first paragraph of this Security Instrument and the signature block at the end of this Security Instrument. Grantor is an organization of the type specified in the first paragraph of this Security Instrument. Grantor is incorporated in or organized under the laws of the state specified in Exhibit B of this Security Instrument. Grantor's principal place of business and chief executive office, and the place where Grantor kept its principal books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, and writings, has been for the preceding four (4) months (or, if less, the entire period of the existence of Grantor) the address shown on the first page of this Security Instrument. Grantor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in Exhibit B of this Security Instrument. Grantor will not change or permit to be changed (a) Grantor's name, (b) the corporate, partnership or other organizational structure of Grantor, (c) Grantor's state of organization, or (d) Grantor's organizational number, in each case, without notifying Beneficiary of such change in writing at least fifteen (15) days prior to the effective date of such change and, in the case of a change in Grantor's structure, without first obtaining the prior written consent of Beneficiary. If Grantor does not now have an organizational identification number and later obtains one, Grantor promptly shall notify the Beneficiary of such organizational identification number.

ARTICLE 15 DEED OF TRUST PROVISIONS

15.1 Acceptance By Trustee. The Trustee shall be deemed to have accepted the terms of this Trust when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law. Trustee shall not be obligated to notify any party thereto of any pending sale under any other Security Instrument or of any action or proceeding in which Grantor, Beneficiary, or Trustee is a party, unless such sale relates to or reasonably might affect the Secured Property, this Security Instrument,

Beneficiary's security for the performance of Grantor's obligations under the Note, or the rights or powers of Beneficiary or Trustee under the Note or this Security Instrument, or unless such action or proceeding has been instituted by Trustee against the Secured Property, Grantor, or Beneficiary.

15.2 Power of Trustee to Reconvey or Consent. At any time, without liability therefor and without notice to Grantor, upon written request by Beneficiary and presentation of the Note and this Security Instrument to Trustee for endorsement, and without altering or affecting the personal liability of Grantor or any other person for the payment of the Indebtedness secured by this Security Instrument, or the lien of this Security Instrument upon the remainder of the Secured Property as security for the repayment of the full amount of the Indebtedness then or thereafter secured by this Security Instrument or any right or power of Beneficiary or Trustee with respect to the remainder of the Secured Property, Trustee may: (i) reconvey or release any part of the Secured Property from the lien of this Security Instrument; (ii) approve the preparation or filing of any map or plot with respect to the Secured Property; (iii) join in the granting of any easement burdening the Secured Property; or (iv) enter into any extension or subordination agreement affecting the Secured Property or the lien of this Security Instrument.

15.3 Reconveyance. At any time, without liability therefor and without notice to Grantor, upon written request by Beneficiary and presentation of the Note and this Security Instrument to Trustee for endorsement, and without altering or affecting the personal liability of Grantor or any other person for the payment of the Indebtedness secured by this Security Instrument, or the lien of this Security Instrument upon the remainder of the Secured Property as security for the repayment of the full amount of the Indebtedness then or thereafter secured by this Security Instrument or any right or power of Beneficiary or Trustee with respect to the remainder of the Secured Property, Trustee may: (i) reconvey or release any part of the Secured Property from the lien of this Security Instrument; (ii) approve the preparation or filing of any map or plot with respect to the Secured Property; (iii) join in the granting of any easement burdening the Secured Property; or (iv) enter into any extension or subordination agreement affecting the Secured Property or the lien of this Security Instrument.

15.4 Substitution of Trustee. Beneficiary, at Beneficiary's option, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in this Security Instrument or acting under this Security Instrument, which instrument, when executed and acknowledged by Beneficiary and recorded in the office of the Recorder of the county or counties in which the Secured Property is located, shall constitute conclusive proof of the proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all right, title, estate, powers, and duties of such predecessor Trustee, including, without limitation, the power to reconvey the Secured Property. To be effective, such instrument must contain the name of the original Grantor, Trustee, and Beneficiary under this Security Instrument, the book and page at which, and the county or counties in which, this Security Instrument is recorded, and the name and address of the substitute Trustee. If any notice of default has been recorded under this Security Instrument, this power of substitution cannot be exercised until all costs, fees, and expenses of the then-acting Trustee shall endorse receipt thereof upon the instrument of substitution. The procedure in this Security Instrument for substitution of Trustees shall not be exclusive of other provisions for substitution provided by applicable law.

15.5 Performance of Duties by Agents. Trustee may authorize one or more parties to act on its behalf to perform the ministerial functions required of it hereunder, including, without limitation, the transmittal and posting of any notices.

ARTICLE 16
MERGER

16.1 No Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Secured Property unless Beneficiary consents to a merger in writing and in accordance with the terms of the Settlement Agreement.

[Signature Page Follows]

This Security Instrument has been executed by the undersigned as of the effective date written on the first page of this Security Instrument.

GRANTOR:

S & S Shortline Leasing, LLC

By: _____

Name: Michael Williams

Title: Manager

ACKNOWLEDGMENT

STATE OF MISSOURI §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2020, by Michael Williams, as Manager of S & S Shortline Leasing, LLC, a Utah limited liability company, which acknowledged this instrument on behalf of such entity.

NOTARY PUBLIC IN AND FOR
THE STATE OF MISSOURI

[SEAL]

EXHIBIT A-1

I. EASEMENTS

The following easements for railroad purposes over and across that certain real property in White Pine County and Elko County, State of Nevada, more particularly described as follows:

PARCEL 1:

A strip of land, in said Elko County, 100 feet in width, described in documents recorded January 10, 1906 and May 31, 1907 in Book 28 Pages 601 and 602 and 617 and 618 of Deeds and on August 10, 1907, in Book 29, Pages 582 and 583 of Deeds, all Records of Said Elko County. Also being 50 feet on each side of the center line of the railroad as shown on the Right of Way-Station and Track Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California, and over and across a portion of the following described land:

TOWNSHIP 35 NORTH, RANGE 67 EAST, M.D.B. & M.

Section 31: All

TOWNSHIP 34 NORTH, RANGE 67 EAST, M.D.B. & M.

Section 7: All

Section 19: N1/2

TOWNSHIP 28 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 14: S1/2 NW1/4

Section 22: E1/2 NW1/4; NE1/4 SW1/4

Section 27: E1/2 NW1/4; SW1/4 SW1/4 (Excepting E1/2 SE1/4
SW1/4 SW1/4)

Section 34: NW1/4 NW1/4

TOWNSHIP 27 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 4: NE1/4 SE1/4

PARCEL 2:

A strip of land, in said White Pine County, 100 feet in width, described in document recorded in Book D, Pages 696 to 698 Inclusive, Real Estate Records of said White Pine County, also being 50 feet on each side of the center line of the Railroad as shown on the Right of Way-Station and Track Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles

Department of Water and Power, County of Los Angeles, California and over and across a portion of the following described land:

TOWNSHIP 25 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 16: SW1/4 SW1/4

Section 17: S1/2 SE1/4

Section 21: NW1/4 NW1/4

PARCEL 3:

TOWNSHIP 24 NORTH, RANGE 64 EAST, M.D.B. & M.

Section 7: That portion of said section described in Document recorded May 11, 1911, in Book 59, Pages 698 and 699, Real Estate Records of White Pine County and as shown on the Right of Way-Station and Track Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California and more particularly described as follows:

Beginning at a point fifty feet distant from the center line of the Railroad of the Nevada Northern Railway Company, as it is now constructed over the property of said party of the first part, and on the south boundary line of said property, whence the Section corner common to Sections 6 and 7 of Township 24 North, Range 64 East M.D.B. & M. and Sections 1 and 12 of Township 24 N., R. 63 East M.D.B. & M., bears North 58° 28' West, a distance of two thousand four hundred ninety-six feet; thence first course, along a line fifty feet distant from and parallel to the center line of the said railroad of said Nevada Northern Railway Company North 40° 37-1/2' East six hundred forty-four and four-tenths feet; thence second course, along a line coincident with the east boundary line of the property of said party of the first part, South 0° 21' West one hundred fifty-four and seven tenths feet; thence third course, along a line fifty feet distant from and parallel to the center line of said railroad, South 40° 37-1/2' West, four hundred forty-five and two-tenths feet; thence fourth course, along a line coincident with the South boundary line of the property of the said party of the first part, North 88° 28' West, one hundred twenty-eight and eight tenths feet to the place of beginning.

PARCEL 4:

A strip of land, in White Pine County, Nevada, 100 feet in width, described in documents recorded on March 5 and 12, 1907 in Book D, Pages 695 and 696 and Pages 715 and 716 and on August 3, 1907 in Book E, Pages 378 to 380 Inclusive all in Real Estate Records of

said White Pine County, also being 50 feet on each side of the center line of the Railroad as shown on the Right of Way-Station and Track Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California and over and across a portion of the following described land:

TOWNSHIP 21 NORTH, RANGE 63 EAST, M.D.B. & M.

- Section 24: SE1/4
- Section 12: SE1/4 SW1/4
- Section 36: E1/2 SW1/4

TOWNSHIP 20 NORTH, RANGE 64 EAST, M.D.B. & M.

- Section 6: E1/2 NE1/4

TOWNSHIP 20 NORTH, RANGE 63 EAST, M.D.B. & M.

- Section 25: SW1/4 NW1/4

TOWNSHIP 18 NORTH, RANGE 64 EAST, M.D.B. & M.

- Section 18: W1/2 W1/2
- Section 19: W1/2 W1/2
- Section 30: W1/2; SW1/4 SE1/4

II. FEE PROPERTIES

Those certain real properties in Elko County, State of Nevada, described in document recorded November 15, 1912 in Book 34, Page 130 records of said Elko County and in document recorded February 12, 1906 in Book C, Pages 765 and 766, Real Estate Records of White Pine County, said State of Nevada, more particularly described as follows:

PARCEL 2:

TOWNSHIP 28 NORTH, RANGE 64 EAST, M.D.B. & M.

- Section 27: E1/2 SE1/4 SW1/4 SW1/4

III. FEDERAL RIGHT OF WAY GRANT

All right, title and interest under all rights-of-way granted to the Nevada Northern Railway Company by the United States of America, or any agency or department thereof, for any purpose (including, without limitation, railroad tracks, station buildings, depots, machine shops, side tracks, turnouts and water stations), located in Elko County, Nevada and White Pine County, Nevada, lying between Mile Post 17.00 of the main line of the Nevada Northern Railway located in the Southeast Quarter of Section 30, Township 35 North, Range 67 East M.D.B. & M. and Mile Post 127.00 of the main line of the Nevada Northern

Railway located in the Southeast Quarter of Section 30, Township 18 North, Range 64 East, M.D.B. & M. and any interest of Seller in the real property situated within the boundaries of such rights-of-way.

Excepting therefrom all of the Department of Water and Power of the City of Los Angeles's right, title and interest in and to water rights and mineral rights, if any, of any nature or type, over, under, across or associated with any of the properties described in Parts I, II and III above.

The above described metes and bounds descriptions previously appeared in that Corporation Grant, Bargain, Sale Deed dated September 27, 2005, and recorded in the Office of the County Recorder for Elko County, Nevada on February 27, 2006, as Document Number 549418, Official Records. The above described metes and bounds descriptions also previously appeared in that Corporation Grant, Bargain, Sale Deed dated September 27, 2005, and recorded in the Office of the County Recorder for White Pine County, Nevada on February 27, 2006, as Document number 331989, Official Records.

EXHIBIT "A-2"

PARCEL 2:

That portion of Section 6, Township 34 North, Range 67 East, M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043230, as shown on the Map of Definite Location of the Nevada Northern Railway – Section H – in Elko County, Nevada, filed with the U.S. Land Office in Carson City, Nevada, on August 22, 1905, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 3:

Those portions of the NW1/4 of the NE1.4 of Section 27, Township 32 North, Range 66 East and of the NE1/4 of the NW1/4 of Section 21, Township 31 North, Range 66 East both M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043230, as shown on the Map of Definite Location of the Nevada Northern Railway – Section G – in Elko County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on August 31, 1905, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 4:

Those portions of the SE1/4 of Section 20 and the N1/2 of the N1/2 of Section 29, Township 31 North, Range 66 East, M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043231, as shown on the Map of Definite Location of the Nevada Northern Railway – Section F – in Elko County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on October 17, 1905, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Divisions' Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 5:

That portion of the SE1/4 of Section 20, Township 31 North, Range 66 East, M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043240,

as shown on the Plat of Station Grounds At Antelope, Elko County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on April 19, 1907, said Station Grounds being shown as Dolly Varden on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 6:

Those portions of the SE1/4 of the SW1/4 of Section 22, of the NE1/4 of the SW1/4 and the SE1/4 of the SW1/4 of Section 27 and the E1/2 of the SE1/4 of Section 33, Township 28 North, Range 64 East, M.D.M. and the E1/2 of the NE1/4 and the SW1/4 of the NE1/4 of Section 4, Township 27 North, Range 64 East, M.D.M. in Elko County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043232 as shown on Map of Amended Definite Location of the Nevada Northern Railway in Elko County and White Pine County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on February 9, 1906, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 7:

That portion of the E1/2 of the NE1/4 of Section 20, Township 25 North, Range 64 East, M.D.M. in White Pine County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant CC 05887, approved on September 13, 1911, as shown on the Map of Supplemental Survey of the Nevada Northern Railway Portion of Definite Location Section – E – in White Pine County, Nevada said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 8:

Those portions of Section 11, Township 22 North, Range 63 East M.D.M. of the W1/2 of the W1/2 of Section 7 and the W1/2 of the NW1/4 of Section 18, Township 21 North, Range 64 East, M.D.M. all in White Pine County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043234, as shown on the Map of Definite Location of the Nevada Northern Railway Section – C – in White Pine County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on December 19, 1905, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in

the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 9:

Those portions of the E1/2 of the NE1/4 of Section 24 and of the N1/2 of the NE1/4 and the W1/2 of the SE1/4 of Section 25, Township 21 North, Range 63 East, M.D.M. and of Lots 2 and 3, Section 7, Township 20 North, Range 64 East, M.D.M., all in White Pine County Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043230, as shown on the Map of Definite location of the Nevada Northern Railway Section – B – in White Pine County, Nevada, filed with the U.S. Land Office in Carson City, Nevada on August 22, 1905, Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 10:

Those portions of the SW1/4 of the SW1/4 of Section 24, Township 20 North, Range 63 East, M.D.M. and of the NW1/4 of the SW1/4 of Section 7, Township 18 North, Range 64 East, M.D.M. all in White Pine County, Nevada included within that certain strip of land 200 feet wide granted to the Nevada Northern Railway Company by the Department of Interior by Right-of-Way Grant Nev. 043230, as shown on the Map of Amended Definite Location of the Nevada Northern Railway in Elko County and White Pine County, Nevada filed with the U.S. Land Office in Carson City, Nevada on October 23, 1906, said strip of land also being shown on the Right-of-Way-Station and Track Map of Nevada Northern Railway, Mainline Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles, Department of Water and Power, County of Los Angeles, California.

PARCEL 11:

An easement over those portions of the E1/2 of the SE1/4 of Section 12, Township 18 North, Range 63 East, M.D.M., and of the S1/2 of the SW1/4 of Section 7, Township 18 North, Range 64 East, M.D.M. in White Pine County, Nevada according to the Official Plat filed in the District Land Office included within a strip of land 100 feet wide lying 50 feet on each side of the center line of the Railroad as shown on the Right of Way-Station and Tack Map, sheets 1 through 37 of Nevada Northern Railway, Main Line Cobre to Ely Junction, dated June 30, 1917 on file in the Power Design and Construction Division's Right-of-Way Engineering Office of the City of Los Angeles Department of Water and Power, County of Los Angeles, California.

PARCEL 12:

That portion of the NW1/4 of the NW1/4 of Section 34, Township 28 North, Range 64 East, M.D.M. in Elko County, Nevada according to the Official Plat filed in the District Land Office described as follows:

Beginning at a point on the easterly boundary line of the right of way of the Nevada Northern Railway Company, which point is distant fifty feet from the center line of the main track, as presently laid, of said Company, and from which point the section corner common to Sections 27, 28, 33 and 34 of Township 28 North, Range 64 East, M.D.B. & M., bears North 67° 3' 17" West 1056.8 feet distant; thence South 18° 51' 30" West, along the said easterly boundary of said right of way, 975.7 feet; thence South 89° 28' 30" East, 210.7 feet; thence North 18° 51' 30" East 909.4 feet; thence North 71° 8' 30" West 200 feet; more or less to the point of beginning, containing 4.327 acres, more or less.

PARCEL 13:

All of the N1/2 of the NW1/4 of Section 7, Township 20 North, Range 64 East, M.D.B. & M. in White Pine County Nevada.

Excepting therefrom all of the Department of Water and Power of the City of Los Angeles's right, title and interest in and to water rights and mineral rights, if any, of any nature or type, over, under, across or associated with any of the properties described as Parcels 1 through 13 above.

The above described metes and bounds descriptions previously appeared in that Quitclaim Deed dated September 27, 2005, and recorded in the Office of the County Recorder for Elko County, Nevada on February 27, 2006, as Document Number 549417, Official Records. The above described metes and bounds descriptions also previously appeared in that Quitclaim Deed dated September 27, 2005, and recorded in the Office of the County Recorder for White Pine County, Nevada on February 27, 2006, as Document Number 331988.

EXHIBIT "A-3"

The following described land previously authorized for use for purposes of a railroad under rights-of-way NVE-03009, NEVE-03514, Nev-043230, Nev-043231, Nev-043232, Nev-043234, Nev-043240, and NVCC-05887 (and, for the avoidance of doubt, excluding any interest south of and Mile Post 127.00 of the main line of the Nevada Northern Railway located in the Southeast Quarter of Section 30, Township 18 North, Range 64 East, M.D.B. & M.):

T. 18 N., R. 63 E.,

- sec. 1, Lot 1, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$;
- sec. 12, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 19 N., R. 63 E.,

- sec. 1, Lot 3, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$;
- sec. 12, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
- sec. 13, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$;
- sec 13, NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ (within);
- sec. 24, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$;
- sec. 24, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ (within);

- sec. 14, NW¹/₄NW¹/₄NW¹/₄, SW¹/₄NW¹/₄NW¹/₄, NW¹/₄SW¹/₄NW¹/₄;
- sec. 15, NE¹/₄SE¹/₄NE¹/₄, SE¹/₄SE¹/₄NE¹/₄, NE¹/₄NE¹/₄SE¹/₄, SE¹/₄NE¹/₄SE¹/₄, NW¹/₄SE¹/₄SE¹/₄,
SW¹/₄SE¹/₄SE¹/₄;
- sec. 22, NW¹/₄NE¹/₄NE¹/₄, SW¹/₄NE¹/₄NE¹/₄, NW¹/₄SE¹/₄NE¹/₄, SW¹/₄SE¹/₄NE¹/₄, NW¹/₄NE¹/₄SE¹/₄,
SW¹/₄NE¹/₄SE¹/₄, NW¹/₄SE¹/₄SE¹/₄, SW¹/₄SE¹/₄SE¹/₄;
- sec. 27, NW¹/₄NE¹/₄NE¹/₄, SW¹/₄NW¹/₄NE¹/₄, NW¹/₄SE¹/₄NE¹/₄, SW¹/₄SE¹/₄NE¹/₄, NE¹/₄NW¹/₄SE¹/₄,
SE¹/₄NW¹/₄SE¹/₄, NE¹/₄SW¹/₄SE¹/₄, SW¹/₄SE¹/₄SE¹/₄;
- sec. 34, NW¹/₄NE¹/₄NE¹/₄, SW¹/₄NE¹/₄NE¹/₄, NE¹/₄SE¹/₄NE¹/₄, SE¹/₄SE¹/₄NE¹/₄, NE¹/₄NE¹/₄SE¹/₄,
SE¹/₄NE¹/₄SE¹/₄;
- sec. 35, NW¹/₄SW¹/₄SW¹/₄, SW¹/₄SW¹/₄SW¹/₄.

T. 24 N., R 63 E.,

- sec. 12, NE¹/₄SE¹/₄SE¹/₄, SW¹/₄SE¹/₄SE¹/₄, SE¹/₄SE¹/₄SE¹/₄;
- sec. 13, NE¹/₄NW¹/₄NE¹/₄, SE¹/₄NW¹/₄NE¹/₄, NW¹/₄SW¹/₄NE¹/₄, SW¹/₄SW¹/₄NE¹/₄,
NE¹/₄NE¹/₄SW¹/₄, SE¹/₄NE¹/₄SW¹/₄, NE¹/₄SE¹/₄SW¹/₄, SE¹/₄SE¹/₄SW¹/₄;
- sec. 24, NW¹/₄NE¹/₄NW¹/₄, SW¹/₄NE¹/₄NW¹/₄, NW¹/₄SE¹/₄NW¹/₄, SW¹/₄SE¹/₄NW¹/₄,
NE¹/₄NW¹/₄SW¹/₄, SE¹/₄NW¹/₄SW¹/₄, NE¹/₄SW¹/₄SW¹/₄, SW¹/₄SW¹/₄SW¹/₄;
- sec. 25, NW¹/₄NW¹/₄NW¹/₄, SW¹/₄NW¹/₄NW¹/₄, NW¹/₄SW¹/₄NW¹/₄, SW¹/₄SW¹/₄NW¹/₄;
- sec. 26, NE¹/₄NE¹/₄SE¹/₄, SE¹/₄NE¹/₄SE¹/₄, NE¹/₄SE¹/₄SE¹/₄, SE¹/₄SE¹/₄SE¹/₄;
- sec. 35, NW¹/₄NE¹/₄NE¹/₄, SW¹/₄NE¹/₄NE¹/₄, NW¹/₄SE¹/₄NE¹/₄, SW¹/₄SE¹/₄NE¹/₄, NE¹/₄NW¹/₄SE¹/₄,
SE¹/₄NW¹/₄SE¹/₄, NE¹/₄SW¹/₄SE¹/₄, SE¹/₄SW¹/₄SE¹/₄.

T. 32 N., R. 66 E.,

- sec. 2, Lot 3, NW¹/₄SE¹/₄NW¹/₄, SW¹/₄SE¹/₄NW¹/₄, NW¹/₄NE¹/₄SW¹/₄, SW¹/₄NE¹/₄SW¹/₄, SE¹/₄SW¹/₄SW¹/₄, NW¹/₄SE¹/₄SW;
- sec. 11, NE¹/₄NW¹/₄NW¹/₄, SE¹/₄NW¹/₄NW¹/₄, NE¹/₄SW¹/₄NW¹/₄, SE¹/₄SW¹/₄NW¹/₄, NE¹/₄NW¹/₄SW¹/₄, SE¹/₄NW¹/₄SW¹/₄, NW¹/₄SW¹/₄SW¹/₄, SW¹/₄SW¹/₄SW¹/₄;
- sec. 14, NW¹/₄NW¹/₄NW¹/₄, SW¹/₄NW¹/₄NW¹/₄;
- sec. 15, NE¹/₄SE¹/₄NE¹/₄, SE¹/₄SE¹/₄NE¹/₄, NE¹/₄NE¹/₄SE¹/₄, SE¹/₄NE¹/₄SE¹/₄, NE¹/₄SE¹/₄SE¹/₄, SE¹/₄SE¹/₄SE¹/₄;
- sec. 22, NW¹/₄NE¹/₄NE¹/₄, SW¹/₄NE¹/₄NE¹/₄, NW¹/₄SE¹/₄NE¹/₄, SW¹/₄SE¹/₄NE¹/₄, NW¹/₄NE¹/₄SE¹/₄, SW¹/₄NE¹/₄SE¹/₄, NE¹/₄SW¹/₄SE¹/₄, SE¹/₄SW¹/₄SE¹/₄;
- sec. 27, NE¹/₄SW¹/₄NE¹/₄, SW¹/₄SW¹/₄NE¹/₄, NW¹/₄NW¹/₄SE¹/₄, SW¹/₄NW¹/₄SE¹/₄, NW¹/₄SW¹/₄SE¹/₄, SW¹/₄SW¹/₄SE¹/₄;
- sec. 34, NE¹/₄NE¹/₄NW¹/₄, SE¹/₄NE¹/₄NW¹/₄, NE¹/₄SE¹/₄NW¹/₄, SE¹/₄SE¹/₄NW¹/₄, NE¹/₄NE¹/₄SW¹/₄, SW¹/₄NE¹/₄SW¹/₄, NW¹/₄SE¹/₄SW¹/₄, SW¹/₄SE¹/₄SW¹/₄.

T. 33 N., R. 66 E.,

- sec. 1, Lot 3, NE¹/₄SE¹/₄NW¹/₄, SE¹/₄SE¹/₄NW¹/₄, NE¹/₄NE¹/₄SW¹/₄, SW¹/₄NE¹/₄SW¹/₄, NW¹/₄SE¹/₄SW¹/₄, SW¹/₄SE¹/₄SW¹/₄;
- sec. 12, NW¹/₄NE¹/₄NW¹/₄, SW¹/₄NE¹/₄NW¹/₄, SE¹/₄SW¹/₄NW¹/₄, NW¹/₄SE¹/₄NW¹/₄, NE¹/₄NW¹/₄SW¹/₄, SE¹/₄NW¹/₄SW¹/₄, NE¹/₄SW¹/₄SW¹/₄, SE¹/₄SW¹/₄SW¹/₄;
- sec. 13, NW¹/₄NW¹/₄NW¹/₄, SW¹/₄NW¹/₄NW¹/₄, NW¹/₄SW¹/₄NW¹/₄, SW¹/₄SW¹/₄NW¹/₄, NW¹/₄NW¹/₄SW¹/₄, SW¹/₄NW¹/₄SW¹/₄;
- sec. 14, NE¹/₄SE¹/₄SE¹/₄, SE¹/₄SE¹/₄SE¹/₄;
- sec. 23, NE¹/₄NE¹/₄NE¹/₄, SE¹/₄NE¹/₄NE¹/₄, NE¹/₄SE¹/₄NE¹/₄, NW¹/₄SE¹/₄NE¹/₄, NW¹/₄NE¹/₄SE¹/₄, SW¹/₄NE¹/₄SE¹/₄, NW¹/₄SE¹/₄SE¹/₄, SW¹/₄SE¹/₄SE¹/₄;
- sec. 26, NW¹/₄NE¹/₄NE¹/₄, SE¹/₄NW¹/₄NE¹/₄, NE¹/₄SW¹/₄NE¹/₄, SE¹/₄SW¹/₄NE¹/₄, NE¹/₄SW¹/₄SE¹/₄, SE¹/₄NW¹/₄SE¹/₄, NE¹/₄SW¹/₄SE¹/₄, SW¹/₄SW¹/₄SE¹/₄;
- sec. 35, NW¹/₄NW¹/₄NE¹/₄, SW¹/₄NW¹/₄NE¹/₄, NW¹/₄SW¹/₄NE¹/₄, SW¹/₄SW¹/₄NE¹/₄, NE¹/₄NE¹/₄SW¹/₄, SE¹/₄NE¹/₄SW¹/₄, NE¹/₄SE¹/₄SW¹/₄, SE¹/₄SE¹/₄SW¹/₄.

T. 34 N., R. 66 E.,

- sec. 24, NE¹/₄SE¹/₄NE¹/₄, SE¹/₄SE¹/₄NE¹/₄, NE¹/₄NE¹/₄SE¹/₄, SE¹/₄NE¹/₄SE¹/₄, NE¹/₄SE¹/₄SE¹/₄, SE¹/₄SE¹/₄SE¹/₄;
- sec. 25, Lots 1, 4, 5, 6, 11;
- sec. 36, Lots 2, 3, 6, 7, 10.

T. 34 N., R. 67 E.,

- sec. 18, Lots 1 to 4, inclusive, NW¹/₄NE¹/₄NW¹/₄.

EXHIBIT B

(ADDITIONAL INFORMATION FOR FIXTURE FILINGS)

Name of Secured Party:

Address of Secured Party:

Name of Debtor:

Type of Organization:

State:

Debtor's FEIN/Org. ID No.: _____

EXHIBIT F
ACQUISITION NOTICE OF EXEMPTION

DRAFT

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Notice of Exemption

STB Finance Docket No. [...]

**S & S Shortline Leasing, LLC
—Acquisition Exemption—
City of Ely and Nevada Northern Railway Foundation**

Charles Montange
Law Offices of Charles Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936

Counsel for S & S Shortline Leasing, LLC

Dated:

DRAFT

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Notice of Exemption

STB Finance Docket No. [...]

**S & S Shortline Leasing, LLC
—Acquisition Exemption—
City of Ely and Nevada Northern Railway Foundation**

**Verified Notice of Exemption
of
S & S Shortline Leasing, LLC**

S & S Shortline Leasing, LLC, hereby files this Verified Notice of Exemption, pursuant to 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41 and states as follows:

a. Applicant's full name and address

S & S Shortline Leasing, LLC
10100 N. Ambassador Dr. Ste. 105
Kansas City, MO 64153

b. Name, address, and telephone number of Applicant's representative

Charles Montange
Law Offices of Charles Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936

c. Agreement

S & S Shortline Leasing, LLC has agreed to purchase and the City of Ely, Nevada, along with Nevada Northern Railway Foundation, Inc. (formerly White Pine Historical Railroad Foundation, Inc.) have agreed to sell to S & S their interest in approximately 127.0 miles of a railroad line between milepost 0.0 at or near Cobre in Elko County, Nevada, and milepost 127.0

DRAFT

at or near McGill Junction in White Pine County, Nevada (the “Line”). S & S currently operates the Line pursuant to *S&S Shortline Leasing, LLC—Operation Exemption—City of Ely*, FD 35284 (STB served Aug. 14, 2009). The Foundation and the City currently own the Line as tenants in common.

d. Operator of the property

S & S is the operator of the property.

e. Brief summary of the proposed transaction

1. Name and address of the persons transferring the subject property to the Applicant

City of Ely
City Hall Building
501 Mill Street
Ely, NV 89301

Nevada Northern Railway Foundation
1100 Avenue A
PO Box 150040
East Ely, NV 89315

2. Proposed time schedule for consummation of the transaction

On or about 30 days after the filing of this Notice.

3. Mileposts of the subject property

The mileposts for the subject property are milepost 0.0 at or near Cobre, NV, to milepost 127.0 at or near McGill Junction.

4. Total route miles being acquired

The total route miles being acquired is approximately 127.0 miles.

f. Map

A map of the line is attached as Exhibit A.

g. Projected revenue certification

S & S certifies that its projected revenues as a result of the transaction will neither exceed the maximum revenue of a Class III rail carrier nor the \$5 million threshold for labor notices under 49 C.F.R. § 1150.42(e).

h. Interchange commitments

S & S certifies that the proposed acquisition and operation of the Line does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

i. Environmental reporting

The Board's rules do not require environmental documentation for this action because it will not result in operational changes that would exceed any of the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5) and it falls within the class exemption from the requirements of 49 U.S.C. § 10902.

j. Historic reporting

The Board's rules do not require historic reports for this action because it does not involve disposal or alteration of properties that are 50 years old or older, within the meaning of 49 C.F.R. § 1105.8(b)(1), and will not substantially change the level of maintenance of railroad property, within the meaning of 49 C.F.R. § 1106.8(b)(3).

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k. Caption summary

A caption summary of this Notice is attached as Exhibit B.

Respectfully submitted,

S & S Shortline Leasing, LLC

By its attorneys,

Charles Montange
Law Offices of Charles Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936

Dated:

DRAFT

Verification

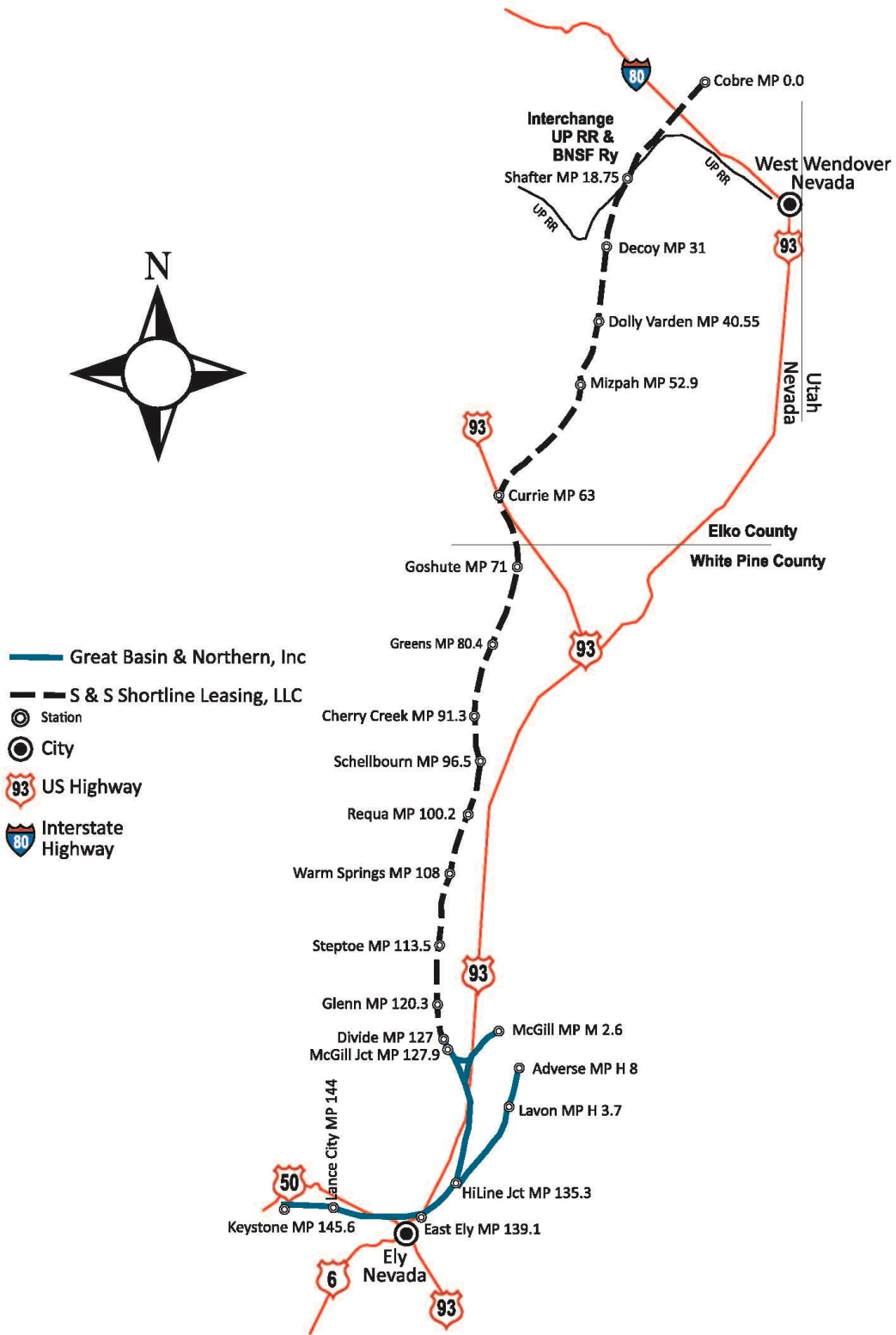
I, Michael Williams, Manager of S & S Shortline Leasing, LLC, verify under penalty of perjury that the foregoing Verified Notice of Exemption is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verified Notice of Exemption on behalf of S & S Shortline Leasing, LLC.

Executed on _____, 2020.

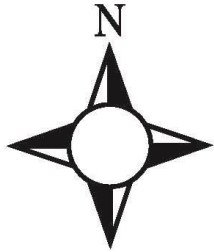
Michael Williams, Manager






DRAFT

Exhibit A



S & S Shortline Leasing, LLC
System Map



-  S & S Shortline Leasing, LLC
-  Station
-  City
-  US Highway
-  Interstate Highway



DRAFT

Exhibit B

DRAFT

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB FINANCE DOCKET NO. [...]

S & S SHORTLINE LEASING, LLC

—ACQUISITION EXEMPTION—

CITY OF ELY AND NEVADA NORTHERN RAILWAY FOUNDATION

S & S Shortline Leasing, LLC, has filed a notice of exemption to acquire the City of Ely and Nevada Northern Railway Foundation's line between milepost 0.0 at or near Cobre, Nevada, and milepost 127.0 at or near McGill Junction, Nevada. Comments must be filed with the Board and served on [name, address, and telephone of S & S's representative]. The notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

EXHIBIT G
CONTROL NOTICE OF EXEMPTION

BEFORE THE SURFACE TRANSPORTATION BOARD
FINANCE DOCKET _____

MICHAEL WILLIAMS
VERIFIED NOTICE OF EXEMPTION –
ACQUISITION AND CONTROL EXEMPTION –
S & S Shortline Leasing, LLC

VERIFIED NOTICE OF EXEMPTION
FOR CONTINUED CONTROL
PURSUANT TO 49 C.F.R. 1180.2(d)

Michael Williams (“Williams”), a non-carrier, hereby files this notice of exemption under 49 C.F.R. 1180.2(d) to continue in control of S & S Shortline Leasing, LLC, a Utah limited liability company (hereinafter “S&S”), upon its acquisition of a line of railroad extending from M.P. (or MP) 0 at or near Cobre in Elko County, Nevada, to MP 127.0 at or near McGill Junction in White Pine County, Nevada (hereinafter “the line”).

S&S has coterminously filed with this Notice of Exemption pursuant to 49 C.F.R. 1180.2(d) a Notice of Exemption pursuant to 49 C.F.R. 1150.41 for acquisition of the line.¹ Mr. Williams owns or controls several additional railroads or railroad lines. However, none of the other railroads or railroad lines owned or controlled by Mr. Williams are in Nevada and thus none

¹ S&S Shortline Leasing, LLC, previously received authority to provide common carrier services over MP 0.0 to MP 127.9 in S&S Shortline Leasing, LLC – Operation Exemption – City of Ely, F.D. 35284, served Aug. 14, 2009. Mr. Williams subsequently purchased the stock of S&S. S&S expects Great Basin and Northern Railroad to file a change of operator exemption to become operator of MP 127 to 127.9, at which point all obligations of S&S under its operation exemption in F.D. 35284 will be transferred to Great Basin for MP 127 to MP 127.9.

connect with the line which S&S will now there acquire. This proposed transaction is not part of a series of anticipated transactions that would result in any additional connection. All the other railroads owned or controlled by Mr. Williams are Class III carriers. This proposed transaction does not involve a Class I carrier. Williams' continuation in control of S&S is thus exempt under 49 C.F.R. 1180.2(d)(2). Mr. Williams accordingly seeks an exemption for continued control pursuant to 49 U.S.C. 11323.

In accordance with the requirements of 49 C.F.R. 1180.4(g), Williams submits the following information:

Description of Proposed transaction: 49 C.F.R. 1180.6(a)(1)(i)

Michael Williams acquired the stock in S & S Shortline Leasing, LLC, which has operating rights from MP 0.0 at or near Cobre to MP 127.9 at or near McGill Junction in White Pine and Elko Counties, Nevada. The line did not have shippers at the time of acquisition. S&S now expects to acquire the line from MP 0.0 to MP 127.0 from its two current co-owners: City of Ely, Nevada, and Nevada Northern Railway Foundation, Inc. ("Nevada Northern").

The railroads owned or controlled by Mr. Williams (other than S&S) are summarized below:

- A. BG & CM Railroad. See BG & CM Railroad – Acquisition and Operation Exemption – Great Northwest Railroad, Inc., F.D. 34713, served July 6, 2005 (76.2 miles of rail line in Nez Perce, Clearwater and Lewis Counties, ID); BG & CM Railroad – Exemption from 49 U.S.C. Subtitle IV, F.D. 34299, served Oct. 17, 2003, clarified Camas Prairie Railnet, Inc. – Abandonment – in Lewis, Nez Perce, and Idaho Counties, ID, AB 564, served May 3, 2004 (contract, not common, carrier operations on an additional 65.8 miles); BG & CM Railroad – Acq. & Op. Exemption – Rail Line of

- Great Northwest Railroad, Inc., F.D. 36098, served March 1, 2017 (27.5 mile “Jaype” line, all in Clearwater County, Idaho).
- B. Ozark Valley Railroad. See Ozark Valley Railroad Acquisition and Operation Exemption – The Kansas City Southern Railway Co., F.D. 34989, served June 8, 2007 (purchase of 21.99 miles, lease of 3 miles, for total operation of 24.99 miles, plus approximately 8 miles of overhead and incidental trackage rights located in Audrain and Callaway Counties, MO).
- C. St. Maries River Railroad. See Michael Williams – Control Exemption – St. Maries River RR, F.D. 35365, served April 28, 2010. Approx. 71 miles from Plummer to St. Maries in Idaho.
- D. SDR Holding Company/Dakota Southern Railway. Williams -Control Exemption - SDR Holding Company, F.D. 35957, served Dec. 15, 2015; Dakota Southern Railway Company – Notice of Modified Certificate of Public Convenience and Necessity, F.D. 36086 filed Dec. 29, 2016 (operating rights over approximately 54.4 miles of line owned by State of South Dakota).
- E. Boot Hill & Western Railway Holding Company/Boot Hill & Western Railway Co., LLC. See Williams -- Continuance in Control Exemption – Boot Hill & W. Ry. Holding Co, F.D. 35925, served June 3, 2015; Boot Hill & W. Ry. Holding Co., Inc. – Acq. & Op. Exemption – Boot Hill & W. Ry., F.D. 35924, served May 8, 2015 (acquisition of 10.2 miles of line and right to reactivate service over 15.8 miles of contiguous railbanked line all in Ford County, KS).

F. McCloud Railway. 19.6 miles of line from point of connection with Union Pacific Railroad Company at MP 16.3 at or near Mt. Shasta, CA, and MP 3.3 east of McCloud, CA.

No significant changes in rail service currently provided over MP 0 to MP 127.0 are anticipated as a result of this control exemption. Mr. Williams plans to maintain the line intact and to use it for rail purposes.

The full name and address of the applicant is:

Michael Williams
P.O. Box 612
Richmond, MO 64085

Any questions concerning this Notice should be sent to Mr. Williams' representative at the following address:

Charles Montange
Law Offices of Charles Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936

Proposed Schedule for Consummation: 49 C.F.R. 1180.6(a)(1)(ii)

S&S expects to consummate the acquisition on or about 30 days after filing this Notice and the Notice in the related 49 C.F.R. 1150.41 et seq. proceeding.

Purpose Sought to Be Accomplished: 49 C.F.R. 1180.6(a)(1)(iii)

The exemption sought herein will allow Mr. Williams to continue in control of S&S upon acquisition of the line from MP 0 to MP 127.0 from the line's current owners. Authorization of control will facilitate preservation of the line for future service to shippers. Mr. Williams and S&S intend to pursue common carrier rail service on the line.

States in Which Property of Applicant Is Located: 49 C.F.R. 1180.6(a)(5)

Mr. Williams is a non-carrier and does not directly own rail property (only stock in companies that do). Mr. Williams controls other railroads through stock ownership in the States of Idaho, Missouri, South Dakota, Kansas and California.

Map-Exhibit 1: 49 C.F.R. 1180.6(a)(6)

A map showing the line is attached hereto as Exhibit A.

Agreement- Exhibit 2: 49 C.F.R. 1180.6(a)(7)(ii)

The proposed sale agreement with City of Ely, Nevada, and Nevada Northern Railway Foundation, Inc., is attached as Exhibit B.

Labor Protective Conditions: 49 C.F.R. 1180.4(g)(1)(I)

Pursuant to 49 U.S.C. 11326(c), no employee protective conditions may be imposed on this transaction. S&S will be, and all existing Williams' controlled railroads are, Class III rail carriers.

Environmental and Historic Preservation Materials: 49 C.F.R. 1180.4(g)(3)

Under 49 C.F.R. 1105.6(c)(2)(i), the proposed control transaction is exempt from environmental reporting requirements. Mr. Williams' continuation in control of S&S will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. 1105.7(e)(4) or (5). Under 49 C.F.R. 1105.8(b)(3), Mr. Williams' proposed continuation in control of S&S is also exempt from historic preservation reporting requirements. The continuation in control will not substantially change the level of maintenance of any railroad property.

Respectfully submitted,

Charles H. Montange
Law Offices of Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Attorney for S&S Shortline Leasing, LLC
and Michael Williams

Attachments: Exhibit A (map)
Exhibit B (sale agreement)

For filing: Month, Day, 2020

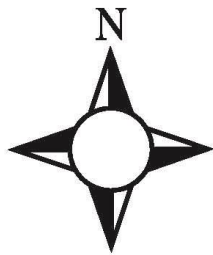
Verification

I, Michael Williams, declare under penalty of perjury pursuant to 28 U.S.C. 1746 that I am the Manager of S & S Shortline Leasing, LLC, that the foregoing is true and correct to the best of my knowledge, information, and belief. In addition, I certify that I am qualified and authorized to make this statement.

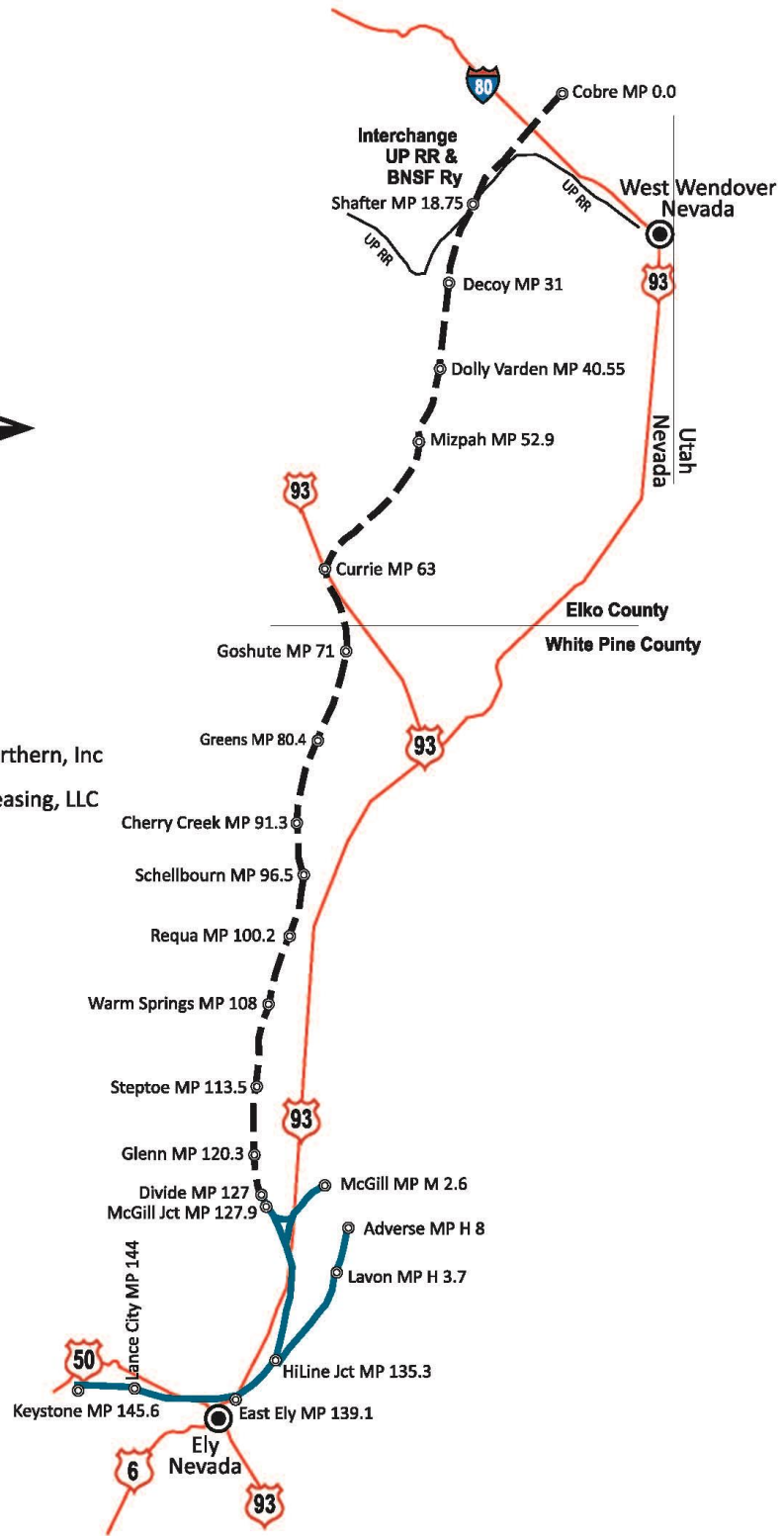
Michael Williams, Manager

Executed on _____.

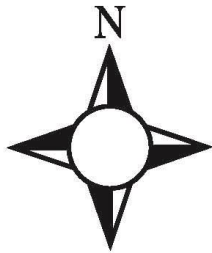
Exhibit A



- Great Basin & Northern, Inc
- S & S Shortline Leasing, LLC
- Station
- City
- US Highway
- Interstate Highway



S & S Shortline Leasing, LLC
System Map



- S & S Shortline Leasing, LLC
- Station
- City
- US Highway
- Interstate Highway



Exhibit B

[Insert Agreement]

EXHIBIT H
CHANGE IN OPERATORS NOTICE OF EXEMPTION

DRAFT

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Notice of Exemption

STB Finance Docket No. [...]

**Great Basin and Northern Railroad
—Change in Operators Exemption—
City of Ely and Nevada Northern Railway Foundation**

Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M St. NW Suite 700
Washington, DC 20036
(202) 331-8800

*Counsel for the Great Basin & Northern
Railroad*

Dated:

DRAFT

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Notice of Exemption

STB Finance Docket No. [...]

**Great Basin and Northern Railroad
—Change in Operators Exemption—
City of Ely and Nevada Northern Railway Foundation**

**Verified Notice of Exemption
of
Great Basin and Northern Railroad**

Great Basin and Northern Railroad hereby files this Verified Notice of Exemption, pursuant to 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41 and states as follows:

a. Applicant's full name and address

Great Basin and Northern Railroad
1100 Avenue A
PO Box 150040
East Ely, NV 89315

b. Name, address, and telephone number of Applicant's representative

Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M St. NW Ste 700
Washington, DC 20036
(202) 331-8800

c. Agreement

Great Basin anticipates that in the next 30 days it will reach an agreement with the City of Ely, Nevada, and Nevada Northern Railway Foundation, Inc.(formerly the White Pine Historical Railroad Foundation, Inc.), under which it obtains rights to operate on and over 0.9 miles of a

DRAFT

railroad line owned by the City and Foundation between milepost 127.0 and milepost 127.9 at or near McGill Junction in White Pine County, Nevada (the “Line”). The Line is currently operated by S & S Shortline Leasing, LLC pursuant to an operating agreement with the City and Foundation. *See S&S Shortline Leasing, LLC—Operation Exemption—City of Ely*, FD 35284 (STB served Aug. 14, 2009). Great Basin will replace S & S as the operator of the Line, and S & S has agreed to discontinue its service over the Line concurrent with its replacement by Great Basin.

The Line is a segment of a railroad line running from milepost 0.0 at or near Cobre, Nevada, to and beyond McGill Junction. S & S currently operates the portion of the longer line from milepost 0.0 to milepost 127.9. *See S&S Shortline Leasing, LLC—Operation Exemption—City of Ely*, FD 35284 (STB served Aug. 14, 2009). Great Basin operates the remaining portion of the line from milepost 127.9 to milepost 146.1 at or near Keystone, Nevada, and two branch lines connecting to this line segment. *See Great Basin & N. R.R.—Change in Operators Exemption—City of Ely*, FD 34506 (STB served June 7, 2004).

No active rail shippers are on or served by the Line.

d. Operator of the property

Great Basin will operate the Line as a rail common carrier.

e. Brief summary of the proposed transaction

1. Name and address of the persons transferring the subject property to the Applicant

City of Ely
City Hall Building
501 Mill Street
Ely, NV 89301

Nevada Northern Railway Foundation
1100 Avenue A
PO Box 150040
East Ely, NV 89315

2. Proposed time schedule for consummation of the transaction

On or about 30 days after the filing of this Notice.

3. Mileposts of the subject property

The mileposts for the subject property are milepost 127.0 to milepost 127.9. Both mileposts are at or near McGill Junction.

4. Total route miles being acquired

The total route miles being acquired is approximately 0.9 miles.

f. Map

A map of the line is attached as Exhibit A.

g. Projected revenue certification

Great Basin certifies that its projected revenues as a result of the transaction will neither exceed the maximum revenue of a Class III rail carrier nor the \$5 million threshold for labor notices under 49 C.F.R. § 1150.42(e).

h. Interchange commitments

Great Basin certifies that the proposed acquisition and operation of the Line does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

i. Environmental reporting

The Board's rules do not require environmental documentation for this action because it will not result in operational changes that would exceed any of the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5) and it falls within the class exemption from the requirements of 49 U.S.C. § 10902.

j. Historic reporting

The Board's rules do not require historic reports for this action because it does not involve disposal or alteration of properties that are 50 years old or older, within the meaning of 49 C.F.R. § 1105.8(b)(1), and will not substantially change the level of maintenance of railroad property, within the meaning of 49 C.F.R. § 1106.8(b)(3).

k. Caption summary

A caption summary of this Notice is attached as Exhibit B.

Respectfully submitted,

Great Basin and Northern Railroad

By its attorneys,

Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M Street, NW Suite 700
Washington, DC 20036
(202) 263-4107

Dated:

DRAFT

Verification

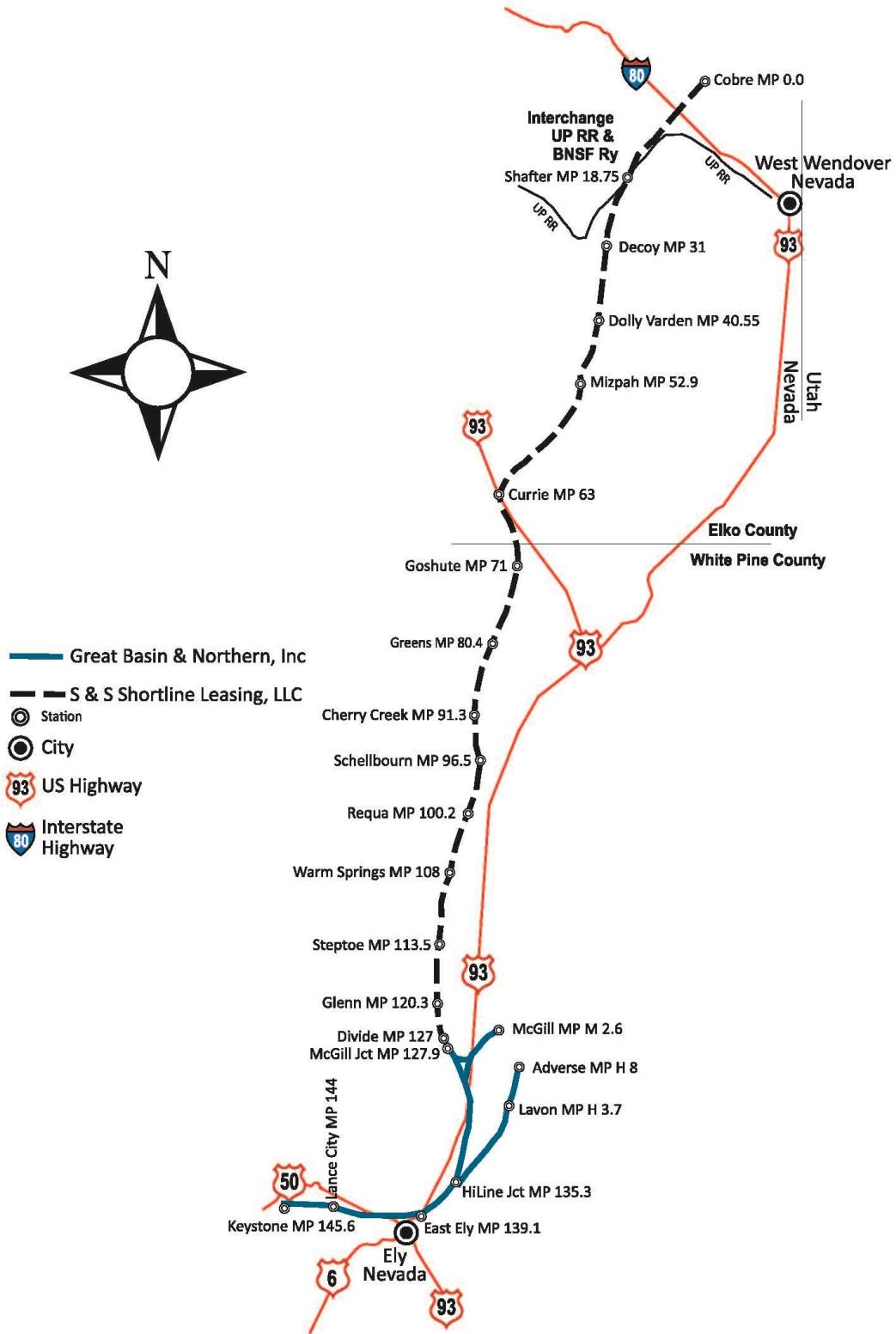
I, John Gianoli, President of Great Basin and Northern Railroad, verify under penalty of perjury that the foregoing Verified Notice of Exemption is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verified Notice of Exemption on behalf of Great Basin and Northern Railroad.

Executed on _____, 2020.

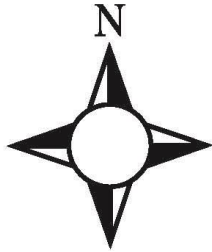
John Gianoli, President

DRAFT

Exhibit A

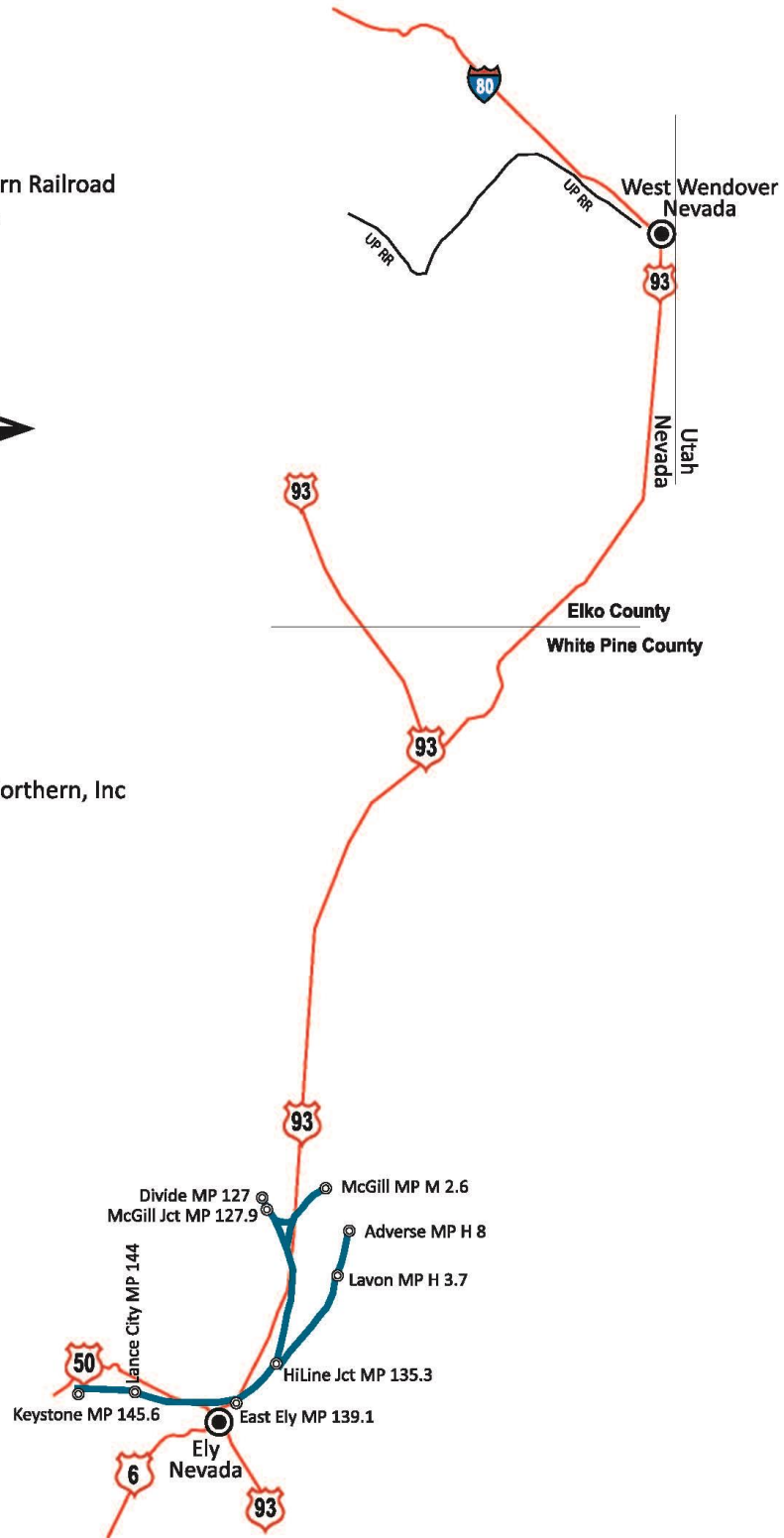


Great Basin and Northern Railroad
System Map



Great Basin & Northern, Inc

- Station
- City
- 93 US Highway
- 80 Interstate Highway



DRAFT

Exhibit B

DRAFT

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB FINANCE DOCKET NO. [...]

GREAT BASIN & NORTHERN RAILROAD
—CHANGE IN OPERATORS EXEMPTION—
CITY OF ELY AND NEVADA NORTHERN RAILWAY FOUNDATION

Great Basin and Northern Railroad has filed a notice of exemption to replace S & S Shortline Leasing, LLC, as the operator over 0.9 miles of rail line owned by the City of Ely and Nevada Northern Railway Foundation. The line extends between mileposts 127.0 and 127.9 at or near McGill Junction, Nevada. Comments must be filed with the Board and served on Jeffrey O. Moreno, Esq., Thompson Hine LLP, 1919 M St. NW Ste. 700, Washington, DC 20036 (telephone 202-331-8800). The notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.