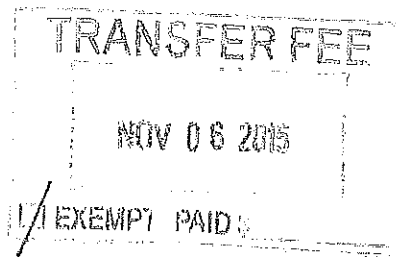


EF 8

30 (23838)

WHEN RECORDED MAIL TO:

Real Estate Office
City of Sioux Falls
224 West Ninth Street
Sioux Falls, SD 57104-7402



RECORDED AT THE REQUEST OF:

City of Sioux Falls
224 West Ninth Street
Sioux Falls, SD 57104-7402



Recorded Nov 06, 2015 at 10:01
In Book 565 of Deeds on Page 863

Julie D. Risty, Register of Deeds
Minnehaha County, South Dakota

By *[Signature]* Deputy

[Signature]

Exempt from Transfer Fee pursuant to SDCL § 43-4-22(2)

SD1420047
K526564

QUITCLAIM DEED

BNSF RAILWAY COMPANY, a Delaware corporation, (formerly known as The Burlington Northern and Santa Fe Railway Company and formerly known as Burlington Northern Railroad Company), of 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, hereinafter called "Grantor", for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, conveys and quitclaims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns, to **CITY OF SIOUX FALLS**, a municipality chartered under the South Dakota Constitution, of 224 West Ninth Street, Sioux Falls, SD 57104-7402, hereinafter called "Grantee", all its right, title and interest, if any, in and to that certain parcel of land (exclusive of any improvements thereon), subject, however, to all existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise, located in the County of Minnehaha, South Dakota, hereinafter called "Property", being more particularly described on EXHIBIT "A" attached hereto and by this reference made a part hereof as well as all its right, title, and interest, if any, in and to section line rights of way, dedicated streets, roadways, sidewalks or other similar rights of way for street or pedestrian traffic as described in Exhibit "A".

Grantee covenants and agrees as follows:

(a) Grantee's interest shall be subject to the rights and interests of Grantor, Grantor's licensees, permittees and other third parties in and to all existing driveways, roads, utilities, fiber optic lines (including, but not limited to, US Sprint Communications Company's fiber optic line referenced in Grantor's records as agreement number BF-41866 dated August 15, 1986), wires, facilities, and easements of any kind whatsoever on the Property whether owned, operated, used or maintained by Grantor, Grantor's licensees, permittees or other third parties and whether or not of public record. Grantor shall have a perpetual easement on the Property for the use of such existing driveways, roads, utilities, fiber optic lines, wires, facilities (including telecommunication facilities) and easements by Grantor and Grantor's licensees, permittees and customers.

This easement will not require the Grantee to maintain existing roads or driveways for the sole benefit of the Grantor or its licensees, permittees, or customers, but Grantee will provide reasonable access for relocated roads and driveways.

(b) Grantee's interest shall be subject to a reservation to Grantor of all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature, including sand and gravel underlying the surface of the Property, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the Property, provided, however, that Grantor expressly waives any right to use the surface or the first two hundred (200) feet of the subsurface of the Property to explore for the minerals and other products herein reserved.

(c) Any improvements constructed or altered on the Property after the date Grantor quitclaims its interest to Grantee shall be constructed or altered in such a manner to provide adequate drainage of water away from any of Grantor's railroad tracks on nearby property.

(d) Grantee acknowledges and affirms that Grantor may not hold fee simple title to the Property, that Grantor's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Grantee is willing to accept Grantor's interest in the Property, if any, on this basis and expressly releases Grantor, its successors and assigns from any claims that Grantee or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the Property. In light of Grantor's disclosure that it may not hold a fee interest in all or part of the Property, Grantee agrees to indemnify, defend and hold Grantor harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys' fees, or civil penalties that may be imposed on Grantor as the result of any person or entity claiming an interest in any portion of the Property or claiming that Grantor did not have the right to transfer all or part of the Property to Grantee.

(e) Grantee acknowledges that Grantor, at Grantor's sole discretion, will continue (i) to operate on its remaining downtown mainline railroad tracks, and (ii) to maintain local and regional service of Grantor. Grantee further acknowledges and agrees that a protective boundary fence between the mainline and the Property is necessary. Within 180 days after the date of expiration or termination of that certain Temporary Easement Agreement between Grantor and Grantee recorded Nov. 3, 2015 as Document * in the Minnehaha Count Register of Deeds' office, Grantee shall, at its sole cost and expense, construct a protective boundary fence (the "**Fence**") a minimum of six (6) feet in height across the Property, on the Property's eastern boundary, between the Property and Grantor's remaining adjacent property. Grantee shall construct the Fence (i) in accordance with plans which have been approved in writing in advance by Grantor, (ii) using new materials of a type and manufacturer satisfactory to Grantor, (iii) in conformity with all applicable federal, state and local laws, codes, ordinances, rules and regulations, and (iv) in a good and workmanlike manner, free from

defects in materials and workmanship. If the Fence is not constructed to Grantor's reasonable satisfaction within this time frame, Grantor may construct the Fence at the sole cost of Grantee and Grantee shall pay Grantor all associated costs within 30 days of receipt of bills related thereto. Grantee shall thereafter, at Grantee's sole cost and expense, repair, maintain, replace and renew the Fence in a good and workmanlike manner and to Grantor's reasonable satisfaction, so as to perpetually keep same in good repair. If the Fence is not repaired, maintained, replaced and renewed to Grantor's reasonable satisfaction within 180 days of receipt of notice from Grantor, Grantor may repair, maintain, replace or renew the Fence at the sole cost of Grantee and Grantee shall pay Grantor all associated costs within 30 days of receipt of bills related thereto. All or a portion of the Fence may be eliminated or removed upon mutual written agreement between the Grantor and Grantee.

(f) Grantee also agrees that should any future owner, developer or tenant of any portion of the Property construct any building or other structure on the Property, then such owner, developer or tenant shall be subject to an easement, permitted, administered and enforced by the City of Sioux Falls, with respect to the Property, whereby all present or future property owners and tenants within the Property shall sign a written acknowledgment stating that such owners and tenants:

- have been notified that Grantor, and its successors and assigns have the right to full railroad and railroad-related operations on Grantor's property; and
- waive any and all injunctive claims and claims for damages due or related to nuisance, noise, disturbance, vibration, loss of use, reduction in value, and/or emissions, whether caused directly or indirectly by Grantor's operations.

(g) Grantee has been allowed to make an inspection of the Property. **GRANTEE IS PURCHASING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM GRANTOR AS TO ANY MATTERS CONCERNING THE PROPERTY,** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property (collectively, the "**Condition of the Property**"). Grantee represents and warrants to Grantor that Grantee has not relied and will not rely on, and Grantor is not liable for or bound by, any

warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, property information packages distributed with respect to the Property) made or furnished by Grantor, the manager of the Property, or any real estate broker or agent representing or purporting to represent Grantor, to whomever made or given, directly or indirectly, orally or in writing. Grantee assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Grantee's inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever Grantor and Grantor's officers, directors, shareholders, employees and agents (collectively, "**Indemnitees**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort or asserting a constitutional claim) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial, restoration or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause Grantor's remaining property or the operations or business of Grantor on its remaining property to be in compliance with the requirements of any Environmental Law, (c) losses for or related to injury or death of any person, (d) losses for or related to injury or damage to animal or plant life, natural resources or the environment, and (e) losses arising under any Environmental Law enacted after transfer. The rights of Grantor under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of Grantee to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. Grantee does not indemnify or hold Grantor harmless or agree to payment of any of Grantor's attorney's fees, costs, fines, penalties or fees relating to (a) any criminal actions or (b) any refusal or failure of Grantor to produce documents or respond to subpoenas in response to any court of competent jurisdiction or governmental entity charged with enforcement of Environmental Laws, including any refusal or failure to produce environmental audits, evaluations, assessments, studies or tests which were prepared previous to closing and are in the custody of the Grantor (or which with reasonable efforts could be within the possession or control of the Grantor). The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed


or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

The covenants and restrictions set forth in paragraphs (a) through (g) above, shall be binding upon Grantee and its heirs, successors and assigns, and shall be covenants running with the land benefiting Grantor and its heirs, successors and assigns, for so long as Grantor continues to operate on Grantor's property or has not abandoned its rights to operate.

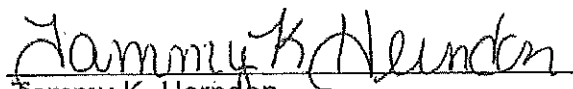
TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto on the 30th day of October, 2015.

BNSF RAILWAY COMPANY,
a Delaware corporation

By: 
Julie A. Figgott
Its: Executive Vice President and
Chief Financial Officer

ATTEST:

By: 
Tammy K. Herndon
Its: Assistant Secretary

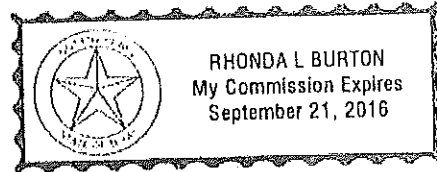


STATE OF TEXAS §
 § ss.
COUNTY OF TARRANT §

On this the 30th day of October, 2015, before me, Rhonda Burton, the undersigned officer, personally appeared, Julie A. Piggott, who acknowledged herself to be the Executive Vice President and Chief Financial Officer of **BNSF RAILWAY COMPANY**, a corporation, and that she, as such Executive Vice President and Chief Financial Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by herself as Executive Vice President and Chief Financial Officer.

IN WITNESS WHEREOF, I have hereto set my hand and official seal.

Rhonda Burton
Notary Public
My commission expires: 9/21/2016



This Instrument Prepared by:

BNSF Railway Company
LAW Department
2500 Lou Menk Drive, AOB 3
Fort Worth, Texas 76131-2830
817-230-2612

FORM APPROVED BY LAW

APPROVED DESCRIPTION	<u>KKA</u>
APPROVED FORM	<u>Rhe</u>
APPROVED	<u>MW</u>

EXHIBIT "A"

PROPERTY DESCRIPTION

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, CONTAINING 10.249 ACRES, MORE OR LESS, AND ADJOINING 0.955 ACRES, MORE OR LESS, DEDICATED ROADWAY TO THE PUBLIC FOR PORTIONS OF EAST SIXTH STREET, EAST EIGHTH STREET, AND EAST TENTH STREET, filed for record on September 21, 2015 and recorded in Book 77 of Plats on Page 225, Register of Deeds in said County.

RECEIVED
10:00
NOV 06 2015