

## Memorandum

To Finance, Expenditures, and Legal Subcommittee

Subject: UPRR Abandonment

Date: June 28, 2010

From: Gerry Bowen

The Union Pacific Railroad (UPRR) is planning to abandon the rail line (see attached map) between Q Street (approximately 132<sup>nd</sup> Street) and Giles Road (approximately 108<sup>th</sup> Street), a distance of 2.5 miles. UPRR has approached the District about purchasing this right-of-way for a trail under the federal rail-banking program. This federal legislation keeps the corridor intact and void of reversionary clauses associated with railroad properties.

The right-of-way is 100 feet wide. The proposed abandonment follows the West Branch Papillion Creek on the east side and encompasses approximately 33 acres.

The Papio Trails Plan includes the West Papio Trail at this location connecting Papillion and Millard. Over the years there have been numerous inquiries from the public as to when this trail would be complete.

At the present time, the District has no plans for channel improvements upstream of Giles Road; therefore, the purchase would be strictly for trail purposes.

The District had the property appraised. The value was determined to be \$1,500,000. Staff has discussed the potential purchase and reached a tentative agreement with Union Pacific on this sale price, payable in three equal, annual installments of \$500,000 beginning in July, 2010. The attached purchase agreement accomplishes this purpose.

- **It is recommended that the Subcommittee recommend to the Board that the District enter into a purchase agreement with the Union Pacific Railroad in the amount of \$1.5 million for the rail line abandonment between Q Street and Giles Road, subject to changes deemed necessary by the General Manager, and approved as to form by District Legal Counsel.**







## PURCHASE AND SALE AGREEMENT

This Agreement is entered into this \_\_\_\_\_ day of May, 2010 ("Execution Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, whose address is 1400 Douglas Street, Omaha, Nebraska 68179 ("Seller"), and **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a natural resources district of the State of Nebraska, whose address is 8901 South 154<sup>th</sup> Street, Omaha, Nebraska 68138-3621 ("Buyer"), WITNESSETH:

IT IS MUTUALLY AGREED by and between the parties hereto as follows:

### Section 1. Purchase and Sale of the Property.

A. Seller hereby agrees to sell and Buyer hereby agrees to purchase, on the terms and conditions of this Agreement, Seller's right, title and interest in and to the real property in Douglas and Sarpy Counties, Nebraska, extending from Milepost 19.4 to Milepost 22.1 on Seller's Millard Industrial Lead as such right of way is shown on the print and described in the legal description marked **Exhibit A**, each attached hereto and hereby made a part hereof (the "Land"), together with any track, ballast, bridges, culverts and other personal property, fixtures and improvements thereon to the extent owned by Seller (the "Personal Property"). The Land and the Personal Property are hereafter sometimes collectively called the "Property".

B. The sale made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights whether or not of record or open and obvious on the ground.

C. EXCEPTING from this sale and RESERVING unto Seller, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Seller, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Buyer, its successors or assigns.

### Section 2. Purchase Price.

The purchase price for the Property is ONE MILLION FIVE HUNDRED THOUSAND AND NO/100<sup>TH</sup> DOLLARS (\$1,500,000.00) ("Purchase Price").

### Section 3. Payment of Purchase Price.

A. Prior to the Closing Date (as defined in Section 6), the sum of Five Hundred Thousand and No/100<sup>th</sup> Dollars (\$500,000.00), such sum to be paid by cashier's or certified check or confirmed wire transfer of U.S. funds for immediate credit.

B. Prior to the Closing Date, Buyer shall deliver to Seller a promissory note and a deed of trust, properly executed and acknowledged by Buyer as Maker and Trustor, respectively, payable to the order of Seller, to evidence and secure the principal sum of One Million and No/100<sup>th</sup> Dollars (\$1,000,000.00), representing the balance of the Purchase Price, the form of such promissory note and deed of trust to be as specified in subparagraph C. below.

C. Promissory Note and Deed of Trust. A purchase money promissory note executed by Buyer in the principal sum of One Million Dollars (\$1,000,000.00), payable to the order of Seller, dated as of the date of Closing, and in the form attached hereto as **Exhibit B** (the "Promissory Note"). The Promissory Note shall be payable in two (2) installments of Five Hundred Thousand Dollars (\$500,000.00) each, with the first payment due on or before July 15, 2010 and the second payment due on or before July 15, 2011. The Promissory Note shall be secured by a purchase money deed of trust in the form attached hereto as **Exhibit C**, to be recorded at the Closing evidencing a first lien against the Property (the "Deed of Trust").

#### **Section 4. Compliance with Trails Act.**

This Agreement is being entered into in accordance with and subject to the National Trails System Act, 16 U.S.C. §1247(d), and the terms and conditions contained in the Decision served July 25, 2008 by the Surface Transportation Board in STB Docket No. AB-33 (Sub-No. 260X) ("Trails Use Decision"). If rail service on the Property is reactivated pursuant to the National Trails System Act, then Seller shall have the right to repurchase the Property for the then-current fair market value of the Property (including all improvements thereon) as determined by appraisal. The provisions of this Section 4 shall survive the Closing and the delivery of the Deed.

#### **Section 5. Conditions Precedent to Sale.**

This Agreement is made and executed by the parties hereto subject to the following conditions precedent:

A. Feasibility Studies. Commencing on the Execution Date and continuing to and including June 15, 2010 ("Feasibility Review Period"), Buyer, and its agents and contractors, are granted the privilege of entering upon the Property for the purpose of performing environmental audits, soil tests, engineering and feasibility studies of the Property as Buyer may deem necessary to determine the suitability of the soil conditions and other physical conditions of the Property. If the results of such audits, tests or studies are unsatisfactory in Buyer's reasonable opinion, Buyer may, at its option, elect to terminate this Agreement by giving Seller written notice of termination before the end of the Feasibility Review Period. If no such written notice of termination shall be given by Buyer to Seller before the end of the Feasibility Review Period, the Property shall be deemed suitable for Buyer's purposes. In the event of such termination by Buyer, then Buyer shall surrender to Seller copies of all audits, soils, engineering and any other reports prepared for Buyer pertaining to the Property and said reports shall become the sole property of Seller without cost or expense of Seller (and the contents thereof shall be kept confidential by Buyer and Buyer's consultants), and this Agreement shall terminate and be without any further force and effect, and without further obligation of either party to the other. Regardless of whether or not this Agreement is terminated, Buyer shall



promptly furnish Seller with a copy of any and all reports on environmental assessments performed for the benefit of Buyer.

In the event Buyer, its agents or contractors, shall enter upon the Property for the purposes set forth in this Section 5.A., such entry shall be subject to the following terms and conditions:

(i) Buyer agrees to indemnify and save harmless Seller and/or Seller's affiliates ("Seller's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), their officers, agents, servants and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage arises in connection with or incident to the occupation or use of the Property by, or the presence thereon of Buyer, Buyer's agents, contractors, servants or licensees prior to Closing;

(ii) Buyer covenants and agrees to pay in full for all materials joined or affixed to the Property and to pay in full all persons who perform labor upon said premises, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Buyer; and Buyer agrees to indemnify and hold harmless Seller against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished prior to Closing;

(iii) In the event the sale and purchase of the Property does not close, Buyer shall, as soon as possible and at Buyer's sole expense, restore the Property to the same condition it was in immediately prior to the time Buyer entered the Property, failing in which Seller may perform the work of restoration and Buyer shall reimburse Seller for the cost and expense thereof within thirty (30) days after rendition of bill therefor by Seller; and

(iv) Notwithstanding any provisions in this Agreement to the contrary, in the event this Agreement is terminated for any reason whatsoever, Buyer nevertheless shall be obligated to comply with the provisions of this Section 5.A.

B. Trails Use Decision. In the event the Trails Use Decision applicable to the Property lapses, expires or is invalidated prior to Closing, this Agreement shall be deemed terminated forthwith. In the event of such termination, this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

## **Section 6. Escrow; Closing.**

A. Escrow. Upon execution of this Agreement by both parties, an escrow account shall be opened with First American Title Insurance Company, 13924 Gold Circle, Omaha, Nebraska



68144 ("Title Company"), and the parties shall deposit with Title Company an executed copy of this Agreement.

B. Buyer's Deliveries. On or before the date of Closing, Buyer shall deposit into escrow the following:

- (i) the cash portion of the Purchase Price in the amount of Five Hundred Thousand Dollars (\$500,000.00);
- (ii) the Promissory Note as executed by Buyer;
- (iii) the Deed of Trust as executed and acknowledged by Buyer;
- (iv) the Bill of Sale referred to in Section 7 below as executed by Buyer; and
- (v) the Assignment and Assumption Agreement referred to in Section 8 below as executed by Buyer.

C. Seller's Deliveries. On or before the date of Closing, Seller shall deposit into escrow the following:

- (i) the Quitclaim Deed as executed by Seller;
- (ii) the Bill of Sale as executed by Seller; and
- (iii) the Assignment and Assumption Agreement referred to in Section 8 below as executed by Seller.

D. Title Company's Instructions. Title Company shall be instructed that when it is in a position to deliver to Seller the cash portion of the Purchase Price, Title Company shall:

- (i) record and deliver the Quitclaim Deed to Buyer;
- (ii) record and deliver the Deed of Trust to Seller;
- (iii) deliver to Seller the cash portion of the Purchase Price and the Promissory Note; and
- (iv) deliver executed counterparts of the Assignment and Assumption Agreement to each of Seller and Buyer.

E. Seller's Costs. At Closing, Seller shall pay Seller's pro rata share of real estate taxes (whether general or special) assessed against the Property and due and payable for the year of Closing.



F. Buyer's Costs. At Closing, Buyer shall pay the following costs:

- (i) The escrow fee;
- (ii) Buyer's pro rata share of real estate taxes (whether general or special) assessed against the Property and due and payable for the year of Closing;
- (iii) The cost of recording the Quitclaim Deed and the Deed of Trust;
- (iv) The Nebraska State real estate excise tax, if any; and
- (v) The cost of the required state revenue stamps, if any.

G. Closing Date; Possession. The sale and purchase of the Property shall close ("Close" or "Closing") on or before June 30, 2010 ("Closing Date"). Possession of the Property shall pass to Buyer on Closing. Buyer shall have no right to possession or occupancy of or entry upon any portion of the Property [except as set forth in Section 5.A.] and title thereto shall be and remain vested in Seller until Closing.

#### **Section 7. Form of Quitclaim Deed and Bill of Sale.**

Upon Closing as set forth in Section 6, Seller's right, title and interest in and to the Land shall be transferred by Seller to Buyer by a duly executed Quitclaim Deed in the form marked **Exhibit D**, attached hereto and hereby made a part hereof, and Seller's right, title and interest in and to the Personal Property shall be transferred by Seller to Buyer by a duly executed Bill of Sale in the form marked **Exhibit E**, attached hereto and hereby made a part hereof.

#### **Section 8. Assignment of Leases and Licenses.**

A. Upon Closing, Seller shall assign or partially assign to Buyer (as applicable), and Buyer shall assume or partially assume (as applicable), all of Seller's right, title and interest in and to the Lease and License Agreements (the "Leases and Licenses") identified on **Exhibit B to Exhibit F** attached hereto and hereby made a part hereof. The Leases and Licenses shall be assigned by Seller to Buyer at Closing and assumed by Buyer by duly executed Assignment and Assumption Agreement in the form attached hereto as **Exhibit F** and hereby made a part hereof. Rentals and other payments under the Leases and Licenses which are fully assigned shall be prorated between Seller and Buyer as of the Closing Date and other payments under the Leases and Licenses which are partially assigned shall be allocated between Seller and Buyer on a proportionate basis. The last column of Exhibit B to Exhibit F indicates whether a particular license or lease agreement is being fully or partially assigned.

B. Buyer acknowledges that the Property may be subject to other licenses and other third party rights that have not been disclosed by Seller to Buyer. It is the responsibility of Buyer to determine if any of these undisclosed rights exist. If any license that affects only the Property is



identified after the Closing Date, Seller's rights (including, without limitation, any income) and obligations under such license will be assigned to and assumed by Buyer after Closing.

**Section 9. As Is; Release and Indemnity.**

A. Buyer and its representatives, prior to the date of Closing, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire. Buyer acknowledges and agrees that the Property is to be sold and quitclaimed to and accepted by Buyer in an "as is" condition with all faults. Seller makes no representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions, and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by their investigation. Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and the donation and purchase and sale of the Property and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.

B. Buyer, for itself, its successors and assigns, hereby waives, releases, remises, acquits and forever discharges Seller, its affiliates, their employees, agents, successors and assigns, of and from any and all claims, suits, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Buyer now has or which Buyer may have in the future on account of or in any way arising out of or in connection with the known or unknown physical or environmental condition of the Property, or any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act.

C. From and after Closing, Buyer shall, to the maximum extent permitted by law, indemnify, defend and save harmless Seller, its affiliates, their employees, agents, officers, successors and assigns, from and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, fines, punitive damages, losses, costs, liabilities and expenses, including attorney's fees, in any way arising out of or connected with the known or unknown physical or environmental condition of the Property (including, without limitation, any contamination in, on, under or adjacent to the Property by any hazardous or toxic substance or material), or any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act.

**Section 10. Notices.**

A. Any notices required or desired to be given under this Agreement shall be in writing and personally served, given by overnight express delivery, or given by mail. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Seller:	UNION PACIFIC RAILROAD COMPANY ATTN: Richard L. Harris, Manager-Real Estate 1400 Douglas Street, Mail Stop 1690 Omaha, Nebraska 68179 Telephone: (402) 544-8588
With copy to:	UNION PACIFIC RAILROAD COMPANY ATTN: Gerard Sullivan, Senior General Attorney 1400 Douglas Street, Mail Stop 1580 Omaha, Nebraska 68179 Telephone: (402) 544-4468
Buyer:	PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ATTN: Gerry Bowen 8901 South 154 <sup>th</sup> Street Omaha, Nebraska 68138-3621 Telephone: (402) 444-6222
With copy to:	TAYLOR, PETERS & DREWS ATTN: Paul F. peters 2120 South 72 <sup>nd</sup> Street Omaha, Nebraska 68124 Telephone: (402) 391-3712

B. Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

**Section 11. Assignment.**

Buyer shall not transfer or assign this Agreement, or any interest therein, without the consent in writing of Seller, and it is agreed that any such transfer or assignment, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and shall, at the option of Seller, terminate this Agreement.



**Section 12. Waiver of Breach.**

A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

**Section 13. Time of the Essence.**

Time is of the essence of this Agreement.

**Section 14. Law Governing.**

This Agreement shall be governed in all respects by the laws of the State of Nebraska.

**Section 15. Merger.**

The terms, provisions, covenants and conditions herein contained shall merge into the deed to be delivered by Seller to Buyer at closing and shall not survive the closing of escrow, except for the provisions of Sections 4, 5.A., 9, 16 and 18.

**Section 16. No Brokers.**

The negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the parties without the intervention of any person which would give rise to any valid claim against either of the parties hereto for brokerage commissions or other like payment. Each party hereto shall indemnify and hold harmless the other party against and from any and all claims for brokerage commission or other like payment arising out of the transaction contemplated by this Agreement and occasioned by the actions of such indemnifying party.

**Section 17. Successors and Assigns.**

Subject to the provisions of Section 11, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

**Section 18. Certification of Non-Foreign Status.**

Seller, Federal ID No. 94-6001323, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Buyer. A Certification prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached as **Exhibit G**.

**Section 19. Not An Offer.**

The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell and donate the Property to Buyer or the granting of an option or other rights with respect to the Property to Buyer. No agreement with respect to the donation and purchase and sale of the Property shall exist, and this writing shall have no binding force or effect, until executed and delivered by both Seller and Buyer.

**Section 20. Severability.**

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, then the remaining provisions of this Agreement remain in full force but only if the essential provisions of this Agreement for each party remain valid, binding and enforceable.

**Section 21. Entire Agreement.**

It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, that neither party is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**

\$1,000,000.00

June \_\_, 2010

**PROMISSORY NOTE**

FOR VALUE RECEIVED, **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a natural resources district of the State of Nebraska ("Maker"), promises to pay to the order of **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Payee"), at the office of the Treasurer of Payee, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, the sum of One Million and No/100<sup>th</sup> Dollars (\$1,000,00.00) in lawful money of the United States of America.

The principal amount shall be due and payable in two installments of Five Hundred Thousand Dollars (\$500,000.00) each, on or before July 15, 2010 and July 15, 2011 (the last being the "Maturity Date").

Maker may prepay, without penalty or premium, all or any portion of the outstanding principal balance at any time. Any and all payments made hereon by Maker will be applied to principal.

This Promissory Note is secured by a first lien Deed of Trust of even date in favor of Payee (the "Deed of Trust"), encumbering certain real property of Maker therein described located in Douglas and Sarpy Counties, Nebraska.

If any one or more of the following events of default shall occur:

- (a) failure of Maker to make payment of principal on this Promissory Note when due; or
- (b) failure of Maker to perform or observe any other covenant contained in this Promissory Note or in the above-described Deed of Trust securing this Promissory Note, and Maker shall fail to cure any such default within thirty (30) days after receipt of written notice from Payee specifying the default; or
- (c) Maker shall (1) apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; (2) be unable, or admit in writing its inability, to pay its debts as they mature; (3) make a general assignment for the benefit of creditors; (4) be adjudicated a bankrupt or insolvent; (5) file a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors, take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed



against it in any bankruptcy or insolvency proceedings; or (6) take action for the purpose of effecting any of the foregoing;

then Payee, at its option, shall have the right to accelerate the date of maturity of this instrument and declare any remaining unpaid principal balance due and payable, and legal action may at once be instituted in any court of competent jurisdiction for recovery and collection of the same.

No failure on the part of Payee to exercise and no delay in exercising any right hereunder shall operate as a waiver of such right; nor shall any single or partial exercise by Payee of any right hereunder preclude the exercise of any other right. The remedies herein provided for are cumulative and not exclusive of any remedies provided by law.

Maker, and any and all others now or hereafter obligated hereon, in whole or in part, whether primarily or secondarily, hereby waive presentment, demand for payment, protest for non-payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of dishonor, diligence in collection, and all other indulgences, and expressly agrees that this Promissory Note may be extended or renewed from time to time and any real or collateral security or any part thereof may be released by Payee without in any manner affecting, altering, releasing or limiting the liability of Maker hereon.

Upon declaration of a default hereunder, the balance of the principal remaining unpaid shall thereafter bear interest at the rate of ten percent (10%) per annum, and in the event of default Maker agrees to pay all costs of collection, including a reasonable attorney's fee.

Nothing in this Promissory Note shall authorize the collection of total charges for interest or in the nature of interest in excess of the highest rate allowed by law, and any excess portion of such charges paid hereunder shall be applied in reduction of principal hereunder.

This Promissory Note is made in and shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT, a Nebraska  
Natural Resources District**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C****RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Union Pacific Railroad Company  
 Attn: Rick L. Harris, Real Estate Dept.  
 1400 Douglas Street, MS 1690  
 Omaha, Nebraska 68179

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*SPACE ABOVE FOR RECORDER'S USE ONLY*

**DEED OF TRUST**

THIS DEED OF TRUST, hereinafter referred to as Security Instrument, is made on June \_\_\_\_, 2010. The trustor, hereinafter referred to as Borrower, is **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a Natural Resources District of the State of Nebraska, whose address is 8901 South 154<sup>th</sup> Street, Omaha, Nebraska 68138-3621. The trustee, hereinafter referred to as Trustee, is **FIRST AMERICAN TITLE INSURANCE COMPANY**. The beneficiary, hereinafter referred to as Lender, is **UNION PACIFIC RAILROAD COMPANY**, which is organized and existing under the laws of the State of Delaware, and whose address is 1400 Douglas Street, Omaha, Nebraska 68179. Borrower owes Lender the principal sum of One Million and No/100<sup>th</sup> Dollars (U.S. \$1,000,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument, hereinafter referred to as the Note, which provides for two (2) payments of principal only, the first payment due on or before July 15, 2010 and the second payment due on or before July 15, 2011. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, and all renewals, extensions, and modifications; (b) the payment of all other sums, with interest, advanced to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the property located in Douglas County, Nebraska, described in **Exhibit 1** attached hereto and hereby made a part hereof.

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record as of the date hereof. Borrower warrants and will defend generally the title



to the Property against all claims and demands, subject to any encumbrances of record as of the date hereof.

Borrower and Lender covenant and agree as follows:

**Section 1. PAYMENT OF PRINCIPAL; PREPAYMENT AND LATE CHARGES.**

Borrower shall promptly pay when due the principal of the debt evidenced by the Note and any late charges due under the Note.

**Section 2. APPLICATION OF PAYMENTS.**

Unless applicable law provides otherwise, all payments received by Lender under Section 1 hereof shall be applied first, to late charges due under the Note and, second, to principal due.

**Section 3. CHARGES; LIENS.**

Borrower shall pay when due all taxes, assessments, charges, fines, and impositions attributable to the Property. Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall preserve and maintain this Security Instrument as a first and prior lien on the Property, including any improvements hereafter made a part of the realty. Borrower shall promptly discharge any lien that has priority over this Security Instrument. If Lender determines that any part of the Property is subject to a lien that may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien within ten (10) days of the giving of notice.

**Section 4. PRESERVATION AND MAINTENANCE OF PROPERTY.**

Borrower shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste. Without limitation of the foregoing, Borrower shall not store, place, use, generate, or dispose of any Hazardous Substances in, on, or under the Property and shall not permit the same. For the purposes of this Security Instrument, the term "Hazardous Substances" shall mean any toxic, carcinogenic, or hazardous wastes, pollutants, or substances, including, without limitation, asbestos, PCBs, petroleum products and by-products, or substances defined or listed as: "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9601 et seq., "hazardous waste" in the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., any chemical substance or mixture regulated under the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. 2601 et seq., any "toxic pollutant" under the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., any "hazardous air pollutant" under the Clear Air Act, 42 U.S.C. 7401 et seq., and any hazardous or toxic substance or pollutant regulated under any other applicable Environmental Laws; and all other substances to which the rules and regulations promulgated by any

federal or state agency pursuant to any one or more of said federal statutes or similar State of Nebraska statutes apply. For purposes of this Security Instrument, the term "Environmental Laws" shall mean all federal, state, and local environmental, health or safety laws, ordinances, or regulations now or hereafter enacted.

(a) Borrower warrants, represents, covenants, and agrees that Borrower shall not, nor shall Borrower permit any person to handle, bury, store, retain, refine, produce, spill, allow to seep, leak, escape or leach, pump, pour, emit, empty, discharge, inject, dump, transfer, or otherwise dispose of or deal with Hazardous Substances in, on, under, or about the Property in a manner that violates any applicable Environmental Law.

(b) Borrower warrants, represents, covenants, and agrees that Borrower shall comply with all applicable Environmental Laws with respect to the Property or anything situated thereon.

(c) Borrower shall promptly upon receipt of any notice of any violation of any Environmental Law with respect to the Property or anything situated thereon, notify Lender of such violation, and begin to perform all such acts as are necessary to bring the Property or anything situated thereon, as applicable, into compliance with such Environmental Law and shall diligently prosecute same to completion.

(d) Borrower hereby covenants and agrees to and does hereby indemnify, defend, and hold Lender, its successors and assigns, and their respective officers, directors, employees, agents, contractors, subcontractors, and other representatives (collectively, the "Indemnitees"), harmless of, from, and against and shall reimburse Lender for, any and all losses, claims, liabilities, damages, injunctive relief, injuries to person, property, or natural resources, fines, reasonable costs, penalties, charges, orders, judgments, remedial and enforcement actions, and other obligations (including, without limitation, reasonable attorneys' fees, court costs, filing fees, witness fees and costs, consultant fees, publications costs, other expenses of defense and collection, all costs of removal, remediation of any kind, and disposal of Hazardous Substances and all costs of determining whether the Property or anything situated thereon is in compliance and causing the same to be in compliance with all applicable Environmental Laws) arising from, out of, or in connection with any one or more of the following, which were not caused by Lender in its capacity as the prior owner of the Property or of which Lender had no actual knowledge in such capacity except as disclosed to Borrower prior to the date of this Security Instrument:

(i) Actual or threatened legal proceedings made or brought by any federal, state, county, or municipal governmental body, agency, or other instrumentality, division or branch thereof ("Public Authority") in respect of the failure to report to any Public Authority any information or findings relating to or dealing with Hazardous Substances that are or have been in, on, under, or about the Property;

(ii) Actual or threatened legal proceedings made or brought by any Public Authority or any other person or entity in respect of actual or threatened damage, destruction, release, discharge, migration, leak, escape, leach, pouring, pumping, emptying, dumping, presence of, generation, use, transportation, handling, treatment, removal, storage, decontamination, cleanup, or disposal of Hazardous Substances, in, on, under, about, to, or from the Property, whether such was foreseeable or unforeseeable, and regardless of when such release occurred or is discovered and whether or not such Hazardous Substances may be legally allowed to be on the Property; and

(iii) The inaccuracy when made of any representation or warranty in respect of Hazardous Substances contained in this Section 4 or any document or instrument executed and delivered by Borrower pursuant to this Security Instrument.

(e) Borrower hereby further covenants and agrees that, notwithstanding anything to the contrary contained herein, the effect of the foregoing representations, covenants, and warranties shall not be diminished or deemed to be waived by any inspections or examinations made by or on behalf of Lender.

(f) The foregoing indemnification, defense, and hold harmless obligations shall remain in full force and effect, including, without limitation, with respect to Hazardous Substances which are discovered on the Property after Lender acquires title to the Property through foreclosure or by deed in lieu of foreclosure of this Security Instrument, but which were not actually placed or permitted to be placed on the Property by Lender (except as disclosed by Lender to Borrower prior to the date of this Security Instrument).

(g) The foregoing indemnification, defense, and hold harmless obligations of Borrower shall survive repayment of the Note, any voluntary transfer of title to the Property or anything situated thereon, any transfer by foreclosure or by a deed in lieu of foreclosure of this Security Instrument or any bankruptcy proceeding.

(h) The foregoing covenants, and indemnification, defense and hold harmless obligations with respect to Hazardous Substances shall in no manner affect or supersede the obligations of Lender, as the seller and prior owner of the Property, to Borrower, as the purchaser of the Property.

## **Section 5. PROTECTION OF LENDER'S RIGHTS IN THE PROPERTY.**

If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien that has priority over this Security Instrument, appearing in court, paying reasonable



attorneys' fees, and entering on the Property to make repairs. Although Lender may take action under this Section 5, Lender does not have to do so.

Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the rate of ten percent (10%) and shall be payable, with interest, within ten (10) days after notice from Lender to Borrower requesting payment.

#### **Section 6. INSPECTION.**

Lender or its agent may (but shall not be obligated to) make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

#### **Section 7. CONDEMNATION.**

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. The proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within ten (10) days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments due under the Note.

#### **Section 8. BORROWER NOT RELEASED; FORBEARANCE BY LENDER NOT A WAIVER.**

Extension of the time for payment or other modification of the Note or this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**Section 9. SUCCESSORS AND ASSIGNS BOUND;  
JOINT AND SEVERAL LIABILITY.**

The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Section 16 hereof. Borrower's covenants and agreements shall be joint and several.

**Section 10. LOAN CHARGES.**

If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower that exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment. Nothing herein or in the Note shall ever entitle Lender, upon the arising of any contingency whatsoever, to receive or collect interest in excess of the highest rate allowed by the laws of the State of Nebraska on the principal indebtedness hereby secured or on any money obligation hereunder and in no event shall Borrower be obligated to pay interest thereon in excess of such rate.

**Section 11. LEGISLATION AFFECTING LENDER'S RIGHTS.**

If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by Section 18 hereof. If Lender exercises this option, Lender shall take the steps specified in the second paragraph of Section 16 hereof. In the event any portion of the indebtedness hereinabove described cannot be lawfully secured by this Security Instrument, it is agreed that the first payments made on said indebtedness shall be applied to the discharge of that portion of said indebtedness.

**Section 12. ADDITIONAL COLLATERAL.**

As additional collateral security for the payment of the indebtedness secured by this Security Instrument, and the taxes, assessments, maintenance and repairs on the Property, Borrower hereby transfers, assigns, sets over and conveys to Lender all rents, royalties, bonuses, delay monies or other income that may from time to time become due and payable under any leases of any kind now existing or hereafter to come into existence covering the Property, or any portion thereof, with authority to collect the same; and Borrower hereby agrees to execute, acknowledge and deliver to Lender such deeds or other instruments as Lender may now or hereafter reasonably require in order to facilitate the payment to it of said rents, royalties, bonuses, delay rentals or other income, which rights are to be exercised by Lender only in the event of delinquency or default in compliance with the terms of this Security Instrument and the indebtedness hereby secured. This assignment shall

terminate and become void upon the payment of said indebtedness and release of this Security Instrument.

**Section 13. NOTICES.**

Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to Borrower's address stated herein or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this Section 13.

**Section 14. GOVERNING LAW; SEVERABILITY.**

This Security Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**Section 15. BORROWER'S COPY.**

Borrower shall be given one conformed copy of the Note and of this Security Instrument.

**Section 16. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER.**

If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises the option to accelerate for sale or transfer, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument or applicable law without further notice or demand on Borrower.

Regardless of whether Lender shall have consented thereto, any sale or transfer of the Property or any interest therein shall be subject and subordinate to this Security Instrument and the lien thereof.

### **Section 17. BORROWER'S RIGHT TO REINSTATE.**

If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) five (5) days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums that then would be due under this Security Instrument and the Note had no acceleration occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Sections 11 or 16 hereof. The foregoing right to reinstate shall be in addition to the right to reinstate provided under Nebraska Revised Statutes § 76-1012.

### **Section 18. ACCELERATION; REMEDIES.**

Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Sections 11 or 16 hereof unless applicable law requires otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Trustee shall record a notice of default in each county in which any part of the Property is located and shall mail copies of such notice in the manner prescribed in applicable law to Borrower and to the other persons prescribed by applicable law. After the time required by applicable law, Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property to any later time on the same date by public



announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Upon receipt of payment of the price bid, Trustee shall deliver to the purchaser Trustee's deed conveying the Property. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of exercising the power of sale, and the sale, including, but not limited to, reasonable Trustee's and attorneys' fees as permitted by law; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

**Section 19. LENDER IN POSSESSION.**

Upon acceleration under Section 18 hereof, or abandonment of the Property, Lender (in person, by agent or by judicially appointed receiver) shall be entitled (but not obligated) to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument.

**Section 20. RECONVEYANCE.**

Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

**Section 21. SUBSTITUTE TRUSTEE.**

Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power, and duties conferred upon Trustee herein and by applicable law.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument.

**TRUSTOR UNDERSTANDS THAT (a) THIS DOCUMENT IS A TRUST DEED AND NOT A MORTGAGE AND (b) THE POWER OF SALE PROVIDED FOR IN THIS TRUST DEED PROVIDES SUBSTANTIALLY DIFFERENT RIGHTS AND OBLIGATIONS TO THE TRUSTOR THAN A MORTGAGE IN THE EVENT OF A DEFAULT OR BREACH OF OBLIGATION.**

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA    )  
   ) ss.  
 COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged on this \_\_\_\_\_ day of June, 2010, before me, a Notary Public duly commissioned, qualified and acting, within and for the said County and State, by \_\_\_\_\_, to me personally known, who stated that he is the \_\_\_\_\_ of PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, and is duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said district, and further stated and acknowledged that he has so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

\_\_\_\_\_  
 Notary Public

(SEAL)

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**



**EXHIBIT D**

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*Space above for recorder's use only*

**QUITCLAIM DEED**

KNOW ALL MEN BY THESE PRESENTS:

That **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, whose address is 1400 Douglas Street, Omaha, Nebraska 68179, Grantor, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does REMISE, RELEASE and forever QUITCLAIM unto **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a Nebraska Natural Resources District, whose post office address is 8901 South 154<sup>th</sup> Street, Omaha, Nebraska 68138-3621, Grantee, its successors and assigns, forever, all of its right, title, interest, estate, claim and demand, both at law and in equity, of, in and to the real estate situate in Douglas and Sarpy Counties, State of Nebraska, more particularly described in **Exhibit A** hereto attached and hereby made a part hereof (the "Property").

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property or the improvements located thereon or to interfere with the use thereof by Grantee, its successors or assigns.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD the Property described in **Exhibit A**, subject to the aforesaid exception and reservation, unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has caused these presents to be signed by its duly authorized officers, and its corporate seal to be hereunto affixed the \_\_\_\_ day of \_\_\_\_\_, 2010.

**Attest:**

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

\_\_\_\_\_  
Assistant Secretary

(Seal)

By \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEBRASKA    )  
   ) ss.  
 COUNTY OF DOUGLAS    )

On \_\_\_\_\_, 2010, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Notary Public

(SEAL)

**EXHIBIT A TO EXHIBIT D**

**LEGAL DESCRIPTION OF THE PROPERTY  
TO BE ATTACHED**



**EXHIBIT E****BILL OF SALE**

**UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Seller"), does hereby donate, transfer and deliver to **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a natural resources district of the State of Nebraska ("Buyer"), its successors and assigns, the following described personal property, to wit:

The improvements owned by Seller and fixed upon the real property located in Douglas and Sarpy Counties, State of Nebraska, described in **Exhibit A**, attached hereto and hereby made a part hereof, including without limitation, the track, if any, ballast, bridges, culverts and appurtenances thereto (the "Personal Property").

SELLER, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING UNDERSTOOD THAT THE BUYER IS ACQUIRING THE PERSONAL PROPERTY DESCRIBED ABOVE IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS.

By its acceptance of this Bill of Sale and from and after the date hereof, Buyer, its successors and assigns, agrees that, in its use and maintenance of the Personal Property, it will accept and assume all liability, loss, damage, costs and expenses arising from or growing out of the existence, use or maintenance of the Personal Property, including any third party's use or maintenance of the Personal Property.

IN WITNESS WHEREOF, Seller and Buyer have each duly executed this instrument as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A TO**  
**BILL OF SALE**

**LEGAL DESCRIPTION OF PROPERTY  
TO BE ATTACHED**

**EXHIBIT F****ASSIGNMENT AND ASSUMPTION AGREEMENT**

FOR VALUE RECEIVED, **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Assignor"), ASSIGNS AND TRANSFERS to **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a natural resources district of the State of Nebraska, ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to the leases and licenses ("collectively, "Licenses") to the extent the Licenses affect the real property ("Property") described in **Exhibit A**, which Licenses are listed on **Exhibit B**.

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to Property accruing on and after the date hereof, and (b) indemnify, defend and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of Assignee's failure to comply with terms of the Licenses as they relate to the Property by the licensees or lessees named in the Licenses accruing on and after the date hereof.

The assignment is made and accepted without recourse against Assignor as to the performance by any party under such Licenses.

All exhibits attached to this Agreement are incorporated herein for all purposes.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**TO**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**LEGAL DESCRIPTION OF REAL PROPERTY  
TO BE ATTACHED**



**EXHIBIT B**  
**TO**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**LIST OF LEASES AND LICENSES  
TO BE ASSIGNED**

**EXHIBIT G****CERTIFICATION OF NON-FOREIGN STATUS**

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, Papio-Missouri River Natural Resources District, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY is not a disregarded entity as defined in Section 1.445.2(b)(2)(iii) of the Internal Revenue Code;
3. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
4. UNION PACIFIC RAILROAD COMPANY'S office address is 1400 Douglas Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferees and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_