

EXHIBIT D TO MOU

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is entered into this _____ day of _____, 202__ ("Execution Date"), between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, whose address is 1400 Douglas Street, Omaha, Nebraska 68179 ("Seller"), and **CITY OF NEW BRAUNFELS**, a municipal corporation of the State of Texas, whose address is 550 Landa Street, New Braunfels, Texas 78130 ("Buyer").

IT IS AGREED by and between the parties as follows:

Section 1. Purchase and Sale of the Property.

Seller agrees to sell and Buyer agrees to purchase, on the terms and conditions of this Agreement, certain real property in the City of New Braunfels, Comal County, State of Texas, shown on the print dated January 24, 2020, marked **Exhibit A**, attached hereto and hereby made a part hereof ("Property").

EXCEPTING from this conveyance and RESERVING unto Seller, its successors and assigns, forever the following:

(a) All minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual rights 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 the Property, or to interfere with the use thereof by the Buyer, its successors and assigns. Notwithstanding the foregoing sentence to the contrary, Seller waives all rights of any kind or character to use the surface of the Property (meaning the area from the ground elevation of the Property to a depth of two hundred feet (200') below such ground elevation) or any part thereof for any purpose, including, without limitation (i) the exploration, development, drilling, mining, production, transportation, treating or storage of any oil, gas or other minerals, and (ii) the right of ingress and egress to and from the surface of the Property. The foregoing sentence will be contained in the Deed (as defined in Section 6(a) below); and

(b) A perpetual, exclusive easement across, in, on, under, over and through all of the Property, for the purpose of conducting freight rail crew operations, including, but not limited to, using and occupying Seller's existing office facilities located on the Property, and for motor vehicle transportation and crew changing activities necessary for Seller's freight rail crew operations (collectively, "Railroad Easement"). Seller, its successors and assigns, shall have

the right to use the Railroad Easement until a new office building and appurtenant facilities (collectively, "Facilities") have been constructed and are operational inside Seller's Corbyn Yard, located between Milepost 234 and Milepost 235 on Seller's Austin Subdivision, Comal County, State of Texas, as more particularly described in Section 4(f) below.

The sale and conveyance 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.

Section 2. Purchase Price.

The purchase price ("Purchase Price") for the Property shall be ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00). As further consideration for the sale of the Property, Buyer shall reimburse Seller for all expenses related to the design and construction of the Facilities as set forth in Section 4(f) below.

Section 3. Payment of the Purchase Price.

The Purchase Price shall be paid by Buyer to Seller as follows:

(a) Upon execution of this Agreement by both parties, the sum of Twenty-Five Thousand Dollars (\$25,000.00), in cash or by certified or cashier's check drawn on a financial institution acceptable to Seller, or by confirmed wire transfer ("Funds"), to be deposited with Corridor Title, 410 West San Antonio Street, New Braunfels, Texas 78130 ("Title Company"), in an interest-bearing account. The Twenty-Five Thousand Dollar (\$25,000.00) deposit and accrued interest thereon shall hereafter be referred to as "Escrow Fund". The Escrow Fund shall be applied towards the Purchase Price at Closing (as defined in Section 8 below) and shall become nonrefundable upon the expiration of the Feasibility Review Period (as defined in Section 4(c) below), except in the event of a material default by Seller or the failure of a condition precedent to Buyer's obligations hereunder; and

(b) At the time of Closing, the balance of the Purchase Price in Funds.

Section 4. Conditions Precedent to Sale.

This Agreement is subject to the following conditions precedent:

(a) Title Review. Within six (6) months following the Execution Date, Buyer, at its sole cost and expense, shall obtain from Title Company a preliminary title report ("Title Report") on the Property and furnish a copy of the Title Report to Seller together with copies of all the documents referred to in the Title Report that are provided by the Title Company with the Title Report. Buyer shall have fifteen (15) days after receipt of the Title Report and the Survey (as defined in Section 4(b) below) ("Title Contingency Date") in which to approve or disapprove any defects in the title or any liens, encumbrances, covenants, rights of way, easements or other outstanding rights disclosed by the Title Report or the Survey, except those matters set forth in

Section 6 below. Disapproval shall be by written notice given by Buyer to Seller setting forth the specific item or items disapproved by Buyer. If no such notice of disapproval is given by Buyer by the Title Contingency Date, it shall be conclusively presumed that Buyer approves of the Title Report and the Survey. If Buyer disapproves of any item or items contained in or disclosed by the Title Report or the Survey, Seller shall have thirty (30) days after receipt of Buyer's notice of disapproval ("Seller's Cure Period") in which, at Seller's election, to eliminate any disapproved items from the policy of title insurance to be issued in favor of Buyer. If any such disapproved item is not eliminated by the end of Seller's Cure Period, then Buyer shall be deemed to have waived its prior disapproval unless Buyer terminates this Agreement by giving Seller written notice of termination at least five (5) days prior to the Closing Date (as defined in Section 8 below). In the event of termination due to any such uncorrected defect in title, the Escrow Fund shall be returned to Buyer, and this Agreement shall terminate and be without any further force and effect, and without further obligation of either party to the other. In no event shall Seller's failure to cure or delete as exceptions to the policy of title insurance any disapproved items be deemed to be a breach of this Agreement by Seller or entitle Buyer to any offset against the Purchase Price.

(b) Survey. Within six (6) months following the Execution Date, Buyer, at its sole cost and expense, shall obtain a survey of the Property ("Survey"), prepared and certified to both Buyer and Seller by a public surveyor registered in the State of Texas, and furnish the Survey to Seller and Title Company. The Survey, as approved by Buyer as set forth in subparagraph (a) above and as approved by Seller, shall be used by Seller as the basis for preparation of the description of the Property.

(c) Feasibility Studies. Upon execution of this Agreement, Buyer, and its agents and contractors, are granted the privilege for a period of twelve (12) months following the Execution Date ("Feasibility Review Period") of entering the Property for the purpose of performing environmental assessments, 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 Buyer wishes to perform any environmental sampling, then Buyer shall (i) before conducting any sampling, provide Seller with Buyer's work plan for sampling and shall modify the work plan as reasonably requested by Seller, (ii) give Seller reasonable advance notice of the dates when sampling will be conducted so that Seller and/or its consultants have the opportunity to be present, (iii) conduct any sampling in accordance with the work plan referred to under (i) above and with generally accepted environmental engineering standards, and (iv) provide Seller with the draft report on such sampling for Seller's review and comments prior to the report being placed in final form, and give reasonable consideration to such comments. Buyer and its agents and contractors will maintain in confidence all information, reports, and evaluations generated in connection with any environmental assessments and will not make disclosure without the prior written consent of Seller. If Buyer discovers hazardous or toxic substances or materials on the Property, Buyer will immediately notify Seller.

If the results of such environmental assessments, tests or studies are unsatisfactory in Buyer's reasonable opinion, Buyer may, at its option, terminate this Agreement by giving Seller written notice of termination before expiration of the Feasibility Review Period. If no such written notice of termination is given by Buyer to Seller before expiration of the Feasibility Review Period, the Property shall be deemed suitable for Buyer's purposes. In the event of such termination by

Buyer, then the environmental assessments, soils, engineering and any other reports prepared for Buyer pertaining to the Property shall be kept confidential, to the extent allowed by law or by ruling of the Texas Attorney General's Office, by Buyer and Buyer's consultants, the Escrow Fund shall be returned to Buyer, and this Agreement shall terminate and be without any further force and effect, and without further obligation of either party to the other. Buyer shall provide prompt written notice to the Seller of any request received by Buyer pursuant to the Texas Public Information Act for the purpose of providing the Seller an opportunity to seek to protect such information from disclosure. Regardless of whether 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.

Any entry on the Property by Buyer, its agents or contractors, for the purposes set forth in this Section 4(c) shall be subject to the following terms and conditions:

(i) Buyer shall notify Seller in writing at least forty-eight (48) hours prior to the date that each and every of such testing or inspections are to be conducted on the Property and shall provide evidence, satisfactory to Seller, of the availability of adequate public liability and other insurance, which insurance shall name Seller as an additional insured;

(ii) BUYER AGREES, TO THE EXTENT IT MAY LAWFULLY DO SO, TO DEFEND, 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 UP PROPERTY BY, OR THE PRESENCE THEREON OF BUYER, BUYER'S AGENTS, CONTRACTORS, SERVANTS OR LICENSEES PRIOR TO CLOSING, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL LIABILITY, LOSS, COSTS AND EXPENSE ARISING IN CONNECTION WITH OR INCIDENT TO THE SOLE, CONCURRENT OR JOINT NEGLIGENCE OF SELLER;

(ii-a) Fiber optic cable systems may be buried on the Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Buyer shall visit <https://www.up.com/community/telecom/groups/index.htm> to complete and submit the required form to determine if fiber optic cable is buried anywhere on the Property to be accessed by Buyer. If it is, Buyer shall telephone the

telecommunications company(ies) involved, and arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Buyer's expense, and will not commence any work on Property until all such protection or relocation has been completed. Notwithstanding Buyer's compliance with this provision, the release and indemnity provisions of Section 12 shall apply fully to any damage or destruction of any fiber optic cable systems on the Property caused by Buyer, its agents, employees, representatives, and contractors.

In the event, that fiber is located upon the Property, the Seller and Buyer agree that all fiber optic cable systems shall be moved by the telecommunication company(ies) involved either onto Seller's remaining property or within the Restricted Area as defined in Section 9(c).

(iii) 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, defend 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;**

(iv) If 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 of the work within thirty (30) days after rendition of bill therefor by Seller; and

(v) Notwithstanding any provisions in this Agreement to the contrary, if this Agreement is terminated for any reason, Buyer nevertheless shall be obligated to comply with the provisions of this Section 4(c).

(d) Subdivision Approval. If the Property is not a legal lot, then Buyer, at its sole cost and expense, shall use commercially reasonable efforts to obtain all necessary governmental approvals required to constitute the Property as a legal lot. Seller shall cooperate in good faith by executing necessary documents, provided, however, that Seller shall not be required to incur any cost or expense in connection therewith and that any action Buyer desires Seller to take shall be reasonably acceptable to Seller as to substance and legal form. In no event shall Buyer take any action (nor shall Seller be required to take any action) in connection with such governmental approvals which would (i) affect in any manner whatsoever Seller's adjacent property, if any, (ii) encumber the Property prior to Closing, (iii) obligate Seller as owner of the Property or otherwise to pay money, construct improvements or dedicate any interest in real property, or (iv) detrimentally affect the use of Seller's adjacent property, if any. If Buyer fails to obtain such governmental approvals before the expiration of the Feasibility Review Period, or if the City of New Braunfels or

other governmental entity having jurisdiction attaches conditions thereto which are unacceptable to Buyer or Seller, Buyer may terminate this Agreement by giving Seller written notice of termination before the expiration of the Feasibility Review Period. In the event of such termination, the Escrow Fund shall be returned to Buyer, and this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

(e) Seller's Management Approval. The terms and conditions of this transaction are subject to approval in accordance with Seller's Management Policy Statement. Notice of approval or disapproval shall be given by Seller to Buyer within sixty (60) days after the Execution Date, and failure to give such notice shall be deemed notice of disapproval. If, within such 60-day time period the terms of this Agreement are not approved for any reason in accordance with Seller's Management Policy Statement, then this Agreement shall be deemed terminated forthwith. In the event of such termination, the Escrow Fund shall be returned to Buyer, and this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

(f) Construction of the Facilities. Seller's obligation to sell the Property is conditioned upon the completion, at the Buyer's sole cost and expense, of 100% designs, plans and specifications for all work necessary to construct the Facilities as described on **Exhibit B**, attached hereto and made a part hereof ("Project Work"). All plans for the Project Work shall be subject to Seller's review and approval. Buyer's obligation to reimburse Seller for the design work shall be governed by a separate Preliminary Engineering agreement between the Parties. The Project Work shall include, but not limited to, grading, access improvements, permitting, zoning, utility installations and relocations, facility construction, track relocation and drainage. Seller's obligation to sell and Buyer's obligation to purchase the Property is further conditioned upon the parties entering into all required definitive agreements related to the post-closing construction of the Project Work by Seller, and the reimbursement thereof by the Buyer, including but not limited to a Funding Agreement, a Construction Agreement and any other definitive agreements required to enable Seller to construct the Project Work and be reimbursed for the same by the Buyer. Buyer shall have the option to terminate this agreement prior to Closing for any reason related to the estimated cost of the Project Work.

(g) At-Grade Crossing Improvements. Buyer will assist and cooperate with Seller, Texas Department of Transportation, Comal County and/or the Alamo Area Metropolitan Planning Organization to determine the feasibility of grade separation, improvement, and/or potential closure of railroad crossings as opportunities arise for the following streets:

- (i) Conrads Road
- (ii) Orion Road
- (iii) Rock Road
- (iv) FM 1102
- (v) Hunter Road

Section 5. Escrow.

(a) Upon execution of this Agreement by both parties, an escrow account shall be opened with Title Company, and Buyer shall deposit with Title Company the sum of Twenty-Five

Thousand Dollars (\$25,000.00) referred to in Section 3(a) above, with instructions to Title Company to hold the same in accordance with the provisions of this Agreement. On or before the Closing Date, Buyer shall deposit into escrow the Purchase Price, less the Escrow Fund, and Buyer's original executed, and, if needed, notarized signature page to the Deed, and, if applicable, the Assignment (as defined in Section 7 below), and Seller shall deposit the Deed, the Assignment, if applicable, and the Certification of Non-Foreign Status (as defined in Section 25 below), each as executed, and if needed, notarized, by Seller. Title Company shall be instructed that when it is in a position to deliver to Seller the Purchase Price, and to issue a standard owner's policy of title insurance in the full amount of the Purchase Price, insuring fee simple title to the Property in Buyer, subject only to the items set forth in Section 6 below, Title Company shall:

- (i) Record and deliver the Deed to Buyer;
 - (ii) Deliver a fully executed Assignment to each of Buyer and Seller, if applicable;
 - (iii) Deliver to Seller the Purchase Price; and
 - (iv) Issue and deliver to Buyer the standard owner's policy of title insurance for the Property.
- (b) At Closing, Seller shall pay the following:
 - (i) One-half (1/2) of the escrow fee; and
 - (ii) 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.
- (c) At Closing, Buyer shall pay the following:
 - (i) One-half (1/2) of the escrow fee;
 - (ii) The premium for the issuance of the standard owner's policy of title insurance;
 - (iii) The cost of recording the Deed;
 - (iv) All costs of any documentary or other transfer taxes applicable to this transaction; and
 - (v) 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.

(d) Buyer shall be responsible for any rollback taxes imposed which are attributable to a change in use of the Property from agricultural.

Section 6. Title.

(a) Upon Closing, title to the Property shall be conveyed by Seller to Buyer by a duly executed Deed Without Warranty ("Deed") in the form marked **Exhibit C**, attached hereto and hereby made a part hereof. Title shall be insurable as in fee, free and clear of all liens, encumbrances, exceptions, and reservations other than the following:

- (i) The mineral reservation set forth in Section 1 above;
- (ii) The Identified Licenses (as defined in Section 7 below);
- (iii) The post-sale covenants referred to in Section 9 below;
- (iv) Non-delinquent real property taxes (whether general or special);
- (v) Standard printed exceptions in the title policy; and
- (vi) Items disclosed in the Title Report and the Survey and approved or waived by Buyer as set forth in Section 4(a).

(b) Unidentified Licenses. Buyer acknowledges that the Property may be subject to licenses and other third party rights ("Unidentified Licenses") that have not been identified by Seller to Buyer from Seller's review of its records. It is the responsibility of Buyer to determine if any of these Unidentified Licenses exist. If any Unidentified Licenses that affect the Property are identified after the Execution Date by either Buyer or Seller, Seller's rights (including, without limitation, any income) and obligations under such Unidentified Licenses to the extent such Unidentified Licenses affect the Property will be assigned to and assumed by Buyer at or after Closing by inclusion in the Assignment.

Section 7. Assignment of Identified Licenses.

Upon Closing, Seller shall assign to Buyer, and Buyer shall assume, all of Seller's right, title and interest in and to the license and other agreements ("Identified Licenses") listed on an exhibit to the form of Assignment and Assumption Agreement ("Assignment"), attached hereto as **Exhibit E** and made a part hereof, but only to the extent the Identified Licenses affect the Property. Rentals and other payments under the Identified Licenses shall be prorated between Seller and Buyer as of the Closing Date.

Section 8. Closing; Possession.

Escrow for the Property shall close ("Close" or "Closing") within thirty (30) days after expiration of the Feasibility Review Period ("Closing Date"). Subject to the Identified Licenses and if applicable, any Unidentified Licenses if known prior to Closing, 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 4(c)] and title to the Property shall be and remain vested in Seller until Closing.

Section 9. Post-Sale Covenants.

The Property shall be conveyed by Seller subject to the following covenants, conditions and restrictions which the Buyer, by the acceptance of the Deed, shall covenant for itself, its successors and assigns, faithfully to keep, observe and perform:

(a) Restriction on Use. The Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers). Notwithstanding the foregoing, if Buyer, its successor and assigns, obtains a Phase II environmental assessment ("Phase II Assessment") of the Property that indicates the Property is acceptable for residential use, and Seller approves the results of the Phase II Assessment for residential use, Seller shall execute a release of this "Restriction on Use" covenant in recordable form and deliver same to Buyer for recordation in the real estate records of Comal County, Texas. Buyer's request for the release and such documentation should be sent to the following address:

Union Pacific Railroad Company
Attn: Real Estate Sales (Folder No. 1840-31)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

[This post-sale covenant will be deleted from the Deed prior to Closing if a Phase II environmental assessment of the Property to be obtained by Buyer indicates that the Property is acceptable for residential use and Seller approves the results of such Phase II environmental assessment.]

(b) Railroad Proximity.

(i) Buyer acknowledges that the property abutting the Southerly boundary line of the Property is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the "Permitted Effects"). Buyer accepts the Property subject to the existence of the Permitted Effects. By acceptance of the Property, Buyer agrees that, at Buyer's sole cost and expense, as part of the development of the Property, Buyer shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Property because of the Permitted

Effects.

(ii) Buyer shall not, and hereby waives all rights to (A) institute legal proceedings against Seller to reduce or lessen the Permitted Effects, and (B) directly or indirectly participate in petition drives, lobbying efforts or other activities seeking the enactment of federal, state or local laws or ordinances to reduce or lessen the Permitted Effects. Any party breaching such covenant shall reimburse Seller for all costs incurred by Seller to comply with any such orders, laws or ordinances, including, without limitation, reasonable attorney's fees and court costs.

(iii) If Buyer sells or leases all or any portion of the Property, Buyer shall require all purchasers and tenants to acknowledge the location of the railroad operations abutting the Property and the existence of the Permitted Effects, and to agree in writing, for the benefit of Seller, to comply with the above covenants.

(c) Sight Line. Buyer covenants and agrees to take all necessary action to protect the line of sight for railroad operations over Seller's railroad right-of-way that traverses or is in proximity to the Property. Without limitation of the foregoing, (i) no building or other improvement of any kind may be constructed within the Restricted Area (as defined below), and (ii) Buyer shall ensure that all vegetation growth within the Restricted Area is less than eight inches (8") in height. The "Restricted Area" is any portion of the Property that is within five hundred feet (500') of either side of any roadway crossing of a rail line or any rail line crossing of a roadway, with any such crossing being deemed to have a width of one hundred feet (100') as measured fifty feet (50') from each side of the centerline of the railroad track(s).

(d) Fence. Buyer, at its sole cost and expense, shall install, within ninety (90) days after Closing, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Seller adjacent to the Southerly boundary of the Property. The fencing or barrier must be of a design and type satisfactory to Seller, and in compliance with applicable building codes. Buyer shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Attn: Real Estate Sales (Folder No. 1840-31)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Seller shall complete such review and make appropriate response to Buyer within twenty (20) days after receipt of such plans by Seller. Seller shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable

governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

The foregoing covenants, conditions and restrictions shall run with the Property, the burdens of which will be binding on the successors and assigns of Buyer, and the benefits of which will inure to the successors and assigns of Seller. A breach of the foregoing covenants, conditions and restrictions, or the continuance thereof, may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Section 10. Construction of the Facilities and Release of Easement.

Following Closing, Seller shall construct (or cause to be constructed), at Buyer's sole cost and expense, the Project Work in accordance with the designs, plans and specifications and the definitive agreements related to the same executed at Closing. Following completion of the construction of the Project Work, and Buyer's reimbursement in full of all Seller expenses related to the same, Seller shall release Railroad Easement reserved at Closing.

Section 11. Post-Closing Traffic Study.

(a) Seller is concerned that development on the Property or realignment of street infrastructure on the Property could lead to vehicle queuing on the Buyer track at the intersection of West Coll Street (U.S. DOT Crossing No. 436043A) in the City of New Braunfels ("West Coll Crossing"). Prior to design and construction of any infrastructure on the Property, Buyer agrees to conduct a traffic study, including a review of existing and expected traffic and pedestrian patterns, and how such traffic and queuing impacts the railroad crossings. Buyer agrees that the related traffic infrastructure will be designed and constructed in a manner to prevent adverse impacts to the railroad crossing.

(b) Buyer will be required to submit the project details to the Union Pacific Public Projects Contact Portal at <https://benesch.quickbase.com/db/bpqhu6hqy?a=dbpage&pageid=13>. Buyer can submit the project via the Contact Portal at any time. Once a project is submitted, Buyer will be required to execute a Preliminary Engineering Agreement ("PE Agreement"). The PE matrix, attached hereto as **Exhibit D** and made a part hereof, is a cost estimate only.

(c) After execution of the PE Agreement, a diagnostic will be required at the West Coll Crossing. The diagnostic shall comprise of City of New Braunfels, Seller, and Buyer or Buyer's representative. The onsite diagnostic shall be held when the traffic study is completed, and safety concerns identified as part of the traffic study and/or onsite diagnostic must be addressed to the satisfaction of Seller and Buyer at no cost to Seller.

Section 12. As Is; Release and Indemnity.

(a) As Is. Buyer and its representatives, prior to the Closing Date, 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 conveyed to and accepted by Buyer in an "as is" condition with all faults. Buyer further acknowledges that the

Property was used for railroad right-of-way purposes. Seller makes no representation or warranty as to the accuracy or completeness of said Environmental Reports. 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, 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 its 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 purchase and sale of the Property and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.

(b) **Release.** BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, 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 (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. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

(c) **Indemnity.** 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. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

(d) General Allocation of Environmental Responsibility. With respect to any existing or future environmental contamination of the Property, from and after Closing, Buyer, at no cost to Seller, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or otherwise necessary to make the Property suitable for Buyer's use of the Property.

(e) Additional and Independent Consideration. The release, indemnity and general allocation of environmental responsibility by Buyer are additional and independent consideration to Seller for the sale and purchase of the Property, without which Seller would not sell the Property for the Purchase Price.

Section 13. Waiver of Consumer Rights.

BUYER HEREBY WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., TEXAS BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF BUYER'S OWN SELECTION, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER. BUYER EXPRESSLY WARRANTS AND REPRESENTS THAT BUYER (A) IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION RELATIVE TO SELLER, AND (B) HAS BEEN REPRESENTED BY LEGAL COUNSEL IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

Section 14. Default; Liquidated Damages.

IN THE EVENT THE SALE AND PURCHASE OF THE PROPERTY SHALL FAIL TO CLOSE BECAUSE OF ANY DEFAULT OF BUYER HEREUNDER, THE ESCROW FUND SHALL BE AND REMAIN THE PROPERTY OF SELLER AS SELLER'S SOLE REMEDY AND AS LIQUIDATED DAMAGES FOR SUCH DEFAULT BY BUYER, AND THIS AGREEMENT SHALL BE WITHOUT ANY FURTHER FORCE AND EFFECT, AND WITHOUT FURTHER OBLIGATION OF EITHER PARTY TO THE OTHER. SELLER'S ACTUAL DAMAGES IN THE EVENT OF SUCH DEFAULT BY BUYER WOULD BE DIFFICULT OR IMPOSSIBLE TO ASCERTAIN, AND FURTHER, BUYER DESIRES TO LIMIT ITS LIABILITY TO SELLER IN THE EVENT THE SALE AND PURCHASE OF THE PROPERTY SHALL FAIL TO CLOSE BECAUSE OF ANY DEFAULT OF BUYER HEREUNDER.

Seller: _____

Buyer: _____

Section 15. Notices.

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: Rebecca Hoffman, Senior Manager – Real Estate
 1400 Douglas Street, Mail Stop 1690
 Omaha, Nebraska 68179
 Telephone: (402) 544-8614
 E-mail: rhoffman@up.com

With copy to: UNION PACIFIC RAILROAD COMPANY
 ATTN: Kristine Nelson, Manager Legal Services
 1400 Douglas Street, Mail Stop 1580
 Omaha, Nebraska 68179
 Telephone: (402) 544-3512
 E-mail: kknelso1@up.com

Buyer: CITY OF NEW BRAUNFELS
 ATTN: Real Estate Manager
 550 Landa Street
 New Braunfels, Texas 78130
 Telephone: 830-387-4739
 E-mail: meckmann@nbtexas.org

Title Company: Corridor Title
 ATTN: Cindy Carroll
 410 West San Antonio Street
 New Braunfels, TX 78130
 Telephone: 830-387-4739
 E-mail: cindy.carroll@corridortitle.com

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. Copies of all notices to Seller or Buyer shall be given to Title Company, and copies of all notices to Title Company shall be given to the other party to this Agreement.

Section 16. 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 17. Condemnation.

If, prior to Closing, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Buyer and Seller shall each have the unilateral right, exercisable by giving notice of such decision to the other party within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement. In the event of such termination, the Escrow Fund shall be returned to Buyer, and this Agreement will be without any further force and effect and without further obligation of either party to the other. If neither party elects to terminate pursuant to this Section 16, the Purchase Price will be determined as though such condemnation had not occurred, and the net proceeds of condemnation awards paid or payable to Seller by reason of such condemnation of the Property shall be paid or assigned to Buyer at Closing.

Section 18. Waiver of Breach.

A waiver by either party of a breach of the other party 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 under this Agreement, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

Section 19. Time of the Essence.

Time is of the essence of this Agreement.

Section 20. Law Governing.

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

Section 21. Merger.

The terms, provisions, covenants and conditions contained in this Agreement shall merge into the Deed to be delivered by Seller to Buyer at Closing and shall not survive the Closing, except for the provisions of Sections 4(c), 6(b), 9, 11, 12, 13, 25 and 27.

Section 22. 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 for brokerage commissions or other like

payment. Each party 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 23. Counterparts; Electronic Signatures;

This Agreement (or any amendments hereto) may be executed in any number of counterparts and in separate counterparts, each of which shall be deemed an original. The exchange of copies of this Agreement and of signature pages by facsimile or e-mail transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or email shall be deemed to be their original signatures for all purposes.

Section 24. Successors and Assigns.

Subject to the provisions of Section 16, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

Section 25. Special Provision.

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 of Non-Foreign Status ("Certification of Non-Foreign Status") prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached hereto as **Exhibit F** and made a part hereof.

Section 26. Tax-Deferred Exchange.

Seller may arrange for the exchange upon the Closing of one or more parcels of property for the Property in order to effect a tax-deferred exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and comparable provisions of state statutes. Buyer agrees to cooperate with Seller in connection with any such exchange. Such cooperation by Buyer shall include, but is not limited to, executing documents as reasonably may be required by Seller.

Section 27. Authority to Fund Obligations.

Buyer represents and warrants that it has the authority to fund its obligations incurred under this Agreement and that provision has been or will be made, from current revenues at the time of Closing on the purchase of the Property. Buyer further represents and warrants that a mechanism for the payment of claims that might arise under the indemnity provisions has been provided by the purchasing and maintaining of a pollution site insurance providing for environmental liability coverage for the Property. Specifically, Seller and Buyer agree that Buyer will create and fund from current revenues a special, non-sinking fund in an amount sufficient to pay upfront the ten year premium for a sufficient environmental liability site insurance policy with an aggregate coverage amount of Five

Million Dollars (\$5,000,000.00) for a period of ten (10) years from the Closing Date which will satisfy the indemnity requirements. Further, the Parties will require this insurance policy to provide the following terms: (a) coverage for pre-existing and new environmental conditions of the Property; (b) Seller will be an additional insured; (c) this Agreement will be listed as an insured contract; (d) a thirty (30) day advance notice of cancellation period will be provided to Buyer and Seller; (e) waiver of subrogation language in favor of Seller; and (f) assignability of policy from Buyer to successor third party purchaser. In the event, the insurance policy is not assignable, then Buyer shall be responsible for placing a subsequent insurance policy that meets the foregoing requirements of for the remaining portion of the ten (10) year term or until the limits of the policy are met, whichever occurs first. In the event, the insurer fails to pay any environmental pollution liabilities arising from the Property, then Seller may seek payment for all paid claims and reasonable attorney's fees, from Buyer in an amount not to exceed the amount of the sinking fund described below in this paragraph. Buyer shall create a sinking fund from current revenues that is comprised of the principal in the amount of One Hundred Thousand Dollars (\$100,000.00) with the obligation to fund the interest at the annual rate of two percent (2%). This sinking fund shall exist for the ten (10) year period of time after the Closing Date as described above. In the event, the sinking fund is exhausted due to payment of paid claims and reasonable attorney's fees to Seller, the Parties agree that the Buyer has no further indemnity obligations under this Agreement. Buyer agrees that, at the time of entering into this Agreement, or at such time as a liability and pecuniary obligation of Buyer under this Agreement ascertainable in amount arises within the ten (10) year period, any liability or pecuniary obligation imposed by this Agreement is within the lawful and reasonable contemplation of the parties to be satisfied out of Buyer's current revenues or out of some fund within the immediate control of Buyer or from the proceeds of the above described insurance policy. In the event of a conflict between this section and any other sections of this Agreement, then the provisions of this section will control such conflict.

Section 28. Not An Offer.

The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell 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 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. Further, until the City Council of the City of New Braunfels, the governing body of Buyer, formally approves this Agreement, Buyer has no obligation hereunder.

Section 29. Severability.

In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction under applicable law, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

Section 30. Entire Agreement.

It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties 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.

SELLER:

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

By: _____
Printed Name: _____
Title: _____

BUYER:

**CITY OF NEW BRAUNFELS,
a municipal corporation in the State of Texas**

By: _____
Printed Name: _____
Title: _____

EXHIBIT A

EXHIBIT B**DESCRIPTION OF THE PROJECT WORK**

Railroad owns property in downtown New Braunfels that the City wishes to purchase for development. The current Railroad downtown office facility will need to be replaced. As a condition of the property sale, City will provide Railroad with of new office facility known as Corbyn Yard which will meet the Railroad's design and construction standards.

EXHIBIT C**FORM OF DEED****RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:**

City of New Braunfels
 ATTN: *[Insert Contact Name]*
 550 Landa Street
 New Braunfels, Texas 78130

(Space Above For Recorder's Use Only)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORDING IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

1840-31

DEED WITHOUT WARRANTY

STATE OF TEXAS)
)
 COUNTY OF COMAL) **KNOW ALL MEN BY THESE PRESENTS:**

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation, successor in interest through merger with Union Pacific Railroad Company, a Utah corporation, successor in interest through merger with Missouri Pacific Railroad Company, a Delaware corporation, successor in interest through merger with Missouri Pacific Railroad Company, a Missouri corporation, successor in interest through merger with International-Great Northern Railroad Company, a Texas corporation, successor in interest through merger with International and Great Northern Railway Company, a Texas corporation, successor in interest through merger with The International and Great Northern Railroad Company) ("Grantor"), for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, to it in hand paid by **CITY OF NEW BRAUNFELS**, a municipal corporation of the State of Texas ("Grantee"), to be addressed at 550 Landa Street, New Braunfels, Texas 78130, the receipt of which is hereby acknowledged, has granted, sold and conveyed, and by these presents does grant, sell and convey to Grantee, the strip or tract of land lying in Comal County, State of Texas, described in **Exhibit A**, attached hereto and made a part hereof ("Property").

EXCEPTING from this conveyance and RESERVING unto Grantor, its successors and assigns, forever the following:

- (a) All minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual rights 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 to interfere with the use thereof by the Grantee, its successors and assigns. Notwithstanding the foregoing sentence to the contrary, Grantor waives all rights of any kind or character to use the surface of the Property (meaning the area from the ground elevation of the Property to a depth of two hundred feet (200') below such ground elevation) or any part thereof for any purpose, including, without limitation (i) the exploration, development, drilling, mining, production, transportation, treating or storage of any oil, gas or other minerals, and (ii) the right of ingress and egress to and from the surface of the Property; and
- (b) A perpetual, exclusive easement across, in, on, under, over and through all of the Property, for the purpose of conducting freight rail crew operations, including, but not limited to, using and occupying Grantor's existing office facilities located on the Property, and for motor vehicle transportation and crew changing activities necessary for Grantor's freight rail crew operations (collectively, "Railroad Easement"). Grantor, its successors and assigns, shall have the right to use the Railroad Easement until a new office building and appurtenant facilities (collectively, "Facilities") have been constructed and are operational inside Grantor's Corbyn Yard, located between Milepost 234 and Milepost 235 on Grantor's Austin Subdivision, Comal County, State of Texas. When Grantor moves into the Facilities, Grantor will abandon and terminate the Railroad Easement within thirty days of the move to the Facilities. Concurrently, with the termination and abandonment of the Railroad Easement, Grantor will execute a Quitclaim Bill of Sale in substantially in the same form as set forth in Exhibit G to the Purchase and Sale Agreement to Grantee for all improvements on the Property including the track and office facility.
- (c) In the event that fiber optic cable systems is present on the Property, a perpetual exclusive easement(s) ten feet (10') in width, in the area shown on Exhibit A-1, in on, or over, under and across the Property ("Fiber Optics Easement Property"), in which areas Grantor (and its easement holders, lessees, sublessees, licensees, successors, or assigns) shall have the right to own, construct, reconstruct, maintain, operate, use and/or remove existing and/or future communication systems, lines and facilities of every kind and nature, including, but not limited to, all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment (the "Fiber

Optic Improvements"). Grantor does further reserve unto itself, its successors and assigns, a limited right of way and right of access to the Fiber Optics Easement Property over and across the Property, for the purposes of the use, enjoyment, maintenance, operation and access to the Fiber Optics Easement Property. All Fiber Optics Improvements presently existing on or hereafter constructed on the Fiber Optics Easement Property shall remain the personal property of Grantor (or the grantee under applicable agreement). Grantor shall be entitled to all revenues derived from all current and future agreements to which Grantor is a party affecting the Fiber Optics Easement Property. No permanent building, structure or fence and no material or obstruction of any kind or character shall be stored or maintained on the Fiber Optics Easement Property which would obstruct or interfere with the use and enjoyment of rights herein reserved without the prior written consent of the grantee under the applicable agreement. Notwithstanding the foregoing, **In the event, that fiber is located upon the Property, the Seller and Buyer agree that all fiber optic cable systems including All Fiber Optic Improvements shall be moved by the telecommunication company(ies) involved either onto Seller's remaining property or within the Restricted Area as defined in Section 9(c). When all Fiber Optics Improvements shall be relocated onto Seller's remaining property then the Fiber Optics Easement Property on the Property shall be terminated, or, in the event, if Fiber Optics Improvements shall be relocated to the Restricted Area then all Fiber Optic Easement Property shall be likewise relocated to such Restricted Area or within 50 feet of the centerline of the Seller's railroad track(s). Grantor shall after the closing shall be obligated to use its best efforts to assist Grantee in relocating the Fiber Optics Improvements to the locations described above.**

The Property is conveyed by Grantor subject to the following covenants, conditions and restrictions which Grantee, by the acceptance of this instrument, covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

- (a) Restriction on Use. The Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers). Notwithstanding the foregoing, if Grantee, its successor and assigns, obtains a Phase II environmental assessment ("Phase II Assessment") of the Property that indicates the Property is acceptable for residential use, and Grantor approves the results of the Phase II Assessment for residential use, Grantor shall execute a release of this "Restriction on Use" in recordable form and deliver same to Grantee for recordation in the real estate records of Comal County, Texas. Grantee's request for the release and such documentation should be sent to the following address:

Union Pacific Railroad Company
 Attn: Real Estate Sales (Folder No. 1840-31)
 1400 Douglas Street, Mail Stop 1690
 Omaha, Nebraska 68179

[This post-sale covenant will be deleted prior to Closing if a Phase II environmental assessment of the Property to be obtained by Grantee indicates that the Property is acceptable for residential use and Grantor approves the results of such Phase II environmental assessment.]

(b) Railroad Proximity.

(i) Grantee acknowledges that the property abutting the Southerly boundary line of the Property is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the "Permitted Effects"). Grantee accepts the Property subject to the existence of the Permitted Effects. By acceptance of the Property, Grantee agrees that, at Grantee's sole cost and expense, as part of the development of the Property, Grantee shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Property because of the Permitted Effects.

(ii) Grantee shall not, and hereby waives all rights to (A) institute legal proceedings against Grantor to reduce or lessen the Permitted Effects, and (B) directly or indirectly participate in petition drives, lobbying efforts or other activities seeking the enactment of federal, state or local laws or ordinances to reduce or lessen the Permitted Effects. Any party breaching such covenant shall reimburse Grantor for all costs incurred by Grantor to comply with any such orders, laws or ordinances, including, without limitation, reasonable attorney's fees and court costs.

(iii) If Grantee sells or leases all or any portion of the Property, Grantee shall require all purchasers and tenants to acknowledge the location of the railroad operations abutting the Property and the existence of the Permitted Effects, and to agree in writing, for the benefit of Grantor, to comply with the above covenants.

(c) Sight Line. Grantee covenants and agrees to take all necessary action to protect the line of sight for railroad operations over Grantor's railroad right-of-way that traverses or is in proximity to the Property. Without limitation of the foregoing, (i) no building or other improvement of any kind may be constructed within the Restricted Area (as defined below), and (ii) Grantee shall ensure that all

vegetation growth within the Restricted Area is less than eight inches (8") in height. The "Restricted Area" is any portion of the Property that is within five hundred feet (500') of either side of any roadway crossing of a rail line or any rail line crossing of a roadway, with any such crossing being deemed to have a width of one hundred feet (100') as measured fifty feet (50') from each side of the centerline of the railroad track(s).

(d) Fence. Grantee, at its sole cost and expense, shall install, within ninety (90) days after the date of delivery of this instrument, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Grantor adjacent to the Southerly boundary of the Property. The fencing or barrier must be of a design and type satisfactory to Grantor, and in compliance with applicable building codes. Grantee shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Attn: Real Estate Sales (Folder No. 1840-31)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Grantor shall complete such review and make appropriate response to Grantee within twenty (20) days after receipt of such plans by Grantor. Grantor shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

The foregoing covenants, conditions and restrictions shall run with the Property, the burdens of which will be binding on the successors and assigns of Grantee, and the benefits of which will inure to the successors and assigns of Grantor. A breach of the foregoing covenants, conditions and restrictions, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Environmental Covenants:

(a) "As Is" Sale. Grantee, for itself, its successors and assigns, including any successor owner of any interest in the Property, acknowledges and agrees that the Property has been sold and conveyed to and accepted by Grantee in an "AS IS" condition, with all faults, and Grantee acknowledges that the Property may have been used for railroad right-of-way purposes, among other uses. Grantee acknowledges and agrees that any information Grantee may have received from Grantor or its agents concerning the Property (including, but not limited to, any lease or other document, engineering study or environmental assessment) was furnished on the condition that Grantee would make an independent verification of the accuracy of the information. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the

Property; in particular, without limitation, Grantor 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 (collectively, "Condition of the Property"). Grantee acknowledges and agrees that the Property has been sold and conveyed on the basis of Grantee's own independent investigation of the physical and environmental conditions of the Property. Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

(b) Release and Indemnity. GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, INCLUDING ANY SUCCESSOR OWNER OF ANY INTEREST IN THE PROPERTY, HEREBY RELEASES GRANTOR, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFIES, DEFENDS AND SAVES HARMLESS GRANTOR, 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 ATTORNEYS' FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN 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. THE FOREGOING WILL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS.

(c) General Allocation of Environmental Responsibility. With respect to any existing or future environmental contamination of the Property, from and after the date of this instrument, Grantee, at no cost to Grantor, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or otherwise necessary to make the Property suitable for Grantee's use of the Property.

This conveyance is made without any warranty, express or implied, including, without limitation, any warranty or covenant implied under the provisions of Section 5.023 of the Texas Property Code, which provisions are hereby expressly waived by Grantee even as to the return of the purchase price.

IN WITNESS WHEREOF, Grantor has caused these presents to be signed by its duly authorized officers this _____ day of _____, 202_.

Attest:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

Assistant Secretary

By: _____
Printed Name: Chris D. Goble
Title: Assistant Vice President – Real Estate

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

This instrument was acknowledged before me this _____ day of _____, 202_, by Chris D. Goble and _____, Assistant Vice President – Real Estate and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

WITNESS my hand and official seal.

Notary Public

(Seal)

EXHIBIT A
TO FORM OF DEED

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

EXHIBIT D

**PE MATRIX
(TO BE ATTACHED)**

EXHIBIT E**FORM OF ASSIGNMENT**

FOR VALUE RECEIVED, **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Assignor"), ASSIGNS AND TRANSFERS to CITY OF NEW BRAUNFELS, a municipal corporation of the State of Texas ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to those certain leases and licenses (collectively, "Licenses") to the extent the Licenses affect that certain real property located in Comal County, State of Texas ("Property") described on **Exhibit A**, attached hereto and made a part hereof, which Licenses are listed on **Exhibit B**, attached hereto and made a part hereof.

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to the Property accruing on and after the Effective Date (as defined below), 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 (1) Assignee's failure to comply with terms of the Licenses as they relate to the Property on and after the Effective Date, or (2) claims under the Licenses as they relate to the Property by the licensees named in the Licenses accruing on and after the Effective Date.

This Assignment and Assumption Agreement ("Agreement") is made and accepted without recourse against Assignor as to the performance by any party under such Licenses.

Dated the ____ day of _____, 202_ ("Effective Date").

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

By: _____
Printed Name: Chris D. Goble
Title: Assistant Vice President – Real estate

**CITY OF NEW BRAUNFELS,
a municipal corporation of the State of Texas**

By: _____
Printed Name: _____
Title: _____

EXHIBIT A
TO FORM OF ASSIGNMENT

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

EXHIBIT B
TO FORM OF ASSIGNMENT

**LIST OF LICENSES TO BE ASSIGNED
(TO BE ATTACHED)**

EXHIBIT F**FORM OF 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, CITY OF NEW BRAUNFELS, 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 transferee 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: _____
 Printed Name: Chris D. Goble
 Title: Assistant Vice President – Real Estate
 Date: _____

EXHIBIT G**QUITCLAIM BILL OF SALE**

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Seller"), for and in consideration of One Dollar (\$1.00) and other valuable consideration does hereby REMISE, RELEASE, and forever QUITCLAIM to _____, a Texas _____ ("Buyer"), all of Seller's right, title and interest in and to the following described personal property, to wit:

(Improvements)_____ and all appurtenances related thereto that ("Personal Property"), which are located on certain real property in New Braunfels, Comal County, State of Texas, legally described in **Exhibit A** attached hereto and made a part hereof.

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 PERSONAL PROPERTY IS BEING QUITCLAIMED TO BUYER IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS, AND ASSUMES ALL RISKS IN CONNECTION THEREWITH, ACKNOWLEDGING THAT BUYER HAS EXAMINED THE PERSONAL PROPERTY AND KNOWS ITS CONDITION.

By its acceptance of this Quitclaim 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, maintenance, or removal of the Personal Property, including any third party's use, or maintenance of, or removal of the Personal Property.

Seller does not convey or intend to convey by this Quitclaim Bill of Sale any right, title, estate or interest whatsoever in or to the real property on which the Personal Property is situated.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, Seller and Buyer have each duly executed this instrument as of the _____ day of _____, 202_.

Seller:

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

By: _____

Name: _____

Title: _____

Buyer:

By: _____

Name: _____

Title: _____