

EXHIBIT 1

PURCHASE AND SALE AGREEMENT

Real Estate Department
Soo Line Railroad Company
900 Canadian Pacific Plaza
120 South Sixth Street
Minneapolis, Minnesota 55402

Attn: Director Real Estate Sales & Acquisitions U.S.

1. **BUYER AND SELLER:** The undersigned (Buyer) offers to purchase certain Property (as defined in Section 3) from Soo Line Railroad Company, doing business as Canadian Pacific, (Seller).

2. **ACCEPTANCE:** This offer shall be void if not accepted by Seller within ninety (90) days of its date. The accepted offer is sometimes referred to as this "**Agreement.**"

3. **PROPERTY:** The Property consists of the Seller's land in Duluth, St. Louis County, Minnesota legally described as:

Blocks 11, 12, 13, 17, 18, and 19, ONEOTA, together with Lots Five (5), Six (6), Seven (7), Eight (8), Ten (10), Twelve (12), Fourteen (14), and Sixteen (16), Ste. Marie Pier, ONEOTA

depicted on the map labeled Exhibit A that is attached hereto and made a part hereof (the Land) and the improvements thereon (the Improvements) (collectively, the Property).

4. **DEED: RESERVATIONS AND COVENANTS; BILL OF SALE:** The Property will be conveyed at the closing by quit claim deed. Upon written notice from Buyer requesting same, given at least ten (10) days in advance of the closing, Seller will deliver at the closing a quit claim bill of sale for any personal property included in the purchase. The following reservations and covenants will be included in the deed.

In these reservations and covenants, Seller is referred to as Grantor, Buyer is referred to as Grantee, and the Property is referred to as the real property.

As used in this paragraph,

"**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims);

"**Environmental Law**" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and the Minnesota State Water Pollution Control Act, Minn. Stat. 115.01 to 115.09, all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted; and

"**Hazardous Substance**" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any

other chemical, substance or material listed or identified in or regulated by any Environmental Law. By accepting delivery of this Quit Claim Deed, Grantee, for itself, its directors, officers, agents, affiliates, predecessors, successors and assigns, and anyone acting on its behalf or their behalf covenants and agrees not to sue Grantor or its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, grantors or anyone acting on its behalf or their behalf with respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that Grantee had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the Property. The foregoing shall apply to any condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property, regardless of whether the foregoing condition of the Property was caused in whole or in part by the Grantor's actions or inactions.

5. [not applicable]

6. [not applicable]

7. **PURCHASE PRICE:** The purchase price of the Property is One-hundred Thousand and No/100 Dollars (\$100,000.00) net to the Seller.

8. **CLOSING:** Except as otherwise provided in Section 9, this transaction shall close at a mutually agreeable time and place no later than ninety (90) days after Seller's acceptance of this offer.

9. **GOVERNMENTAL APPROVAL:** If Seller is required to obtain governmental approval or exemption in lieu thereof (collectively, Authorization) in order to consummate this transaction, this Agreement shall be contingent upon the granting of Authorization, and Buyer will cooperate with Seller to obtain Authorization. If Authorization is not obtained within one hundred eighty (180) days after Seller's acceptance of this offer (the Contingency Period), this Agreement shall automatically terminate at the end of the Contingency Period. If Authorization is not obtained prior to the expiration of the time period specified in Section 8, the date for closing shall be delayed to a date no later than 15 days after Authorization is obtained; however, under no circumstances shall the closing be delayed to a date later than one hundred eighty (180) days after Seller's acceptance of this offer.

10. **ESCROW:** Should the parties agree to close in escrow, Buyer will pay all fees and charges in connection with the escrow.

11. [not applicable]

12. **ENCUMBRANCES:** The Property will be conveyed subject to facts which would be disclosed by a comprehensive survey, rights and claims of parties in possession, rights of the public, and easements, leases, licenses, and permits. Buyer may object to the marketability of Seller's title on the basis of such matters.

13. **JUDGMENT LIENS:** Any judgment against Seller which may appear of record as a lien against the Property shall be settled and satisfied by Seller within thirty (30) days after it becomes final and unappealable, and Seller shall indemnify Buyer, and Buyer's title insurer, for any loss sustained by either of them as a result of Seller's failure to have any such judgment lien so settled and satisfied. Buyer may object to the marketability of Seller's title on the basis of such matters.

14. [not applicable]

15. **SURVEY**: Buyer may, at its expense, obtain a survey of the land. In that case, the survey shall be prepared by a surveyor registered in the state of Minnesota. If the Land is registered (i.e., Torrens) land, or if a certified survey is required by law, the survey shall be duly certified. The survey shall show:

- (a) and describe the Property to be sold; and
- (b) the location of all known easements and improvements, including, but not limited to, easements for railroad tracks.

Buyer shall deliver the survey to Seller no later than 45 days after Seller's acceptance of this offer. Seller shall have 10 days in which to disapprove the survey by giving notice to Buyer of the matters which render the survey unacceptable. If Seller fails to give such notice, the survey shall be deemed approved. If Seller gives such notice, Buyer shall make a good faith attempt to remedy such matters and shall, within 10 days of Seller's notice, deliver a revised survey to Seller. Seller shall have 10 days in which to disapprove the revised survey by giving Buyer notice of the matters which render it unacceptable. If Seller fails to give such notice, the survey shall be deemed approved. If Seller gives such notice, this Agreement shall thereupon terminate unless Seller, at its option, shall agree in writing to permit Buyer to make additional revisions to the survey.

16. **SUBDIVISION PLATS**: Buyer will be responsible for preparing, at its expense, any survey or plat required by any governmental authority (including any survey or plat of Seller's property contiguous to the Land, where such survey or plat is required in connection with or as a consequence of, Buyer's purchase of the Land). The survey or plat shall not be filed or recorded until Seller has approved it.

17. **RIGHT OF ENTRY**: During the first 45 days after Seller's acceptance of this offer, Buyer (and its employees, agents, and contractors) may enter the Property and, to the extent necessary to effectuate the purposes of this Section, Seller's land in the vicinity of the Property (such land and the Property being referred to, collectively, as the Site), for the purpose of conducting soil tests, environmental tests, and a survey, subject to the following conditions:

- (a) Buyer shall give Seller reasonable advance notice of the date and time of each entry and the nature of the activities to be conducted on the Site at each such date and time.
- (b) Seller may elect to be present during the conduct of such activities and to monitor same. Such monitoring shall not relieve Buyer of any liability under this Section 17.
- (c) Prior to entering the Site, Buyer shall secure the permission of any tenant then in possession of same.
- (d) Upon the completion of its activities on the Site, Buyer shall remove any debris resulting from such activities and shall restore the Site to the condition it was in prior to the commencement of such activities.
- (e) Buyer shall indemnify, hold harmless and defend the Indemnitees (as defined below) from and against all Claims arising out of, resulting from or relating to any loss of (or damage to) any property or business or any injury to (or death of) any person, where such loss, damage, injury, or death actually or allegedly arises (whether directly or indirectly, wholly or in part) from: (a) any action or omission of Buyer (or its employees, agents, or contractors) while on the Site pursuant to this Section 17; or (b) the exercise by Buyer (or its employees, agents, or contractors) of the permission granted by this Section 17; or (c) the release of any Hazardous Substance (as defined in Section 30) resulting (directly or indirectly, wholly or in part) from any action or omission of Buyer (or its employees, agents, or contractors) while on the Site pursuant to this Section 17. Indemnitees means Seller, its subsidiaries, affiliated companies and parent companies, and their directors, officers, employees and agents, including without limitation Soo Line Corporation, Dakota, Minnesota & Eastern Railroad Corporation, Delaware and Hudson Railway Company, Inc., Wyoming Dakota Railroad Properties, Inc., The Milwaukee

Motor Transportation Company, Hiawatha Transfer Company, and Canadian Pacific Railway Company.

- (f) Buyer (and its employees, agents, and contractors) shall comply with all applicable laws while on the Site.
- (g) Buyer will not commence any environmental testing until its work plan for such testing has been approved in writing by Seller, which approval shall not be unreasonably withheld, conditioned or delayed. Buyer will provide Seller with complete copies of the test data and test reports as soon as they are available to Buyer.
- (h) The cost of any test or survey will be borne solely by Buyer.
- (i) Test holes shall be located no closer than 10 feet from the nearest rail of any railroad track located on or adjacent to the Site. Drilling equipment and related equipment shall not be placed closer than 10 feet from the nearest rail of any such track.
- (j) While on the Site, Buyer (and its employees, agents, and contractors) shall comply with Seller's safety rules, including any requirement regarding the use of flagmen. All costs associated with compliance with such rules shall be borne by Buyer. If Seller shall incur any costs in connection therewith, Buyer shall reimburse Seller within 30 days after receipt of Seller's invoice.
- (k) Unless disclosure is required by court order or applicable law, Buyer shall maintain, and shall cause its employees, agents, and contractors to maintain, the confidentiality of all information pertaining to any environmental test performed on the Site.
- (l) If any mechanic's or materialmen's lien, or similar lien, is asserted against the Site, the Property, or any other property of Seller or the Indemnitees as a result of the exercise of the permission granted in this Section 17, Buyer shall immediately satisfy and/or obtain the release of such lien, all at Buyer's expense, and Buyer shall indemnify, hold harmless and defend the Indemnitees from and against all Claims arising out of or connected with such lien.

18. **TITLE MATTERS:** Seller makes no warranty or representation with respect to the marketability or quality of its title and is not under any obligation to furnish abstracts of title, title reports, or title insurance policies in respect of the Property. Buyer shall have 60 days after Seller's acceptance of this offer in which to raise objections to the marketability of Seller's title. If Buyer objects to Seller's title, it must give Seller notice within such 60-day period, specifying the precise nature of the alleged title defects. The notice must be accompanied by evidence of the alleged defects, in the form of a copy of an abstract of title or a title company's title commitment. If Buyer fails to give proper or timely notice, it shall be deemed to have waived its right to object (except that defects which arise subsequent to the 60-day period shall not be deemed waived unless Buyer fails to give Seller notice of same promptly after it learns, or in the exercise of reasonable diligence should have learned, of them); furthermore, even if Buyer gives proper and timely notice, it shall be deemed to have waived its right to object on the basis of then-existing defects not specified in the notice. Seller shall have 60 days or until the closing, whichever is less (the Cure Period), in which it may, if it so chooses, attempt to cure any defect specified in a timely and otherwise proper notice. Seller has no obligation or responsibility whatsoever to cure (or attempt to cure) any title defect. If Seller shall undertake to cure or attempt to cure any title defect, it may withdraw from such undertaking at any time without penalty; such undertaking shall not create, nor shall it under any circumstance be construed to create, any obligation whatsoever on the part of Seller to cure any such defect. If Seller is unable or unwilling to cure any specified defect, Buyer may terminate this Agreement by giving Seller notice of termination at any time prior to the actual delivery and acceptance of the deed, which notice shall state that this Agreement is being terminated by reason of Seller's failure to cure title defects. If Buyer gives proper and timely notice of termination, Seller shall reimburse Buyer for the actual amount paid by Buyer for the abstract of title or title commitment, provided that the abstract or

commitment is delivered and assigned to Seller. By accepting delivery of the quit claim deed, Buyer shall be deemed to waive any and all uncured title defects.

19. **REAL ESTATE TAXES:** The total real estate tax bill payable in the year in which the date of closing occurs will be prorated on a per diem basis as of the closing, using the most recent tax bill; such proration shall be final and binding on Seller and Buyer and there shall be no post-closing adjustment. Taxes payable in any year after closing shall be the responsibility of the Buyer even if the taxes are for a prior year. There will be no proration to the extent the payment of such taxes has been assumed by a lessee under a lease that will be assigned to Buyer or merged into the purchase.

20. **TRANSFER TAXES AND FEES:** Buyer will purchase, affix, and cancel any and all documentary stamps in the amount prescribed by statute, and will pay any and all transfer taxes, excise taxes, sales taxes, use taxes, and fees incidental to the transfer of the Property or the recordation or filing of the deed.

21. **SPECIAL ASSESSMENTS:** Buyer will assume responsibility for paying any special assessment (or installment thereof) where the due date for payment is on or after the closing date, irrespective of the date of the improvement.

22. **NOTICES:** Notices permitted or required by this Agreement must be in writing and shall be deemed given when delivered in legible form electronically, or in hard form to the business address of the party to whom addressed. If delivered at the closing, a notice shall be deemed given when hand-delivered to the party's representative at the closing. The business addresses of the parties are as follows:

Seller --
mail & delivery
address:

David S. Drach
Real Estate Department
Canadian Pacific
900 Canadian Pacific Plaza
120 South Sixth Street
Minneapolis, Minnesota 55402

david_drach@cpr.ca

telecopier:

(612) 904-6147

Buyer--
mail & delivery
address:

Attn: Henry Martinsen
Property Services Supervisor
Property and Facilities Management
City of Duluth
1532 W. Michigan Street
Duluth, Minnesota 55806

hmartinsen@DuluthMN.gov

Notices not given in the manner or within the time limits set forth in this Agreement are of no effect and may be disregarded by the party to whom they are directed.

23. **REAL ESTATE BROKERS:** Seller represents that it has not retained any real estate broker or agent in connection with this transaction. If any real estate broker or agent can establish a valid claim for commission or other compensation in connection with this transaction, such commission or other compensation shall be paid by Buyer.

24. **LEASES:** Except as may be reserved unto Seller pursuant to Section 4, at and as of the closing, Seller will assign to Buyer Seller's rights, and Buyer will assume Seller's obligations, under any lease which: (a) was granted by Seller (or its predecessors in interest) as lessor, (b) is known to Seller and disclosed to Buyer in writing, and (c) includes or burdens any portion of the Property; provided, that if Buyer is the lessee under such a lease, that lease shall merge into the purchase as of the closing. And further provided, that if a lease includes property other than the Property, the assignment and assumption (or merger) shall be limited to the leasehold interest in the Property. The assignment and assumption contemplated by this Section shall be limited to rights and obligations accruing as of and after the closing. Prepaid rentals shall be prorated on a per diem basis at and as of the closing. In the event of a partial assignment or merger, rentals in respect of the period from and after the closing shall be adjusted between Seller and Buyer on the basis of the square footage of the land area of their respective interests in the leased premises; provided, however, that where the rental was established on a basis other than square footage, the adjustment shall be determined using such other basis. Seller will provide a copy of each such lease to Buyer within 30 days after Seller accepts this offer. At the closing, the parties will execute an assignment and assumption agreement incorporating the terms of this Section and identifying such lease or leases.

25. **EASEMENTS, LICENSES, AND PERMITS:** Except as may be reserved unto Seller pursuant to Section 4, at and as of the closing, Seller will assign to Buyer Seller's rights, and Buyer will assume Seller's obligations, under existing easements, licenses, and permits (collectively, instruments) which: (a) were granted by Seller (or its predecessors in interest), (b) are known to Seller and disclosed to Buyer in writing, and (c) include or burden any portion of the Property. There shall be no proration of prepaid rentals, prepaid fees, or other prepaid charges in respect of any such instrument. If such an instrument pertains in part to property other than the Property, the assignment and assumption shall be limited to the interest the instrument creates in the Property. In the event of such partial assignment, the rentals, fees, and other charges which come due after the closing shall be allocated between Seller and Buyer on the basis of the square footage of the land area of their respective interests in the property affected by the instrument; provided, however, that where the rental, fee, or other charge was established on a basis other than square footage, the adjustment shall be determined using such other basis. The assignment and assumption contemplated by this Section shall be limited to rights and obligations accruing as of and after the closing. Seller will provide a copy of each such instrument to Buyer within 30 days after Seller accepts this offer. At the closing, the parties will execute an assignment and assumption agreement incorporating the terms of this Section and identifying such instrument or instruments.

26. **AS IS; ALL FAULTS; NO REPRESENTATION BY SELLER:** Buyer agrees to accept the condition of the Property, including specifically without limitation, the environmental and geological condition of the Property, in an "AS-IS" and with "ALL FAULTS" condition. Buyer's acceptance of title to the Property shall represent Buyer's acknowledgment and agreement that:

- (i) Seller has not made any written or oral representation or warranty of any kind with respect to the Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose);
- (ii) Buyer has not relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Property;
- (iii) Buyer has had an adequate opportunity to inspect the condition of the Property, including without limitation any environmental testing, and to inspect documents applicable thereto, and Buyer is relying solely on such inspection and testing; and
- (iv) the condition of the Property is fit for Buyer's intended use. Buyer agrees to accept all risk of Claims (including without limitation all Claims under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) whether past, present or future, existing or contingent, known or unknown, arising out of, resulting from or relating to the condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property.

27. [not applicable]

28. [not applicable]

29. **ENVIRONMENTAL: PARTIES' RIGHT TO TERMINATE:** Either party may terminate this Agreement at any time prior to the delivery of the deed if it determines, in the exercise of its discretion, that circumstances related to Hazardous Substances render the sale inadvisable. The closing of the sale, if it occurs, is not, and shall not be construed as, an actual or implied representation or warranty by Seller as to the condition of the Property or the absence of Hazardous Substances.

30. **DEFINITIONS:**

"**Claim**" or "**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

"**Environmental Law**" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. § 1251 et seq. the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and the Minnesota State Water Pollution Control Act, Minn. Stat. 115.01 to 115.09 all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.

"**Hazardous Substance**" or "**Hazardous Substances**" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

31. [Deleted]

32. **TIME OF THE ESSENCE:** Time is of the essence of this Agreement.

33. **LIQUIDATED DAMAGES AND SPECIFIC PERFORMANCE:** If Buyer fails to perform any of the terms or conditions of this Agreement within the specified time limits, Seller may, at Seller's option, declare this Agreement terminated or have this Agreement specifically enforced. Likewise, if Seller fails to perform any of the terms or conditions of this Agreement within the specified time limits, Buyer may declare this Agreement terminated or Buyer may have this Agreement specifically enforced. The rights and remedies granted to the parties in this Section are intended to be cumulative to all other rights and remedies available to the parties (whether under this Agreement, at law, in equity or otherwise); accordingly, the exercise by either party of any such right or remedy shall not preclude it from exercising any other such right or remedy.

34. **COMPUTATION OF TIME:** For the purpose of computing the time periods specified in this Agreement, Saturdays, Sundays and legal holidays shall be counted. However, where the last day for performing any act falls on a Saturday, Sunday, or legal holiday, that act may be performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

35. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with respect to the sale and purchase of the Property. Buyer has not relied on any statements or representations by Seller except as are set forth in this Agreement.

36. **NON-ASSIGNABILITY:** Buyer shall not in any manner assign or transfer its rights under this Agreement, voluntarily or involuntarily, by operation of law or otherwise, without the advance written consent of Seller. Any attempted or purported assignment or transfer by Buyer without such consent shall be void. Subject thereto, this Agreement shall inure to the benefit of, and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties.

37. **SURVIVAL OF TERMS AND CONDITIONS:** The terms and conditions of this Agreement shall survive and be in full force and effect after the delivery of the deed, and shall not be deemed to have merged therein.

38. **SURVIVAL OF INDEMNIFICATION, LITIGATION EXPENSE AND CONFIDENTIALITY PROVISIONS:** The indemnification, litigation expense, and confidentiality provisions of this Agreement shall survive its termination.

39. **APPLICABLE LAW:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota.

40. **SEVERABILITY:** Each provision, paragraph, section, sentence, clause, phrase, and word of this Agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, section, sentence, clause, phrase or word of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement.

41. **RAIL SERVICE; NO OBLIGATION:** Nothing in this Agreement is intended to create, nor shall it be construed to create, any express or implied obligation on the part of Seller to provide (or continue to provide) rail service to Buyer and/or the Property. Nothing in this Agreement is intended to prevent or limit, nor shall it be construed to prevent or limit, the discontinuance, by Seller, of rail service over any railroad line or trackage by which rail service is or may be provided to Buyer and/or the Property.

42. **WELL AND SEWAGE TREATMENT SYSTEM DISCLOSURES:** Seller certifies that to the best of Seller's knowledge there are no wells on the Property. Seller states that to the best of Seller's knowledge there is no individual sewage treatment system, as defined in Chapter 115.55 of the Minnesota Statutes, on or serving the Property.

43. [not applicable]

44. **HEADINGS:** The Section headings used in this Agreement are used solely for the purpose of convenience. They are not intended to, and do not, modify or limit the wording of the Sections to which they are appended, and they shall not be used or construed as guides to the interpretation of said Sections.

45. **OFFER DATE:** This offer is dated _____, 20____.

OFFER:

(Buyer's name as it should appear in deed)

By _____

Its _____

Type of company, e.g., corporation, partnership:

State of incorporation or formation:

ACCEPTANCE:

SOO LINE RAILROAD COMPANY

a Minnesota corporation doing business as
Canadian Pacific

By _____
Director Real Estate Sales & Acquisitions U.S.

Date: _____

Not Assignable Without Consent

