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June 27, 2012

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: STB Docket No. FD 35558, Utah Southern Railroad Company, LLC — Change in Operators Exemption — Iron Bull Railroad Company, LLC

Dear Ms. Brown:

Enclosed on behalf of PIC Railroad, Inc. d/b/a Comstock Mountain Lion Railroad are an original and 11 copies of a "Petition To Reject Or Revoke" filed in connection with the above-captioned class exemption proceeding. Also enclosed is a check for the \$250.00 filing fee for a petition to revoke. Copies of this petition are being served today on all parties of record.

Please file stamp the 11th copy of this petition and return it to the person making this filing for return to me. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,


William A. Mullins

Enclosures

cc: All Parties of Record
Louise Anne Rinn (Union Pacific Railroad Company)

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. FD 35558

**UTAH SOUTHERN RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
IRON BULL RAILROAD COMPANY, LLC**

PETITION TO REJECT OR REVOKE

ENTERED
Office of Proceedings
JUN 27 2012
Part of
Public Record

FEE RECEIVED
JUN 27 2012
SURFACE
TRANSPORTATION BOARD

FILED
JUN 27 2012
SURFACE
TRANSPORTATION BOARD

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June 27, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. FD 35558

**UTAH SOUTHERN RAILROAD COMPANY, LLC
– CHANGE IN OPERATORS EXEMPTION –
IRON BULL RAILROAD COMPANY, LLC**

PETITION TO REJECT OR REVOKE

SUMMARY OF ARGUMENT

PIC Railroad, Inc. d/b/a Comstock Mountain Lion Railroad (“CMRR”) hereby petitions the Surface Transportation Board (“STB” or “Board”) to reject the notice of exemption filed by Utah Southern Railroad Company, LLC (“USRC”) in STB Docket No. FD 35558, or, in the alternative, to revoke USRC’s exemption obtained pursuant to that notice. As set forth in this petition and confirmed in Exhibit H, which is a copy of a 6/20/12 consent decree order issued by Judge Clark Waddoups of the U.S. District Court of Utah, Central Division (“Consent Decree”), the notice of exemption that USRC filed in this proceeding was materially false and misleading, and is therefore void ab initio, because:

- (1) USRC misled the Board concerning the corporate status of USRC, and the relationship between USRC and Iron Bull Railroad Company, LLC (“IBRC”), falsely stating in a related Board proceeding that IBRC was to be renamed as USRC (when, in fact, IBRC and USRC were always separate companies), and failing to disclose that IBRC no longer existed at the time IBRC purportedly transferred operating rights to USRC;
- (2) USRC misleadingly implied in its filing to the Board that IBRC possessed the legal (contractual) right to convey common carrier “operating authority” to USRC; and

- (3) USRC falsely stated that it had an agreement with CMRR to operate over the subject rail line.

When an aspiring short line railroad (such as USRC) controlled by an experienced railroad operator (such as Mr. Root)¹ knowingly and purposely misleads the Board and a shipper in an effort to position itself as a common carrier with the rights and obligations attendant to such legal status, it is up to the Board to render the would-be short line's operating authority invalid from the outset (or, to use the common agency expression, void ab initio).

This proceeding began in 2006 when Union Pacific Railroad ("UP") reached an agreement in principle to lease to CMRR² a 14.6-mile line of railroad known as the Comstock Subdivision, which extends between milepost 0.1 at or near Iron Springs and milepost 14.7 at or near Iron Mountain in Iron County, Utah.³ As part of that agreement, UP allowed CMRR to enter into a contract with IBRC to have IBRC operate the line and serve the Comstock Subdivision's lone shipper, CML. Shortly thereafter, CMRR and IBRC jointly filed and obtained notices of exemption for CMRR to lease and operate the Comstock Subdivision, and for

¹ USRC's owner, Mr. Root, is no stranger to the railroad industry or to the Board's processes. Mr. Root claims to have over 25 years of railroad experience. He had, since approximately 1998, controlled the Albany & Eastern Railroad Company ("AERC") – a short line railroad operating in Oregon. Although not entirely clear, CMRR's investigation suggests that Mr. Root may have divested himself of a controlling stake in AERC in or around 2007.

² CML Metals Corporation ("CML") is a rail-dependent iron ore producer heavily involved in overseas exports of iron ore and is the sole shipper on the Comstock Subdivision. CML created CMRR, its only railroad subsidiary, to lease the Comstock Subdivision from UP. In the interest of accuracy, CML was not known as CML 2006. CML began business as Palladon Iron Corporation and was later re-named as CML. For the purposes of this proceeding, and with the aforementioned CML-Palladon distinction having been noted, CML and Palladon will hereinafter be referred to as CML.

³ PIC Railroad, Inc., a wholly owned subsidiary of CML, leased the Comstock Subdivision from UP in 2006. Consent Decree at ¶¶4-5.

IBRC to operate that rail line upon CMRR's assumption of a leasehold interest.⁴ In its notice of exemption filing, CMRR explained that it would enter into an agreement pursuant to which IBRC would operate the Comstock Subdivision, and that CMRR would operate the line if IBRC were to cease operations.⁵

Unbeknownst to CML and CMRR at the time, however, Mr. Root also shortly thereafter created another company, USRC, a company separate and distinct from IBRC. When Mr. Root wanted to transfer the underlying operating and service arrangements on the Comstock Subdivision from IBRC to USRC, rather than going through the standard consent and assignment processes, he simply claimed that IBRC had "changed its name" to USRC. Based upon this "change of name assertion," Mr. Root undertook a series of transactions whereby IBRC was replaced by USRC through a series of half-truths and false statements made to CML, CMRR, and even this Board, statements that we now know were untrue.

During these transactions, Mr. Root, on his own and through counsel, has at times characterized IBRC and USRC as the same corporate entity, but at other times, when convenient to do so, acknowledged that IBRC and USRC were separate and distinct corporate entities.

⁴ PIC Railroad LLC – Lease and Operation Exemption – Union Pacific Railroad Company, STB Docket No. FD 34896 (STB served September 14, 2006); Iron Bull Railroad Company, LLC – Operation Exemption – PIC Railroad LLC, STB Docket No. 34897 (September 14, 2006). Consent Decree at ¶6. Regulatory counsel for IBRC was at that time also serving as counsel for CMRR. Originally, CMRR was identified under the wrong corporate name – "PIC Railroad LLC." CMRR later brought to the Board's attention that CMRR's legal name is and was PIC Railroad, Inc. See supplemental filing in STB Docket No. FD 34897 on behalf of PIC Railroad, Inc., dated and filed April 21, 2009. Mr. Root, an individual who already directly controlled an existing Class III carrier – AERC – contemporaneously filed a notice of exemption to control AERC and to assume indirect control of IBRC through AERC when IBRC became a rail carrier. See Michael R. Root and Albany & Eastern Railroad Company – Continuance in Control Exemption – Iron Bull Railroad Company LLC, STB Docket No. FD 34898 (STB served Sept. 14, 2006).

⁵ CMRR's STB Docket No. FD 34896 notice of exemption filed on August 15, 2006 at 2, n.1.

When he eventually would get caught in a tangle of contradictory statements, he would claim that such actions were merely careless mistakes or mere ignorance of complex corporate rules or Board procedures. Yet, Mr. Root's past conduct and short line experience belies his professed innocence. He understands, and in the past has followed, STB procedures. Mr. Root's feigned unfamiliarity with the Board's regulatory processes is hollow and self-serving. It is employed as a construct to gloss over the simple fact that Mr. Root had previously misled the Board (and CMRR and CML for that matter) in 2008 and again in December 2011 when he or his counsel stated that USRC was merely a renamed IBRC.

Mr. Root's tangled web of fancy may never have come to light if he had done what he said he could do, and that is to provide safe and timely service to CML for the delivery of iron ore to UP who in turn took it to the Port of Richmond, CA for export.⁶ But when volumes began to increase and service timeliness became necessary to meet international shipping schedules, Mr. Root's railroad, USRC, was unwilling or unable to meet CML's service needs. Instead, Mr. Root attempted to extort extra contractual concessions from CML in exchange for meeting the very service levels that USRC's was contractually obligated to provide. Thus began a series of court and STB actions by both parties whereby CML sought nothing more than to get reliable rail service. Eventually, CML had to undertake legal action to obtain service from its own subsidiary railroad, CMRR, as the replacement for USRC. It was during these court and STB actions that it came to light that IBRC and USRC were not the same company, that Mr. Root told one story one place and another story at another place, and the web of fancy began to unravel.

⁶ The resurgence of iron ore exports via rail is a U.S. success story and is indicative of the types of activities that can occur when shippers, Class I's, and shortlines work together. Indeed, CMRR/CML has been told that this very move was apparently mentioned by UP in its testimony in the Ex Parte No. 705 proceeding.

Now that the truth has come to light and CML is being provided more than adequate service by CMRR, Mr. Root has taken his marbles and gone home by selling his locomotives and is no longer providing rail service. Yet, rather than voluntarily filing a discontinuance to make it clear that USRC's common carrier service is no longer wanted or to be provided, prior to the Consent Decree, Mr. Root's counsel suggested that CML and CMRR should file an adverse discontinuance. But as consented to and affirmed by USRC and Mr. Root in the Consent Decree, such a step is unnecessary as USRC never had valid authority in the first instance, it having been obtained via false statements and pretenses. No public interest would be served if the Board were to excuse or overlook the Consent Decree and the facts of this case and require CML to undertake an expensive and time consuming adverse discontinuance proceeding rather than simply revoking USRC's invalidly obtained operating authority. As such, it is time to put the final nail in the coffin and reject and/or revoke USRC's purported common carrier authority.

FACTUAL BACKGROUND

The factual background behind this case is rather complex, involving numerous parties and events arising as far back as 2006. In the discussion that follows, CMRR attempts to offer a thorough discussion of the facts and circumstances that put CMRR's petition to reject or revoke into proper perspective. This factual background is confirmed in the Consent Decree and the various other exhibits attached to this petition. Still, this background can be complicated, and, for the sake of easier reference, CMRR has attached hereto as Exhibit A a chronology of events.

As noted, this proceeding has its genesis in the 2006 transaction whereby UP reached an agreement in principle to lease to CMRR the Comstock Subdivision and as part of that agreement, UP allowed CMRR to enter into a contract with IBRC to have IBRC operate the line. Shortly thereafter, CMRR and IBRC jointly filed and obtained notices of exemption for CMRR

to lease and operate the Comstock Subdivision, and for IBRC to operate that rail line upon CMRR's assumption of a leasehold interest.

The Comstock Subdivision is located in the so-called Iron Springs district of southwestern Utah. The district holds magnetite-rich deposits, and historically has been a center of iron ore mining activity. The underlying objective of the anticipated rail line transactions among UP, CMRR, and IBRC was to facilitate the resumption of iron mining activity at the then-inactive Comstock/Mountain Lion open pit mine located on the Comstock Subdivision. Efforts to restore the mine to operation took longer than anticipated, and no rail service was needed on the Comstock Subdivision until well after 2006. As a result, CMRR and UP did not finalize terms for CMRR's lease of the Comstock Subdivision until July 31, 2008.

In the 2008 UP-CMRR lease agreement, UP retained the right to approve of any rail carrier that CMRR designated to provide service on the Comstock Subdivision. Because UP approved of IBRC as Comstock Subdivision operator, CMRR executed an operating agreement with IBRC on July 31, 2008 (the "2008 Operating Agreement"). That agreement, negotiated between IBRC and previous CMRR management, forbade IBRC from assigning or conveying its operating rights and/or operating authority to any third party, including affiliated companies.⁷

For whatever reason, IBRC sought to transfer operations to USRC, but rather than seek to obtain both contractual and STB authority for the transfer, Mr. Root informed CML and CMRR that IBRC and USRC were merely the same company renamed and sought to substitute USRC for IBRC in the various agreements. Likewise, in a letter filing dated September 30, 2008, counsel for IBRC also advised the Board that "the name of Iron Bull Railroad Company, LLC is

⁷ Section 14.13 of the 2008 Operating Agreement specifically prohibited IBRC from assigning its rights, stating, among other things that, "Assignment of this contract shall constitute a default." The 2008 Operating Agreement is attached as Exhibit B.

being changed to Utah Southern Railroad Company, LLC.”⁸ (That statement, it was much later discovered, was untrue – IBRC and USRC were, and always have been, separate companies under Mr. Root’s control.) Based upon the notion that IBRC’s name had been changed to USRC, the parties amended the 2008 Operating Agreement on November 17, 2008.⁹ The addendum to the 2008 Operating Agreement (the “2008 Addendum”) specifically stated that “effective 10/1/08, [IBRC]’s name has been changed to [USRC], but the ownership of USRC is the same as the ownership of [IBRC].”¹⁰ Based upon this assertion, all IBRC references in the 2008 Operating Agreement were changed to USRC. The 2008 Operating Agreement’s non-assignment provisions remained.¹¹

In January of 2011, well before the initiation of this docket and based upon USRC’s continuing mischaracterization of itself as a renamed IBRC, CML negotiated a “Rail Track Operating Agreement” (“2011 Operating Agreement”) with USRC.¹² The 2011 Operating

⁸ See USRC Letter filing of September 30, 2008.

⁹ IBRC never provided rail common carrier service over the Comstock Subdivision. Rather, USRC – claiming to be a re-named IBRC – assumed the operation of the line when bulk iron ore production commenced at the Comstock/Mountain Lion mine in early 2011. This occurred at the same time that new management was put in place at CML, which management assumed control of the Comstock/Mountain Lion mine and CMRR.

¹⁰ See “Addendum to Rail Track Operating Agreement” (Addendum to 2008 Operating Agreement), attached as Exhibit C.

¹¹ The effect of Mr. Root’s maneuverings was to effectuate an assignment of IBRC’s contractual rights and IBRC’s common carrier status to IBRC’s sister company, USRC, under false pretenses and without the consent of CML, CMRR, or UP. CMRR does not know why Mr. Root created USRC, or why he attempted, without explanation or CMRR’s consent, to have USRC assume IBRC’s contract rights.

¹² Despite the agreement’s title, CML did not intend for the 2011 Operating Agreement to effectuate a change of operators from IBRC to USRC, nor does the agreement so state. Indeed, as the leasehold agreement for lease and operation of the line was between UP and CMRR, CML had no authority to grant any type of operating rights or common carrier rights over the line. As such, the 2011 Operating Agreement is really in the nature of a service contract between a shipper and its rail service provider. CML, like its subsidiary CMRR, understood that IBRC was

Agreement – which stated incorrectly, that *CML* possesses leasehold rights over the Comstock Subdivision from UP (such rights were and have remained CMRR's)¹³ – was intended primarily to update the terms and conditions under which IBRC (presumably renamed as USRC) would provide rail service to CML. The 2011 Operating Agreement also contained nonassignment provisions identical to those in the 2008 Operating Agreement. See 2011 Operating Agreement at § 14.13 (attached hereto as Exhibit E).

Misled into believing that USRC was a renamed IBRC, CML and CMRR did not object when USRC commenced operations over the Comstock Subdivision in early 2011. By the end of 2011, however, USRC's service so deteriorated that it was entirely unacceptable to CML, and was, in fact, not in keeping with the rail service commitments in the 2011 Operating Agreement. USRC's service failures and bad faith conduct are thoroughly detailed in the "Declaration of Dale Gilbert in Support of Memorandum in Opposition to Plaintiff's Request for Temporary Restraining Order and Preliminary Injunction" ("Gilbert Declaration" – appended hereto as Exhibit F) which CML submitted on December 19, 2011, in connection with the then pending federal court litigation, which eventually led to the attached Consent Decree. As Mr. Gilbert explained:

- In negotiating the 2011 Operating Agreement, CML advised Mr. Root, USRC's president, that CML would increase production and shipping volumes. However, as shipping requirements increased, USRC performance significantly declined, particularly in September 2011, when USRC reduced the number of locomotives on the Comstock Subdivision from three to two. This change came after statements from Mr. Root asking for a long-term contract with CML. When an agreement to extend the contract was not

USRC renamed when it negotiated the 2011 Operating Agreement. See also Consent Decree at ¶3.

¹³ CML entered into an "Assignment and Assumption Agreement" with CMRR dated November of 2011 ("November 2011 Assignment Agreement"), pursuant to which CML assigned its "rights and obligations" under the 2011 Operating Agreement to CMRR.

forthcoming, Mr. Root warned CML Metals that USRC would reduce its operating capacity to two locomotives. Exhibit F, ¶ 27.

- When USRC went from three locomotives down to two, it was unable to keep up with CML's shipping requirements in a timely fashion. The third locomotive is the key locomotive to achieve the production volumes required by CML. Without a third locomotive, there is significant downtime while the mine operator's loading crews wait for the other two locomotives to return. For example, USRC's unit train cycle time on the Comstock Subdivision had gone from 10 hours to 20 hours or more, with corresponding drops in production and income at the CML mine. Id. ¶ 28.
- CML met with USRC on several occasions in an effort to resolve shipping delays due to inadequate USRC service, but USRC was uncooperative, and repeatedly threatened not to haul CML shipments in the absence of an extension of the contract. Id. ¶ 30.
- In October of 2011, Mr. Gilbert met with UP for an annual review of CML's shipping rates with UP. UP advised that it would need to increase rates by 6% to offset operational inefficiencies caused by USRC, and inefficiencies at the Port of Richmond, CA. CML has been able to work with the Port of Richmond to increase efficiencies there, but Mr. Gilbert reports that similar efforts with USRC were not successful. Id. ¶ 32.
- In October of 2011, CML proposed directly leasing an additional locomotive and allowing USRC to use that locomotive with direct cost reimbursements. CML also proposed having CML take over USRC's operations, leasing additional locomotives and hiring Mr. Root as a consultant to assist with the operation, or having CML buy out USRC's contract. Mr. Root rejected these proposals. Id. ¶ 33.
- As matters between CML and USRC worsened in October of last year, Mr. Root informed CML that USRC would no longer inspect the Comstock Subdivision track (as USRC was required to do under the 2011 Operating Agreement), and that USRC would not move any trains or cars until a certified inspector had inspected the track. Id. ¶ 34.
- In view of these developments, CML sent USRC a notice of default on October 13, 2011. Id. ¶ 35.
- On or around October 21, 2011, after CML sent USRC notice of USRC's default under the 2011 Operating Agreement, USRC failed to notify Balfour Beatty (a company hired by CML to perform over \$1 million in Comstock Subdivision track refurbishment) of an approaching USRC train movement, which almost resulted in an accident. Id. ¶ 37.

It was in the midst of all of this falling-out that USRC filed the USRC Notice on October 21, 2011 ("USRC Notice") seeking allegedly after-the-fact STB authority for IBRC to "transfer" its common carrier status to USRC. It was this filing where USRC publicly acknowledged for

the first time that it was a separate and distinct corporation from IBRC. USRC also made another surprising statement. It stated that it had “acquired [past tense] IBRC’s operating authority” (an untrue statement), and that the Comstock Subdivision “is operated [present tense] by USRC pursuant to an operating agreement with PIC [CMRR],”¹⁴ when no CMRR-USRC operating agreement existed.

Through this filing, CML and CMRR – (1) received confirmation that IBRC and USRC were not the same, (2) learned that Mr. Root had misled them in securing the Addendum to the 2008 Operating Agreement, (3) discovered that USRC lacked legitimate regulatory or contractual authority to provide rail service over the Comstock Subdivision, and (4) determined that Mr. Root could be violating federal law by controlling both AERC and USRC without appropriate regulatory authority, assuming that Mr. Root still controlled AERC.¹⁵

On December 15, 2011, CML and CMRR terminated the 2011 Operating Agreement. CML then sought rail service from its subsidiary rail carrier, CMRR, whereupon CMRR began to provide exclusive and ongoing rail service to CML over the Comstock Subdivision. Once CML began using CMRR exclusively, USRC’s service and operations became superfluous. At first, USRC attempted to interfere with CMRR’s provision of rail service as follows:

- On December 15, 2011, USRC employees parked two locomotives at the Iron Springs interchange with UP, blocking the CMRR interchange with UP. These USRC locomotives were not moved, and the blockage was not eliminated, until the local sheriff’s department became involved. CML also believes that USRC has made false

¹⁴ Making matters more confusing, it is unclear whether or not USRC is referring in the quoted passage to the 2008 Operating Agreement between IBRC and CMRR (USRC claims that IBRC *transferred* its rights to USRC) or to the 2011 Operating Agreement between USRC and CML.

¹⁵ According to a filing made with the State of Utah Department of Commerce, Division of Corporations and Commercial Code, IBRC’s representative (Mr. Root) reported that IBRC was dissolved in December of 2009. At that point, IBRC was “no longer in business.” See IBRC Articles of Dissolution filing, attached hereto as Exhibit D; Consent Decree ¶ 9.

reports to UP alleging that CML or CMRR has interfered with UP operations and tracks at the Iron Springs interchange. Exhibit F, ¶ 40.

- On December 17, 2011, CML discovered that certain electronic Bills of Lading from UP appeared to have been tampered with and changed so that they were erroneous. CML suspected that Mr. Root and/or USRC may have changed the electronic bills, and CML shared its suspicions with UP, which removed Mr. Root's and USRC's access to UP's billing system. The billing error delayed the handling of train sets on their way to CML for loading. Id. ¶ 43.

The rapid and inexcusable deterioration in service, coupled with the impact that such service deterioration had on CML is the reason why CMRR advised the Board via letter filing on December 16, 2011 that CMRR had assumed operation on the Comstock Subdivision (and had taken all necessary steps to do so). See also Consent Decree ¶15. CMRR's letter filing also informed the Board that, due to persistent, grossly inadequate USRC service, USRC was in breach of its duties under its rail services contract, which had been terminated for cause.

In December 2011, USRC filed suit against CML in the Fifth Judicial District Court in and for Iron County, State of Utah, raising claims under the 2011 Operating Agreement and seeking to enjoin CML from using CMRR rail service. The Utah state court granted USRC an ex parte restraining order against CML precluding CML from using CMRR as a rail carrier, and requiring CML to use USRC as its exclusive rail carrier. This seriously disrupted CML's iron ore production and shipping. CML immediately removed to the United States District Court for the District of Utah, Central Division (Case 2:11-cv-01176-CW), which promptly vacated the state court injunction and allowed for CMRR to provide rail service in lieu of USRC.¹⁶ This federal court proceeding has now been decided by Consent Decree.

¹⁶ A copy of the federal court order terminating the state court injunction is attached hereto as Exhibit G.

USRC then filed a letter with the Board on December 28, 2011. In that letter, USRC – quite ironically and totally without supporting evidence – tried to depict CMRR as a bad actor that has “barred” USRC from providing service over the line.¹⁷ In addition to threatening CMRR, USRC’s letter claims that if CML no longer wanted or needed USRC’s services on the Comstock Subdivision, CML has only one option: to seek Board authority under the costly and time-consuming adverse discontinuance of service provisions under 49 U.S.C. § 10903 and the corresponding regulations at 49 C.F.R. § 1152.1 et seq.¹⁸ USRC’s letter filing presumed, of course, that USRC had valid exemption authority from the Board in the first instance, and that this authority must be terminated via the Board’s discontinuance procedures rather than by the revocation/rejection process. But as this petition sets forth, USRC never had valid contractual or STB operating authority in the first place, and even if it did, USRC’s authority was obtained through misleading statements and should be revoked or rejected, especially given that USRC no longer provides any rail service.

Perhaps the most astonishing passage in USRC’s December 28 letter filing is the following: “[IBRC], *now known as USRC*, has not ceased its operations” (emphasis added).¹⁹

¹⁷ CML is the Comstock Subdivision’s only shipper, and CML relies exclusively on CMRR rail service, so the allegation that CMRR has “barred” USRC from providing service is nonsense. USRC may for the moment have the color of regulatory operating authority, but it may not engage in conduct intended to impede CMRR’s lawful common carrier operations. Literally put, USRC has no business conducting “operations” on a line where its common carrier services have not been requested, and where such “operations” serve only to impede CMRR’s lawful provision of common carrier operations. In any event, USRC is no longer present on the line.

¹⁸ Interestingly enough, USRC’s own counsel has criticized the Board’s adverse abandonment and discontinuance process as costly and cumbersome, recommending that the third-party abandonment and discontinuance of service procedures and fees, respectively, be streamlined and reduced. See Fritz R. Kahn, Discontinue Adverse Abandonments, *Journal of Transportation Law Logistics and Policy*, Vol. 78, No. 1 (2011) at 57.

¹⁹ USRC December 28 Letter Filing at 1.

This again changes the story and once again seeks to cast USRC as the same corporate entity as IBRC and even goes so far as to claim that IBRC has not ceased its operations. Yet, as previously noted, just two months earlier, USRC had made it very clear in the USRC Notice that IBRC and USRC were not one and the same – that each was a separate and distinct corporate entity under Mr. Root’s control. Nor did the letter disclose that IBRC was dissolved in 2009 as is reflected in Utah state corporate records.

On January 6, 2012, CMRR responded to USRC’s December 28 Letter Filing, explaining that there was absolutely no substance to USRC’s claim that CMRR is “in violation of 49 U.S.C. § 10903 and 49 C.F.R. § 1152.1, et seq.,” and that no basis therefore existed to support USRC’s demand for the agency to refer the matter to the “Attorney General” to institute some sort of court action against CMRR.²⁰ CMRR believes that USRC filed the letter as a scare tactic under which USRC hoped to frighten CMRR and CML into believing that CML’s actions were somehow contrary to federal law and STB regulations, which was not true. Indeed, CMRR is the only lawful entity authorized to provide common carrier service on the line.

After CMRR submitted its Reply Letter, the parties to the litigation in federal district court in Utah (CML and USRC) discussed settlement arrangements. These efforts resulted in the attached Consent Decree being entered against USRC. Because CML, as the sole shipper on the line, does not want or need USRC’s rail service (it has been relying on the properly-licensed service of CMRR exclusively), USRC has long since vacated the rail lines it sought to operate,

²⁰ CMRR indicated that it would “shortly file a petition to reject or revoke USRC’s operating exemption,” explaining that, “at that time, the Board will have a full opportunity to review the complete record in the context of that proceeding based upon some of the facts presented above (and others to be presented later), and the Board can take any appropriate action . . .” (CMRR Reply Letter at 4). Unfortunately, the then pending federal litigation and subsequent settlement discussions prevented CMRR from “shortly” filing what is now this petition.

and the formality and cost of a drawn out adverse discontinuance process in unnecessary given the Consent Decree and the unique circumstances of this case, the Board should grant the subject petition to reject and/or revoke. Doing so will remove any uncertainty concerning USRC's legal status, and it will do so in an orderly manner that avoids subjecting CML and CMRR to regulatory insult over its existing injury.

ARGUMENT

Notices of exemption issued by the Board pursuant to 49 C.F.R. § 1150.31, et seq., must state that, “[i]f the [verified] notice contains false or misleading information, the exemption is void ab initio.” This statement was included in the FD 35558 notice of exemption. USRC has made several material assertions on the record that are untrue, misleading, and/or contradicted by other, later-offered USRC statements. Because the USRC Notice contains false and misleading statements, that notice must be deemed null and void from the outset.

Examples of the false and misleading statements contained within USRC's “change of operators” notice filing are as follows:

- USRC acquired IBRC's “operating authority” as of or before September 30, 2008, when USRC had not done so, could not have done so, and had no STB authority to so;
- USRC entered into an “Operating Agreement” with CMRR when it had not. The 2008 Operating Agreement was between CMRR and IBRC, and the subsequent 2011 Operating Agreement was between CML and USRC, although CML has since assigned its rights and interests to CMRR;
- USRC implied that it had obtained the formal consent of CMRR and UP to conduct rail operations in place of IBRC, when this was not the case;
- USRC made conflicting statements concerning whether or not IBRC and USRC were separate corporate entities, and whether or not IBRC still existed, when the evidence showed that they were not the same and that IBRC ceased to exist.

Taken separately, each false and conflicting assertion of fact is sufficient for the Board to deem the USRC Notice void ab initio. In the aggregate, the statements reflect an intent to

mislead and confuse the public and the Board with a constantly shifting story. Accordingly, the Board should deem USRC's purported exemption authority to operate over the Comstock Subdivision to have been invalid from the outset²¹ and USRC's notice should be rejected,²² or, in the alternative, because the exemption has taken effect, the notice should be revoked.²³

I. MR. ROOT MISLED THE BOARD IN 2008, AND THE USRC NOTICE FILED LAST YEAR IS ITSELF PREDICATED UPON MR. ROOT'S DECEPTION

Prior to the Consent Decree, Mr. Root wanted the Board to believe that his IBRC-USRC shell game was merely a simple misunderstanding, reflecting his imperfect grasp of Board regulations. Given his experience in the rail industry and his use of well known and well experienced ICC/STB counsel in this and prior proceedings, such a claim is fanciful at best. The

²¹ See BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK, STB Docket No. AB-6 (Sub-No. 430X) slip op at 6 (STB served Jun. 5, 2008) (“BNSF-OKC”) (finding BNSF's notice of exemption as void ab initio) (“In administering the [rail line abandonment] class exemption, the Board depends on the accuracy of the information in the carrier's certification. To ensure the integrity of the [abandonment] class exemption procedure, our regulations provide that ‘[i]f the notice of exemption contains false or misleading information, the use of the exemption is void ab initio and the Board shall summarily reject the exemption notice.’ 49 CFR 1152.50(d)(3). This rule contains no exception for de minimis errors in the notice of exemption concerning usage of the line”) (citation omitted).

²² The Board may reject a class exemption filing “after the fact” if the filing contains false or misleading information, and it can order the parties to undo the transaction they already may have entered into. See, e.g., Sagamore National Corporation – Acquisition and Operation Exemption – Lines of Indiana Hi-Rail Corporation, Finance Docket No. 32523 (ICC served Oct. 28, 1994); see also Yolo Shortline Railroad Company – Lease and Operation Exemption – Port of Sacramento, STB Finance Docket No. 34114 (STB served Feb. 3, 2003), slip op. at 2 (“Under 49 CFR 1150.42(c), if a notice of exemption contains false or misleading information, we will reject the notice as void ab initio”); BNSF-OKC, slip op. at 7.

²³ At times, the Board has indicated that an exemption that has already taken effect should be revoked, as opposed to rejected, where the notice of exemption filing contained false and misleading information. See, e.g., SF&L Railway, Inc. – Acquisition and Operation Exemption – Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL, STB Finance Docket No. 33995 (STB served Oct. 17, 2002), slip op. at 10 (citing Save the Rock Island Committee, Inc. v. St. Louis Southwestern Railway Co., Docket No. AB-39 (Sub-No. 18X) (ICC served Apr. 1, 1994)).

USRC Notice reflects that Mr. Root fully appreciated the corporate distinctions between USRC and IBRC from the outset. (Mr. Root created both companies, so how could he plausibly claim not to understand the corporate distinctions between them?) The *after-the-fact* claims with respect to the 2008 filing that, “Mr. Root incorrectly believed that only a notice of name change was required for USRC to step into the shoes of IBRC. Consequently, Mr. Root instructed counsel to prepare and file a notice of change of name from IBRC to USRC [in September of 2008],” USRC Notice at 2-3, are simply too convenient and too illusory to accept.

Mr. Root claims that the September 2008 “name change filing,” in which the IBRC-to-USRC transition is depicted as a simple corporate name change, was an honest – and therefore potentially excusable – “mistake” not calculated to mislead the agency. The surrounding facts, however, show that Mr. Root knew exactly what he was doing, and that the September 2008 name change filing was intended to mislead. Mr. Root’s contemporaneous conduct showed that USRC’s false identity was all part of a plan, that Mr. Root purposely misled the Board about this in 2008, and that USRC’s offer of explanation in the 2011 USRC Notice was an attempt to sweep Mr. Root’s longstanding deception under the rug.

The Addendum to the 2008 Operating Agreement, for example, which was negotiated less than two months after the so-called September 30, 2008 “notice of change of name” filing at the STB, specifically stated that “Iron Bull’s [IBRC’s] name has been changed to Utah Southern Railroad Company, LLC [USRC].” That statement was not only patently false, but it was made to effectuate a shift from IBRC to USRC that legally had to be made by way of a formal assignment under the 2008 Operating Agreement, and Mr. Root knew this to be the case. To obtain the Addendum, Mr. Root purposely misled CMRR. He knew that the purported basis for the so-called “name change” was absolutely false and that if the truth about the corporate

distinction between IBRC and USRC ever came out, this could create problems for his railroad's relationships with CMRR and he would have been in violation of the 2008 Agreement for effectuating an assignment without consent. To claim years later in 2011 that his so-called "change of name filing" to the Board in the fall of 2008 was simply a mistake for which he was then merely trying to correct belies the facts. The representations made in the 2008 and 2011 filings were offered for a purpose (to evade compliance with the appropriate regulatory and contractual obligations), just as were his contemporaneous misrepresentations to CMRR to secure the 2008 Addendum.

The sudden appearance of the 2011 USRC Notice filing and its timing was also suspicious. Why did Mr. Root choose to disclose to his regulatory counsel (and to the Board) for the first time in late 2011 that USRC and IBRC were not one and the same? For what reasons did he authorize the filing of a new notice of exemption in an attempt to license USRC's "ongoing" operations? USRC blandly suggests that for some unexplained reason its regulatory counsel had just then become aware of the oversight, but we're not told what precipitated the disclosure.

Much more believable answers emerge from the surrounding facts. In particular, as the facts behind USRC's operations on the Comstock Subdivision came to light – that IBRC had not merely changed its name to USRC in 2008 as had been represented to the Board, and that IBRC had been dissolved – it became clear that USRC had no legitimate contractual or regulatory operating authority under the Docket No. FD 34897 notice from 2006. USRC had assured CML, CMRR, and the Board in 2008 that it was the same company as IBRC – it was not – and that it needed no other regulatory authority to operate IBRC's common carrier operations, when in

reality, USRC needed independent common carrier operating authority to serve CML, which it did not have.

It is much more believable that the sudden 2011 USRC Notice and disclosure were not precipitated by some recently discovered mistake, but rather, because USRC was locked in a dispute with CML over USRC's declining service levels and that Mr. Root's three-year-old ruse was about to be exposed. Mr. Root most likely anticipated that CML and CMRR were about to discover that they had been duped all of these years and that he could face significant contractual and regulatory violations if he didn't act to "legitimize" his USRC operations quickly so as to secure his otherwise tenuous grasp to the Comstock Subdivision. It is most likely, therefore, that Mr. Root filed the 2011 USRC Notice not out of any pangs of conscience to redress previous misstatements to the Board, but rather in an attempt to say *anything* to ensure that CML and CMRR would not be able to eject USRC, as both a matter of contract law (with USRC not having any legitimate contract rights to operate over the line) or as a matter of regulatory law (as USRC had no STB authority to operate over the line as a separate corporation distinct and apart from IBRC). In short, Mr. Root most likely attempted to invoke the Board's processes in 2011 as a shield against certain ejection from the Comstock Subdivision. In doing so, he had to admit that the statements he made to the Board in 2008 were in fact inaccurate and misleading.

II. USRC DID NOT AND COULD NOT LEGALLY "ACQUIRE IBRC'S OPERATING AUTHORITY" AS USRC CLAIMS

IBRC entered into an agreement with CMRR to operate the Comstock Subdivision in July of 2008. That agreement specifically prohibited IBRC from assigning its rights and obligations under that contract to anyone. Nevertheless, the USRC Notice states that "as of [September 30, 2008], USRC had been incorporated, and acquired IBRC's operating authority,

and operated the [Comstock Subdivision] as a corporation separate and distinct from IBRC.”²⁴

The obvious problems with USRC’s statement in its Notice are that – (1) the 2008 Operating Agreement expressly prohibited IBRC from transferring its contract rights; (2) IBRC had not sought, nor had it obtained, any waiver of the non-assignment provision or consents to a transfer; and (3) USRC had not obtained Board authority to assume operation of the Comstock Subdivision “as a corporation separate and distinct from IBRC.”

Regarding the second enumerated problem, IBRC purposely misled CMRR concerning the corporate relationship between IBRC and USRC. Specifically, in negotiating the November 17, 2008 Addendum, which changed all references in the 2008 Operating Agreement from IBRC to USRC, Mr. Root falsely stated that IBRC had merely changed its name. In fact, USRC had existed for some time *prior* to November 17, 2008, and IBRC and USRC were separate and distinct corporations at all times. IBRC never changed its name, USRC never assumed IBRC’s identity or corporate interests, and neither CMRR nor UP ever consented to a transfer of IBRC’s contractual authority to any third party, whether related to IBRC or not. In fact, until the October 21 USRC Notice filing, USRC had never acknowledged that it was *not* IBRC renamed. Thus, USRC cannot plausibly argue that CMRR and UP knowingly agreed to IBRC’s purported assignment of its common carrier rights USRC, or that that CMRR formally waived its nonassignment rights under § 14.13 of the 2008 Operating Agreement.

Although USRC claims to have “acquired IBRC’s Operating Authority” in 2008, the facts demonstrate that this did not happen and could not have happened without CMRR’s consent. In fact, CMRR could not have consented because, at the time, USRC had purposely led CMRR to believe that IBRC and USRC were the same entities. As such, IBRC accomplished no

²⁴ USRC Notice at 2.

legal assignment of its obligations under the 2008 Operating Agreement to USRC, USRC had no contractual authority to operate over Comstock Subdivision, and the USRC Notice is false and misleading by asserting facts to the contrary.

III. USRC DID NOT HAVE AN AGREEMENT WITH CMRR AT THE TIME THAT IT FILED THE USRC NOTICE CONTRARY TO USRC'S REPRESENTATIONS

According to the USRC Notice, the Comstock Subdivision “is operated by USRC pursuant to an operating agreement with PIC [CMRR].”²⁵ By use of the present tense “is operated,” USRC represented that it was, as of October 21, 2011, already operating pursuant to an unspecified agreement with CMRR. The language of the USRC notice filing indicates that USRC was operating without the requisite STB authority. Whether USRC was relying on the 2008 Operating Agreement or the 2011 Operating Agreement as the basis for its purported contract rights, USRC purported statements of material facts was false and misleading. USRC had no agreement with CMRR under which USRC could have been operating at that time, and USRC had no STB authority to operate over the Comstock Subdivision.

CMRR understood, pursuant to the terms of the 2008 Operating Agreement (as modified by the November 17, 2008 Addendum), that it had an agreement with IBRC – albeit re-named as USRC – not with an entirely different corporate entity. If the 2008 Operating Agreement and 2008 Addendum form the basis for USRC’s statement in the USRC Notice concerning an agreement governing the supposed transaction, then USRC’s statement is misleading because USRC failed to disclose critical facts underlying that agreement, and USRC failed to obtain appropriate STB regulatory authority. On the other hand, if the 2011 Operating Agreement forms the basis for USRC’s statement concerning an agreement for which STB authority is

²⁵ USRC Notice at 2.

needed, then USRC's statement is still misleading because that agreement was entered into with CML, not CMRR (PIC), and because CML (a noncarrier mining company) had no common carrier authority to convey. Thus, any purported agreement between CML and USRC must be viewed as void as a matter of federal law. The statement in the USRC Notice that USRC had an agreement with CMRR is completely false.²⁶

IV. USRC CONTRADICTS ITSELF AND HIGHLIGHTS ITS OWN DECEPTION BY CLAIMING THAT IBRC AND USRC ARE ONE AND THE SAME

The USRC Notice is the first time that USRC confirmed that it was not the same corporate entity as IBRC. While it is troubling enough to discover that USRC misled CMRR into executing the 2008 Addendum, it is worse to find that the 2011 Operating Agreement was predicated upon the same false pretense. Worse still is that two months after filing its Notice, USRC's counsel in its December 28, 2011 letter once again obscured the distinctions between USRC and IBRC and once again contended that USRC was merely a renamed IBRC.

Even if one fully assumes that USRC's misrepresentations were not intentionally false that still does not mean they weren't false statements for which the notice should be void ab initio. The statements were material to the Board's licensing procedures and authority, and they were false and misleading.²⁷ It is now clear that CML, CMRR, and the Board all have been misled. It is also clear – and CMRR wants the Board to fully understand – that CMRR, the rail carrier in legal possession of the Comstock Subdivision, never acquiesced in or approved of the

²⁶ USRC conceals its failure to alert CMRR and CML to the fact that IBRC and USRC were *not* one and the same and, in so doing, USRC misleadingly implies that CMRR was fully informed about USRC's true corporate status. It was not. USRC also incorrectly implies that CMRR had approved of USRC's presence on the Comstock Subdivision in place of IBRC. It had not.

²⁷ That Mr. Root led CMRR (and later the Board) to believe that USRC and IBRC were the same entity was an issue in the pending federal court litigation where the respective contractual rights of USRC, CML, and CMRR were being resolved, which has now been resolved via the Consent Decree.

corporate changes that USRC described in the USRC Notice.²⁸ CMRR and the Board now know that IBRC ceased to exist in 2009, that in IBRC's place Mr. Root installed a different railroad company without obtaining requisite STB operating authority, that CMRR and UP did not consent to USRC operating on the line as a distinct and separate company, and that Mr. Root has asserted (falsely) that the new company "acquired" IBRC's "operating authority" in 2008.

CML and CMRR now also know that the Board was again misled when USRC, in its December 28, 2011 letter, pointed to the exemption authority that IBRC obtained in 2006 in the FD 34897 proceeding and stated (astonishingly) that, "Iron Bull Railroad Company LLC, now known as Utah Southern Railroad Company, LLC, *has not ceased its operations*. To the contrary, [IBRC, now known as USRC] is ready, willing and able *to continue to render service* on the Comstock Subdivision (emphasis added)."²⁹ But not two months prior, USRC had admitted that USRC was not merely a renamed IBRC and was in fact a separate and distinct corporation. USRC fails to explain why, if IBRC and USRC are the same, it chose to file the 2011 IBRC-to-USRC notice of exemption filing in the first place. Also omitted is any reference to the fact that IBRC had been dissolved. As such, USRC muddied the waters even more in its December 28, 2011 letter and further misled the Board.³⁰

²⁸ After filing the change in operators notice, USRC stated that CML, the line's sole shipper, had been advised of the notice and that CML had consented to the change. See USRC filing in FD 35558, submitted on October 26, 2011. But CML had not yet fully grasped the legal significance of the purported change in operators. It was focused on obtaining adequate rail service from a service provider who was beginning to miss on its transportation commitments. Regardless, USRC still needed to obtain CMRR's and UP's consent to such an operator change (not CML's) for USRC to assume IBRC's role. But USRC did not obtain and has never obtained CMRR's nor UP's consent to the purported change of operators.

²⁹ USRC December 28 Letter Filing at 1 (emphasis added).

³⁰ Curiously, USRC's December 28 letter filing, which has no caption reference or heading, focuses upon the 2006 exemption proceedings in FD 34896 (the CMRR lease and operation exemption) and FD 34897 (the IBRC operation exemption), and only notes this proceeding in a

Perhaps USRC was attempting to mislead the Board in an attempt to have it both ways, but such an effort must be rejected. If, as the December 28 letter suggests, USRC wanted the Board to believe that USRC and IBRC were one and the same, then the USRC Notice was entirely unnecessary, and the USRC Notice (the facts of which were verified by Mr. Root) was plainly void ab initio for stating otherwise. On the other hand, if USRC and IBRC were separate and distinct corporations as previously stated in this proceeding and as borne out in the Utah state corporation records, then the Notice should have been rejected or revoked because of the various misleading statements offered in this and other proceedings. In either event, USRC's conflicting assertions of facts warrant nullification of the exemption in the interest of upholding the integrity of the Board's processes.

V. MR. ROOT AND USRC MAY HAVE ALSO MISLED THE BOARD WITH RESPECT TO HIS OWNERSHIP OF AERC

Mr. Root also may have misled the Board with respect to his ownership of other railroads and whether some form of common control authority was required. We know that in 2006, Mr. Root controlled AERC and sought authority to also control IBRC indirectly. It is unclear whether Mr. Root continues to have a controlling interest in AERC (there is some indication that Mr. Root may have divested himself of a controlling interest in AERC in or about 2007). If Mr. Root has not, however, relinquished his controlling interest in AERC, his acknowledgement that IBRC and USRC were not the same company begs explanation concerning why he did not invoke the Board's class exemption procedures at 49 C.F.R. §§ 1180.2(d) and 1180.4(g) or seek alternative regulatory authority to continue in control of both AERC and USRC when USRC

footnote. Furthermore, it appears that the STB has only accepted the letter in the related FD 34896 proceeding, pursuant to which (ironically) CMRR obtained authority to lease and operate the Comstock Subdivision. CMRR respectfully requests the Board to take judicial notice of that December 28, 2011 letter and incorporate it as part of the record in this proceeding.

became a new rail common carrier by virtue of its purported acquisition of common carrier rights over the Comstock Subdivision.³¹

Specifically, if Mr. Root still controls AERC, Mr. Root needed, but failed to obtain, regulatory approval (or an exemption) to acquire control of USRC. In the alternative, Mr. Root needed, but failed to obtain, authority to engage in a corporate family transaction whereby IBRC was to be dissolved, and, in the process, IBRC's contract rights (and, presumably also IBRC's common carrier rights and obligations) were to be shifted to USRC.³² In either case, assuming that Mr. Root still controls AERC (an issue that CMRR and CML acknowledge is in doubt), then Mr. Root has failed to comply with 49 U.S.C. § 11323, and the corresponding regulations at 49 C.F.R. Part 1180. If so, then Mr. Root lacks the prerequisite authority to control USRC and any other rail carriers, including AERC, and the Notice should be rejected as invalidly obtained without appropriate regulatory authority.

³¹ Given that he had previously utilized the common control process to control both AERC and IBRC, Mr. Root cannot plausibly claim ignorance of the need to acquire common control authority.

³² In other cases, corporate maneuverings involving changes to railroads within a corporate family (similar to those that Mr. Root undertook here) required Board authority under the corporate family transaction exemption procedures. See, e.g., Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp. – Corporate Family Transaction Exemption – Sacramento Valley Railroad, LLC and Piedmont & Northern Railway, LLC, STB Docket No. FD 35449 (STB served Dec. 8, 2010) (corporate family transaction covering the conversion of two affiliated rail carrier corporations into limited liability companies); Watco Holdings, Inc., Watco Companies, Inc., and Watco Transportation Services, Inc. – Corporate Family Transaction Exemption, STB Docket No. 35439 (STB served Nov. 4, 2010) (involving corporate restructuring, including the conversion of certain affiliated rail carriers from corporations to limited liability companies).

VI. USRC IS LONG GONE, SO PROLONGED REGULATORY PROCEEDINGS HERE WOULD DO NOTHING BUT REWARD USRC AND MR. ROOT FOR THEIR DECEPTION

USRC is plainly a rogue short line operator, one that has succeeded in installing itself on the Comstock Subdivision by way of an assumed identity. To get to where it once was, USRC deceived the Board, the Comstock Subdivision's lessor and current operator (CMRR), and the line's sole shipper. Moreover, during USRC's shaky tenure, USRC service was woefully inadequate, and when CML was forced to take matters into its own hands to protect its business by opting to use CMRR service (CMRR possessed legitimate STB operating authority and CML had the right to use CMRR), USRC became petty and vengeful.

But USRC and its owner, Mr. Root, ultimately recognized that the writing was on the wall, and USRC eventually disappeared from the Comstock Subdivision even during the then pending federal litigation. As of now, it has withdrawn all of its equipment and personnel, entered into the Consent Decree, and no longer has the ability to resume service. Because it is no longer needed or wanted on the line, USRC has fully discontinued operations on the Comstock Subdivision in the literal sense and it is time to remove its STB authority as well.

Although USRC's regulatory counsel previously insisted that the only way that USRC can legally be "evicted" from the Comstock Subdivision was by way of a formal discontinuance of service application proceeding, the Board need not follow that course here. (This of course, presupposes that USRC has valid legal standing as a rail common carrier on the line, a matter that CMRR has demonstrated is not the case.) In view of the Consent Decree and the facts set forth in this petition, no purpose would be served by holding CMRR to the considerable added burden and expense of preparing and pursuing the adverse discontinuance process. The Board should not turn a blind eye to the merits of granting the subject petition to reject or revoke. It , it

would not only be sanctioning USRC's dishonesty, but it would also subject CMRR and CML to further injury by preventing them from quickly eradicating any surviving claim that USRC may have to common carrier status on the Comstock Subdivision. No public interest would be served by prolonging this proceeding and requiring the preparation, expense, and processing of an adverse discontinuance proceeding. On the unique circumstances of this case, the practical choice is for the Board to grant the subject petition to reject or revoke, and to thereby avoid artificial and wholly unnecessary barriers for the "exit" of a bad actor that has purported to be a rail common carrier.

CONCLUSION

The foregoing sections of this petition show that USRC has offered multiple false, misleading, and/or contradictory statements in connection with its purported "change of operators" notice of exemption in this proceeding. Rather than set out the truth or seek the appropriate regulatory actions, USRC has time and time again switched its story depending upon the circumstances. We now know that USRC's exemption was obtained under false pretenses, that Mr. Root and USRC had since 2008 been untruthful to the Board, CML, and CMRR by claiming that IBRC and USRC were one and the same (and then only came clean when it appeared that CML and CMRR might expose the truth themselves), and that USRC failed to disclose to the Board pertinent information that would have borne upon the Board's processing of the notice of exemption. It is time for the Board to put an end to Mr. Root's misleading and obstructive behavior. Because the USRC Notice contained multiple false and misleading statements, it should be rejected or revoked as void ab initio.

Respectfully submitted,



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Dated: June 27, 2012

STB DOCKET NO. FD 35558

**UTAH SOUTHERN RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
IRON BULL RAILROAD COMPANY, LLC**

PETITION TO REJECT OR REVOKE

EXHIBIT A

CHRONOLOGY OF EVENTS

COMSTOCK SUBDIVISION – CASE CHRONOLOGY**Winter-Spring 2006**

Palladon Iron Corporation (“Palladon”) – predecessor to CML Metals Corporation – announces plans to restore iron mining activity at Nevada’s Comstock/Mountain Lion Mine. In connection with its anticipated iron mining operations, Palladon enters into negotiations with Union Pacific Railroad Company (“UP”) concerning the restoration of rail operations over UP’s Comstock Subdivision, a branch line directly serving the Comstock/Mountain Lion Mine.

Palladon and UP reach an agreement in principle for the restoration of rail service on the Comstock Subdivision. Under that agreement, Palladon will establish a new non-carrier subsidiary (PIC Railroad, Inc.) to lease the Comstock Subdivision from UP, and PIC Railroad will, in turn, enter into a contract with Iron Bull Railroad Company, LLC (“IBRC”), pursuant to which IBRC will provide rail service to Palladon over the Comstock Subdivision.

August 15, 2006

PIC Railroad, Inc. and IBRC file notices of exemption with the Surface Transportation Board in STB Docket Nos. 34896 and 34897, respectively, for PIC Railroad to lease the Comstock Subdivision from UP, and for IBRC to assume operation of the Comstock Subdivision upon PIC Railroad’s consummation of its leasehold interest. The notices are filed jointly by IBRC’s Surface Transportation Board counsel.

Michael R. Root, IBRC’s indirect owner, concurrently files a notice of exemption with the Surface Transportation Board in STB Docket No. FD 34898 to permit Mr. Root to control Albany & Eastern Railroad Company (“AERC”), an existing Class III railroad, and IBRC (through AERC) at such time as IBRC becomes a rail common carrier.

August 15, 2006 – July 31, 2008

Palladon does not commence iron mining operations. Accordingly, PIC Railroad’s lease of UP’s Comstock Subdivision has not yet occurred. IBRC has not yet commenced rail service on the line.

July 31, 2008

PIC Railroad and UP execute an agreement for PIC Railroad’s lease of UP’s Comstock Subdivision, along with subsidiary agreements related to the rail line lease transaction.

IBRC and PIC Railroad execute a “Rail Track Operating Agreement” (the “2008 Operating Agreement”) pursuant to which IBRC is to operate over the Comstock

Subdivision upon PIC Railroad's consummation of a leasehold interest in that rail line, and pursuant to which IBRC is to provide service to Palladon.

IBRC still has not yet commenced rail operations on the Comstock Subdivision.

September 30, 2008

IBRC's counsel submits a one-page letter filing to the Surface Transportation Board advising that "effective October 1, 2008, the name of Iron Bull Railroad Company, LLC is being changed to Utah Southern Railroad Company, LLC [USRC]."

This statement, unbeknownst to Palladon, PIC Railroad, or the Board is false.

IBRC/USRC still has not yet commenced rail operations on the Comstock Subdivision.

November 17, 2008

Mr. Root, on behalf of IBRC, falsely represents to PIC Railroad that "effective October 1, 2008, Iron Bull's [IBRC] name has been changed to Utah Southern Railroad Company, LLC [USRC], but ownership of Utah Southern is the same as ownership of Iron Bull," and the two parties execute an Addendum to the 2008 Operating Agreement (the "2008 Addendum") changing all references to IBRC in the 2008 Operating Agreement to USRC. The 2008 Addendum makes no other changes to the 2008 Operating Agreement.

Unbeknownst to Palladon and PIC Railroad, Mr. Root has established USRC as a company separate and apart from IBRC.

IBRC/USRC still has not yet commenced rail operations on the Comstock Subdivision.

April 21, 2009

Counsel for PIC Railroad (also serving as counsel for IBRC/USRC) advises the Surface Transportation Board in a one-page letter filing that the notice of exemption filed on behalf of PIC Railroad in 2006 is incorrect in that it refers to this company as "PIC Railroad, LLC," when in fact the correct corporate name is PIC Railroad, Inc.

IBRC/USRC still has not yet commenced rail operations on the Comstock Subdivision.

April 19, 2010

Palladon changes its name to CML Metals Corporation ("CML"). CML retains control of the Comstock/ Mountain Lion mine and Palladon subsidiary PIC Railroad.

Under new management, CML revives stalled efforts to reactivate the Comstock/Mountain Lion mine and to restore the Comstock Subdivision rail line to service.

IBRC/USRC still has not yet commenced rail operations on the Comstock Subdivision.

January 1, 2011

On or about this date, CML begins iron ore production at its Comstock/Mountain Lion mine. CML's ore production is destined to consumers in China by way of ocean ports in Central California. USRC (purporting to be the renamed IBRC) commences rail service on the Comstock Subdivision at approximately the same time.

January 20, 2012

Contemplating rail service requirements differing significantly from those set forth in the now-outdated 2008 Operating Agreement, CML executes a new Rail Track Operating Agreement with USRC (the "2011 Operating Agreement").

Summer-Fall of 2011

USRC service to CML on the Comstock Subdivision declines, and CML faces increased costs in its efforts to avoid missing ocean shipment starts. CML attempts, unsuccessfully, to reach arrangements with USRC to restore USRC service to satisfactory levels. The relationship between CML and USRC begins to deteriorate. USRC service fails to improve, and CML faces increasing shipping costs stemming from USRC's avoidable service inefficiencies.

Counsel for CML during this time frame begins to learn that USRC and IBRC are not one and the same, contrary to Mr. Root's representations.

October 2011

CML determines that USRC is in breach of its contractual commitments under the 2011 Operating Agreement, and CML counsel so advises counsel for USRC.

October 21, 2011

In the face of the deteriorating CML-USRC relationship, USRC files a notice of exemption in STB Docket No. 35558, in which USRC seeks exemption authority to acquire IBRC's common carrier rights and obligations over the Comstock Subdivision. USRC acknowledges for the first time that it had incorrectly advised the Board in its September 30, 2008 filing that USRC was merely IBRC renamed, when USRC and IBRC have always been separate and distinct corporate entities under Mr. Root's control. USRC also acknowledges that IBRC has been dissolved.

October 26, 2011

USRC submits a one-page letter filing to the Board accepting the Board's decision to re-characterize transaction encompassed by the FD 35558 notice of exemption from a transaction between IBRC and USRC (involving the alleged conveyance of operating rights) to a "change of operators" transaction. USRC represents that it has obtained CML's consent to the change of operators (as the Comstock Subdivision's lone shipper), but fails to disclose that PIC Railroad – the entity in legal possession of the Comstock Subdivision pursuant to a rail line lease with UP – has not consented to the arrangement.

November 2011

As it was entitled to do under the terms of that agreement, CML assigns all of its rights under the 2011 Operating Agreement to its subsidiary, PIC Railroad.

December 2011

Finding USRC service to be unacceptable and not in keeping with USRC's obligations under the 2011 Operating Agreement, PIC Railroad makes arrangements to commence rail operations on the Comstock Subdivision in its own name, and CML advises USRC of this arrangement.

USRC, taking exception to this turn of events, engages in actions designed to thwart PIC Railroad's provision of rail service to CML.

December 15, 2011

USRC files suit against CML in Utah state court alleging CML's breach of the 2011 Operating Agreement, and, among other things, it files an ex parte motion for a court order to enjoin CML from using PIC Railroad's rail services.

PIC Railroad submits a letter filing to the Board in the FD 34896 proceeding, advising the Board that, among other things, it will do business as Comstock Mountain Lion Railroad ("CMRR"), that CMRR is CMLs' preferred rail service provider, and that CML has terminated the 2011 Operating Agreement with USRC.

December 16, 2011

The Utah state court issues a temporary restraining order and preliminary injunction in favor of USRC, precluding CML from using CMRR rail service.

December 17, 2011

CML seeks removal of the aforementioned Utah state court litigation to the United States District Court for the District of Utah, Central Division. On that same day, the federal

district court immediately suspends and sets aside the state court's temporary restraining order and preliminary injunction against CML.

Litigation between CML and USRC begins to unfold in federal district court in Utah. Various motions, declarations, and memoranda are filed shortly thereafter.

December 19, 2011

The federal district court fully vacates the state court-issued temporary restraining order.

December 28, 2011

New STB regulatory counsel for USRC submits a letter filing with the Board in the FD 34896 and 34897 proceedings. Among other things, the filing states that "Iron Bull Railroad Company LLC, now known as Utah Southern Railroad Company, LLC, has not ceased operations" [despite the fact, previously acknowledged by USRC, that IBRC had been dissolved], accuses CML of a "flagrant violation of 49 U.S.C. § 10903 and 49 C.F.R. § 1152.1, *et seq.*" [by virtue CML's decision to use CMRR exclusively for its rail service needs], and urges "the Attorney General to bring a court proceeding" against CMRR.

January 6, 2012

CMRR responds to USRC's December 28 letter filing. CMRR explains that USRC has attempted to interfere with CMRR's provision of duly-licensed common carrier rail service to CML, points out that neither CML nor CMRR have engaged in any conduct in violation of the ICC Termination Act of 1995 or the Board's regulations, and advises that CMRR intends shortly to file a petition to reject or revoke USRC's operating exemption.

January 7 to Present

Utah federal district court litigation remains pending.

USRC has fully vacated the Comstock Subdivision, having withdrawn all equipment and personnel from the line. CMRR remains as the exclusive rail service provider to CML.

CML and CMRR have engaged in settlement discussions with USRC in an effort to resolve the underlying dispute and to explore a mutually acceptable arrangement to address questions concerning USRC's operating authority on the Comstock Subdivision. In the interest of a mutually acceptable arrangement, CML and CMRR held off pursuing the aforementioned petition to reject or revoke. Such discussions have not been as fruitful as CML and CMRR had hoped. CML and CMRR elect under the circumstances not to hold off any longer on seeking a Board determination as to USRC's regulatory status on the Comstock Subdivision.

STB DOCKET NO. FD 35558

**UTAH SOUTHERN RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
IRON BULL RAILROAD COMPANY, LLC**

PETITION TO REJECT OR REVOKE

EXHIBIT B

2008 OPERATING AGREEMENT

**RAIL TRACK OPERATING AGREEMENT
between**

**PIC Railroad, Inc.
and
Iron Bull Railroad Company, LLC**

This Rail Track Operating Agreement ("Agreement") dated July 31, 2008 (the "Effective Date"), is made and entered into between PIC RAILROAD, INC., a Utah Corporation ("PICR"), as "Lessee," and IRON BULL RAILROAD COMPANY, LLC ("IBR"), a Utah Corporation, as "Rail Operator", collectively the "Parties."

RECITALS

A. PICR is the Lessee of the Union Pacific ("UP") rail line known as the Comstock Subdivision, extending between milepost 0.1 at or near Iron Springs, Utah and milepost 14.7 at or near Iron Mountain, Utah, a distance of approximately 14.6 miles, located in Iron County, Utah (the "Track"), with rights to certain other tracks in the vicinity (the Track and the other tracks to which PICR has rights are sometimes referred to herein as the "Project"). A copy of the UP Lease is attached hereto as Exhibit "A," and a map showing the location of the Track is attached hereto as Exhibit "B."

B. IBR desires to operate, and handle day-to-day maintenance and repair of the Track on behalf of PICR on the terms set forth in this Agreement in accordance with FRA Class 2 Standards.

C. PICR desires to engage IBR for the purpose of switching, operating, maintaining and repairing the Track on behalf of PICR subject to the terms, conditions and provisions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the Parties agree as follows:

Article 1. Definitions

1.00 Definitions. As used in this Agreement, the following terms

shall have the following definitions:

a. "Applicable Laws" shall mean all current and future laws, statutes, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, and requirements of all municipal, state and federal authorities, including but not limited to the Surface Transportation Board, the Utah Public Utilities Commission, the Federal Railroad Administration, the Federal Employees Liability Act, Worker's Compensation, now or later in force, including but not limited to, Environmental Laws, the requirements of the local fire department and any applicable insurance underwriter (fire or otherwise) or rating bureau relating in any manner to the use, occupancy or operation of the Track (including but not limited to matters pertaining to: (i) railroad operators; (ii) railroad safety; (iii) the transportation and/or storage of goods, products or any other items in or on rail cars; (iv) industrial hygiene; (v) occupational safety and health; (vi) fire safety; (vii) environmental conditions on, in, under or about the Track, including soil and groundwater conditions; and (viii) the use, generation, manufacture, production, installation, maintenance or removal, transportation, storage, spill or release of any Hazardous Substance or storage tank, now in effect or which may hereafter come into effect (including retrofits or changes in building and health and safety codes), and whether or not reflecting a change in policy from any previously existing policy.

b. "Assignment" shall mean any assignment, transfer, mortgage, or other transfer or encumbrance of this Agreement whether voluntarily or by operation of law.

c. "Environmental Laws" shall mean all current and future federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, occupational or environmental conditions on, under, or about the Project, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Hazardous Materials Transportation Act, the federal laws and regulations governing the storage and transportation of hazardous materials by rail, the state laws and regulations governing the storage and transportation of hazardous materials by rail, the Superfund Amendments and Re-authorization Act, the Emergency Planning and Community Right to Know, the Occupational Safety and Health Act, together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Project, or the regulation or protection of the environment,

including ambient air, soil, soil vapor, groundwater, surface water, or land use.

d. "Event of Default" shall mean any one or more of the events or occurrences set forth in Section 11.00 of the Agreement.

e. "Hazardous Substance" shall mean any product, substance, chemical, material or waste whose presence, nature or quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or affect, either by itself or in combination with other materials which is either: (i) potentially injurious to the public health, safety or welfare, the environment, the Track, or the Project; (ii) regulated or monitored by any governmental authority; or (iii) a basis for liability of PICR or IBR to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include but not be limited to: (i) those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in or under any other Environmental Law; (ii) those substances listed in the United States Department of Transportation (DOT), or by the environmental Protection Agency, or any successor agency, as hazardous substances; (iii) other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and (iv) any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance, a flammable explosive, or a radioactive material.

f. "Hazardous Substance Condition" shall mean the occurrence or discovery of any deposit, spill, seepage, release or any other condition involving the presence of or a contamination by a Hazardous Substance, in, under or about the Track, Project, and/or any rail car on the Track as the case may be.

g. "Reportable Use" shall mean: (i) the installation or use of any above or below ground storage tank; and (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority, including IBR's being responsible for the presence in, on or about the Track of a Hazardous Substance with respect to which any Applicable Laws require that a notice be given the persons using, entering or occupying the Track or neighboring properties. "Reportable Use" shall not be interpreted to limit the reporting of any Hazardous Substances under this Agreement to a "Reportable quantity" under the Environmental Law.

h. "Rules and Regulations" shall mean the rules and regulations for the operation as established and issued by PICR, as amended from time to time. The Rules and Regulations are attached as Exhibit "C" hereto and incorporated herein by this reference.

i. "IBR's Related Parties" shall mean IBR's employees, officers, directors, agents, contractors, invitees, licenses, vendors, shippers, customers and any other individuals related by business or otherwise to IBR.

Article 2. Track in Project

2.00 Track. PICR will allow IBR to use the Track on the terms, provisions and conditions set forth in this Agreement.

2.01 Rehabilitation. For the first year, the scope of work as provided in Exhibit E, shall be completed on or before October 1, 2008. PICR shall rehabilitate and upgrade the Track to a FRA Class 2 Standard.

Article 3. Use and Condition of Track

3.00 Responsibilities of IBR; Permitted Use of the Track. IBR shall be responsible during the term of this Agreement for the operation, maintenance and repair of the Track. Except as otherwise provided in this Agreement or in a written agreement between IBR and PICR, IBR shall be solely responsible for all costs and expenses incurred in connection with the operation, maintenance and repair of the Track. In carrying out its duties and responsibilities hereunder, IBR shall be permitted to use the Track for the switching of rail cars, to conduct maintenance and repair of the track and the track bed, and for no other use or purpose whatsoever (the "Permitted Use").

3.01 Prohibited Activities. IBR shall not use or permit the use of the Track in any way or manner that creates or threatens to create waste or a nuisance, or that disturbs, interrupts or interferes with the PICR or other PICR pre-approved occupants of the line or to the neighboring premises or properties.

3.02 Responsibility for Rail Cars. In connection with the operation of the Track, rail cars will be provided by PICR. Once rail cars or a unit train is consigned, delivered, or otherwise placed on the track for interchange, the rail cars and their contents shall be deemed to be delivered to IBR and IBR assumes full responsibility for all loss or damage to the rail car and its contents that occurs while the rail car is on the track or otherwise in the custody and/or control of IBR, until the rail car is delivered to Union Pacific at interchange. PICR shall have no responsibility or liability whatsoever for rail cars on the Track unless, as the result of negligence or intentional act on the part of PICR resulting in the loss or damage of said railcars.

3.03 Rules and Regulations. PICR may from time to time create, establish, enact, amend, modify or change the Rules and Regulations, within

PICR's sole and absolute discretion including, but not limited to, rules and regulations for the management, safety, care, and cleanliness of the area, the grounds, and the preservation of good order. IBR agrees that it will abide by, keep, and observe all of the Rules and Regulations. IBR acknowledges PICR's absolute authority to establish, create and amend the Rules and Regulations. If, however, the amended Rules and Regulations are found unacceptable to IBR then IBR shall have the right to negotiate terms acceptable to both parties. If no agreement can be reached, then IBR shall have the right, via thirty-day written notice, to terminate this agreement.

Article 4. Operations

4.00 Delivery of Rail Cars. IBR shall communicate and coordinate with UP for the timely pickup and/or delivery of rail cars to and from the rail line. IBR shall use all reasonable efforts to coordinate with UP to comply with the pick-up and/or delivery times requested by PICR.

4.01 Switching Rail Cars. IBR shall, at IBR's sole cost and expense, switch or cause to be switched all rail cars and unit trains delivered to, stored or otherwise placed at the interchange tracks within a reasonable amount of time.

4.02 Rail Locomotives. IBR shall at all times, at IBR's sole cost and expense, maintain rail locomotives in good working order and condition in compliance with applicable laws ready to provide the switching services pursuant to this Agreement. Once the Track is upgraded, UP may allow its locomotives to be operated over the Track. For the movement of up to and including 2.0 million tons of material annually, IBR locomotives shall be used. For the movement of material beyond 2.0 million tons on an annual basis, it shall be at PICR's discretion whether IBR or UP locomotives will be used. Accordingly, PICR shall provide written direction to IBR regarding the use of locomotive power.

4.03 Operating Authority. PICR will file a Notice of Exemption at the STB for its acquisition of the rail line by lease from UP and its operation. IBR will file a Notice of Exemption at the STB for its operation of the rail line by operating agreement with PICR. Those filings made be made jointly if PICR and IBR so agree. In the event that the Operating Agreement were to be lawfully terminated, or expires by its terms, IBR agrees that it will promptly file at the STB for authority to discontinue rail service over the line.

4.04 IBR Tracking System. IBR shall provide PICR full access to all unit trains/cars handled at the interchange point, along the Track.

Article 5. Term

5.00 Term. The initial term of this Agreement shall commence on the Effective Date of this Agreement and shall expire five (5) years following the Effective Date (the "Term"). This Agreement shall be automatically renewed thereafter for successive one (1) year terms (each, a "Renewed Term") unless either party gives written notice to the other party at least sixty (60) days prior to the expiration of the Term or any Renewed Term that the Agreement shall not be renewed.

Article 6. Fees

6.00 Per Car Fee. As compensation for its services hereunder, IBR shall be compensated by PICR based upon the number of rail cars handled by IBR. The per-car rates to be paid by PICR to IBR are set forth on Exhibit "D" of this Agreement. The schedule of rates set forth on Exhibit "D" may be modified or amended upon the written consent of both Parties. IBR will submit to PICR a list of cars handled each month on an itemized invoice. PICR agrees to pay such monthly invoices within 30 days of receipt.

6.01 IBR's Books and Records. IBR shall keep and maintain full, complete, and appropriate books and records of all cars handled from the Track in accordance with generally accepted accounting principles. Not more often than once per calendar year, PICR shall have the right to audit IBR's books and records relating to IBR's operation of the Track for the purpose of verifying the number of rail cars reported by IBR as having been handled by IBR. The Parties shall adjust the amounts paid or owed by PICR if such audit shows that the number of rail cars handled by IBR was incorrectly reported by IBR. If such audit discloses that IBR has overstated the number of rail cars handled by IBR by two percent (2%) or more as to any given period, IBR shall pay the reasonable cost of such audit and shall immediately refund the amount due to PICR with interest thereon from the date such amount was paid by PICR at the rate of twelve percent (12%) per annum.

Article 7. Maintenance and Repair

7.00 IBR's Track Maintenance and Repair Obligations. IBR shall, at IBR's sole cost and expense:

- (a) Inspect the Track weekly and notify PICR monthly in writing of any maintenance and/or repair required to operate safely on the Track. All work shall be in accordance with FRA Class 2 Standards.
- (b) Provide normal maintenance and repair work on the

Track. For work deemed outside the scope of normal maintenance and repair, IBR shall provide PICR written notification including, but not limited to the option of completing the necessary work at PICR expense. PICR may at its discretion hire a third-party to complete the necessary work.

- (c) On an annual basis, contract a third-party, agreeable to IBR and PICR, for the purpose of controlling potential overgrowth of vegetation on or around the Track.

Article 8. Insurance; Indemnity

8.00 IBR's Insurance. IBR shall obtain, keep in full force and effect, and provide to PICR written evidence of the insurance required under this Agreement. Insurance required hereunder shall be in companies duly licensed to transact business in Utah and maintaining during the policy term a "General Policyholders Rating" as set forth in the most current issue of "Best's Insurance Guide" acceptable to PICR. IBR shall not do or permit to be done anything which shall invalidate the insurance policies set forth herein. IBR shall cause to be delivered to PICR certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insureds and loss payable clauses as required by this Agreement. IBR shall name PICR as an additional insured on all their policies. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to PICR. IBR shall, at least thirty (30) days prior to the expiration of such policies, furnish PICR with evidence of renewals, certificates or "insurance binders" evidencing renewal thereof, or PICR may order such insurance and charge the cost thereof to IBR, which amount shall be payable by IBR to PICR upon demand

8.01 Liability Insurance. IBR shall obtain and keep in force during the term of this Agreement a Comprehensive Commercial General Liability policy of insurance protecting IBR, and naming PICR as additional insured, against claims for bodily injury, personal injury, and property damage based upon, involving, or arising out of the use, operation, maintenance or repair of the Track, (including but not limited to fires, chemical spills, seepage, or other Hazardous Substance Conditions) and all areas appurtenant or adjacent thereto, including areas used in common with others at the Project. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$5,000,000 per occurrence with an "Additional Insured-Managers or Contractors of Premises" Endorsement and contain the "Amendment of the Pollution Exclusion" for damage caused by heat, smoke, or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this

Agreement as an "insured contract" for the performance of IBR's indemnity obligations under this Agreement. PICR shall have the right to increase required minimum limits not to exceed \$7,500,000, as it deems necessary, via written notice to IBR. Additionally, railroad employees of IBR will be covered under the Federal Employers Liability Act (FELA).

8.02 Auto Liability Insurance. IBR shall carry automobile (including vehicular liability) insurance with a minimum combined single limit of \$1,000,000 covering all owned, hired, and non-owned autos, vans, trucks and any other vehicles entering the Project and/or driving within Project on IBR's behalf. PICR shall be named as an additional insured on all such policies. PICR shall have the right to increase required minimum limits not to exceed \$1,500,000, as it deems necessary, via written notice to IBR.

8.03 Indemnity. IBR shall indemnify, protect, defend, and hold harmless the Track, PICR, and their respective employees and agents from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, permits, attorney's and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the use, operation, maintenance or repair of the Track by IBR and the conduct of IBR's business, unless caused by the negligence or intentional misconduct of PICR.

8.04 Exemption of PICR from Liability. PICR shall not be liable for injury or damage to the person or goods, wares, merchandise, or other property of IBR, IBR's Related Parties or agents, or any other person in or about the Track or the property, whether such damage or injury is caused by or results from fire, explosion, steam, electricity, gas, water or rain or snow, or from the breakage, leakage, obstruction, or other defects of pipes, wires, or from any other cause, whether the said injury or damage results from conditions arising upon the Track or upon other portions of property, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Except as otherwise provided in this Agreement, PICR shall not be liable to IBR for any damages, claims or losses, nor shall IBR be entitled to terminate this Agreement or to any abatement of user fees for any damage to IBR's property or any injury to IBR or IBR's Related Parties, or loss to IBR's business arising out of any cause whatsoever. PICR immunity from liability shall be excepted if the loss or damage is the result of negligence or an intentional act on the part of PICR.

Article 9. Hazardous Substances

9.00 Reportable Users Require Prior Consent. IBR shall not engage in any activity in, on or about the property or the Track which constitutes a Reportable Use of Hazardous Substances without the express prior written

consent of PICR and compliance in a timely manner (at IBR's sole cost and expense) with all Applicable Laws. Notwithstanding the foregoing, IBR may, without PICR's prior consent, but in compliance with all Applicable Laws, use any ordinary and customary materials reasonably required to be used by IBR in the normal course of IBR's business permitted on the Track, so long as such use is not a Reportable Use of a Hazard Substance and does not expose the property or neighboring properties to any meaningful risk of contamination or damage or expose PICR to any liability therefore.

9.01 Duty to Inform PICR of Hazardous Substance Condition. If IBR knows, or has reasonable cause to believe, that a Hazardous Substance Condition has occurred in, on, under, or about the Track, other than as previously consented to by PICR, IBR shall immediately: (i) give verbal and written notice of such fact to PICR; and (ii) give PICR a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to IBR, or received by IBR from, any governmental authority or private party, or persons entering or occupying the Track, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on or about the Track, including but not limited to all such documents as may be involved in any Reportable Uses involving the Track.

9.02 Hazardous Substance Condition Responsibilities. If a Hazardous Substance Condition occurs for which IBR is legally responsible, IBR shall make whatever investigation and remediation thereof is required by Applicable Laws, and this Agreement shall continue in full force and effect, subject to PICR's rights under Article 11. If a Hazardous Substance Condition occurs for which IBR is not legally responsible, PICR may, at PICR's option, either: (i) investigate and remediate such Hazardous Substance Condition at PICR's expense, in which event this Agreement shall continue in full force and effect; or (ii) if the estimated cost to investigate and remediate such condition exceeds twelve (12) times the then monthly Base Revenue Fee, PICR may, within thirty (30) days after it learns of the occurrence, terminate this Agreement upon sixty (60) days prior written notice to IBR.

9.03 Expiration and Termination Option. Upon expiration or earlier termination of this Agreement, PICR may request IBR to perform all of the following activities at IBR's sole expense: (i) obtain an environmental assessment of the Track to evaluate the environmental condition of the Track and the area immediately surrounding the track, and any potential environmental liabilities under this Agreement; (ii) all remedial or other work identified in such environmental assessment and all applicable Environmental Laws; (iii) all corrective, remedial, repair, or other work necessary to correct any alleged violations, deficiencies, or hazards noted by any environmental governmental agency; and (iv) all steps necessary to terminate, close, or transfer all environmental permits, licenses, and other approvals or authorizations for the Track or for activities, equipment, or conditions on the Track, in accordance with all Environmental Laws. The above will only occur if during the term of this

Agreement a hazardous incident has occurred.

9.04 Environmental Indemnification. IBR shall indemnify, protect, defend and hold PICR and its respective agents, officers, and employees harmless from and against any and all losses damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorney's and consultant's fees arising out of the actions of IBR and its agents and representatives in bringing any Hazardous Substance on the Track or the immediately surrounding area or in controlling any such Hazardous Substance.

Article 10. Compliance with Laws

10.00 IBR Compliance with Laws. IBR shall, at IBR's sole cost and expense: (i) obtain and maintain any and all necessary licenses, permits and/or approvals under Applicable Laws and Regulations for IBR's business in, on or about the Track as provided herein; and (ii) fully, diligently and in a timely manner comply with all Applicable Laws and Regulations concerning the Track or IBR's use thereof, whether foreseen or unforeseen, regardless of cost, and regardless of when during the Term the proper paperwork is filed. IBR shall, within five (5) days after receipt of PICR's written request, provide PICR with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing IBR's compliance with any Applicable Laws and Regulations specified by PICR, and shall immediately upon receipt, notify PICR in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by IBR, the Track to comply with any Applicable Laws and Regulations. Without in any way limiting the generality of the foregoing, IBR shall prior to conducting any activities or use of the Track, obtain at IBR's sole expense all use or occupancy permits and licenses required by Applicable Laws and Regulations for the Permitted Use.

Article 11. Default; Remedies

11.00 Event of Default. Any one or more of the following events or occurrences shall constitute a material breach of the Agreement by IBR and after the expiration of any applicable grace period shall constitute an Event of Default:

(a) Failure to Provide Insurance or Fulfill Other Obligations. Except as expressly otherwise provided in this Agreement: (i) the failure by IBR to provide PICR with reasonable evidence of insurance required under this Agreement where such failure continues for three (3) days following written notice thereof by or on behalf of PICR; or (ii) the failure of IBR to fulfill any

obligation under this Agreement which endangers or threatens life or property, where such failure continues for a period of three (3) days following the written notice thereof by or on behalf of PICR to IBR. Notwithstanding the foregoing, grossly unsafe practices as determined by any applicable local, state, or federal governmental agency, or as reasonably determined by an insurance rating bureau or underwriter regularly used by PICR to evaluate such matters shall be sufficient cause for PICR to immediately terminate IBR's right to possession and eject IBR from the Track without waiving other rights and remedies PICR may have against IBR.

(b) Failure to Provide Switching Services. A default, breach or failure of IBR to perform or comply with IBR's obligations in Article 4 where such default, breach or failure continues for a period of three (3) days after written notice thereof by or on behalf of PICR to IBR.

(c) Failure to Provide Certain Written Notices. Except as expressly otherwise provided in this Agreement, the failure by IBR to provide PICR with reasonable written evidence (in duly executed original form, if applicable) of: (i) compliance with Applicable Laws and Regulations pursuant to Section 10.00; or (ii) the execution of any document or other information which PICR may reasonably require of IBR under the terms of this Agreement, where any such failure continues for a period of three (3) days following written notice by or on behalf of PICR to IBR.

(d) Default of Agreement or Rules and Regulations. A default or breach by IBR as to the terms, covenants, conditions, or provisions of this Agreement except as otherwise provided for herein, or of the Rules and Regulations where such default or breach continues for a period of three (3) days after written notice thereof by or on behalf of PICR to IBR.

Article 12. Right of Entry

12.00 Access and Entry. PICR reserves the right at any and all times to access and enter the Track for inspection, showing to prospective tenants, or for other reasonable purposes.

Article 13. Alterations

13.00 No Alterations. IBR shall not make any alterations, improvements or other changes whatsoever to the Track, without the prior written consent of PICR in PICR's sole and absolute discretion. PICR reserves the right, at any time, to make improvements, additions, modifications or changes to any portion of the Track, including, but not limited to, track layout provided, however,

that any such changes shall not adversely affect IBR's rail operations.

Article 14. Miscellaneous Provisions

14.00 Severability. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

14.01 Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Agreement.

14.02 No Prior or Other Agreements. This Agreement contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

14.03 Notices. All notices required by the terms of this Agreement and supporting documents, shall be deemed to have been properly given if such notice is in writing, addressed to the party at such address as the party may have last designated in writing (if different from the address listed herein), sent by facsimile transmission:

If to PICR:

Palladon Iron Corporation
Attn: Donald G. Foot, Jr.
554 South 300 East, Suite 250
Salt Lake City, UT 84111
Facsimile No. (801) 521-5454

If to IBR:

Iron Bull Railroad Company
19014 East Tonto Verde Drive
Rio Verde, AZ 85263
Attention: Michael Root
Facsimile No. ()

Any changes in addresses or numbers for notices shall be promptly forwarded to all PARTIES. Unless otherwise stipulated hereunder, all notices shall be effective as of the date and time on which faxed. If any notice is transmitted by facsimile transmission

14.04 Waivers. No waiver by PICR of any Event of Default or breach of any term, covenant or condition hereof by IBR, shall be deemed a

waiver of any other term, covenant, or condition hereof, or of any subsequent Event of Default or breach by IBR of the same or of any other term, covenant, or condition hereof. PICR's consent to, or approval of, any act shall be deemed to render unnecessary the obtaining of PICR's consent to, or approval of, any subsequent or similar act by IBR, or be construed as the basis of an estoppel to enforce the provision or provisions of this Agreement requiring such consent. Regardless of PICR's knowledge of an Event of Default or breach at the time of accepting user fees, the acceptance of user fees by PICR shall not be a waiver of any preceding Event of Default or breach by IBR of any provision hereof, other than the failure of IBR to pay the particular rent so accepted. Any payment given PICR by IBR may be accepted by PICR on account of moneys or damages due PICR, notwithstanding any qualifying statements or conditions made by IBR in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by PICR at or before the time of deposit of such payment.

14.05 No Right to Holdover. IBR has no right to retain possession of the Track or any part thereof beyond the expiration or earlier termination of this Agreement.

14.06 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

14.07 Covenants and Conditions. All provisions of this Agreement to be observed or performed by IBR are both covenants and conditions.

14.08 Binding Effect: Choice of Law. This Agreement shall be binding upon the parties, their personal representatives, successors, and assigns and be governed by the laws of the State of Utah. Any litigation between the Parties hereto concerning this Agreement shall be initiated in Iron County, Utah, provided, however, that federal law shall apply to matters affecting interstate commerce, and actions thereon shall be instituted in federal court in Utah.

14.09 Attorneys' Fees. If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees and court costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse

all attorney's fees reasonably incurred. PICR shall be entitled to attorney's fees, costs, and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with an Event of Default.

14.10 Termination. Unless specifically stated otherwise in writing by PICR, the voluntary or other surrender of this Agreement by IBR, the mutual termination or cancellation hereof, or a termination hereof by PICR for breach or default by IBR, shall automatically terminate any subcontract on the Premises; provided, however, PICR shall, in the event of any such surrender, termination, or cancellation, have the option to continue any one or all of any existing subcontractors. PICR's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute PICR's election to have such event constitute the termination of such interest.

14.11 Reservations. PICR reserves to itself the right, from time to time, to grant, without the consent or joinder of IBR, such easements, rights and dedications that PICR deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps, and restrictions do not unreasonably interfere with the use of the Track by IBR. IBR agrees to sign any documents reasonably requested by PICR to effectuate any such easement rights, dedication, map, or restrictions.

14.12 Authority. If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Agreement on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on its behalf. If IBR is a corporation, trust, or partnership, IBR shall, within thirty (30) days after request by PICR, deliver to PICR evidence satisfactory to PICR of such authority.

14.13 Assignment. IBR may not assign or transfer its obligations under this agreement. Assignment of this contract by IBR shall constitute a default.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

Lessee:
PIC Railroad, Inc.

Rail Operator:
Iron Bull Railroad Company, LLC

By: [Signature]
Title: President & CEO

By: [Signature]
Title: President

EXHIBIT A

**Lease Agreement Between Union Pacific Railroad Company and PIC Railroad,
Inc. :**

To Be Inserted Once Signed.

EXHIBIT B
Map of Rail Short Line

QuickTime™ and a
decompressor
are needed to see this picture

EXHIBIT C

Rules and Regulations

To be established by PICR as needed according to 1. h. & 3.03

- **IBR must meet all Federal, State and Local Laws.**
- **IBR will be under MSHA and Palladon Iron Corporation's safety requirements while operating within the boundaries of the mine property.**
- **IBR must follow all Federal rail administration rules and regulations.**

EXHIBIT D

IBR will submit to PICR a list of cars handled each month on an itemized invoice. PICR will pay IBR the following per car rates:

- a. Cars handled using Union Pacific Railroad locomotives: \$26.50 per car.
- b. Cars handled using IBR locomotives: \$66.00 per car.

PICR will pay IBR monthly invoices within 30 days of receipt.

EXHIBIT D

IBR will submit to PICR a list of cars handled each month on an itemized invoice. PICR will pay IBR the following per car rates:

- a. Cars handled using Union Pacific Railroad locomotives: \$26.50 per car.
- b. Cars handled using IBR locomotives: \$66.00 per car.
- c. Rates shall be adjusted annually on the anniversary date of this agreement by the application of the index in the Rail Cost Adjustment Factor, governed by the Surface Transportation Board (STB) and calculated by the Association of American Railroads (AAR).
- d. "Car Handled" shall be defined as movement of an "empty" car from the Interchange Track at Iron Springs, to the mine site and load-out facility at Iron Mountain, and delivered back to the Interchange Track as a "full" car, regardless of how often the car is moved by IBR in the interim.

PICR will pay IBR monthly invoices within 30 days of receipt.

EXHIBIT E
Scope of Work

From: mike_root@hotmail.com
Subject: Crossings and trees
Date: July 15, 2008 3:26:41 PM MDT
To: ghawkins@palladoniron.com, frank.dolce@palladoniron.com,
frankddolce@msn.com, hawkins.palladon@gmail.com

I offer Palladon the following quote for crossing repairs and tree removal:

CROSSING REPAIRS (2)

Install 133# rail as needed in crossing area
Replace all crossties in crossing area with new ties
Place correct ballast under ties
Surface track
Replace crossing surface with man made crossing planks
Replace crossing signs to comply with regulations
Clean up

\$15,000 per crossing
\$30,000 for both crossings

TREE REMOVAL

Excavator w/operator \$250 hr
24 hours
\$6,000

Signed: _____

Title: _____

Date: _____

STB DOCKET NO. FD 35558

**UTAH SOUTHERN RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
IRON BULL RAILROAD COMPANY, LLC**

PETITION TO REJECT OR REVOKE

EXHIBIT C

ADDENDUM TO 2008 OPERATING AGREEMENT

ADDENDUM TO RAIL TRACK OPERATING AGREEMENT

This Addendum to Rail Track Operating Agreement, dated as of November 17, 2008, is entered into between PIC Railroad, Inc. (PIC) and Utah Southern Railroad Company, LLC (Utah Southern).

RECITALS

WHEREAS, PIC and Iron Bull Railroad Company, LLC (Iron Bull) entered into a Rail Track Operating Agreement on July 31, 2008, for Iron Bull's operation of a rail line between Iron Springs, Utah and Iron Mountain, Utah that PIC leases from Union Pacific Railroad Company (UP); and

WHEREAS, effective October 1, 2008, Iron Bull's name has been changed to Utah Southern Railroad Company, LLC, but ownership of Utah Southern is the same as ownership of Iron Bull; and

WHEREAS, PIC and Utah Southern desire to execute an Addendum to the Rail Track Operating Agreement that acknowledges and agrees to that name change,

NOW, THEREFORE, in consideration of the mutual covenants contained in this Addendum and in the Rail Track Operating Agreement, PIC and Utah Southern hereby agree as follows:

1. All references in the Rail Track Operating Agreement to Iron Bull shall be changed to Utah Southern; and
2. This Addendum shall be permanently attached to the Rail Track Operating Agreement; and
3. All other provisions of the Rail Track Operating Agreement shall remain in full force and effect.

WHEREFORE, authorized representatives of PIC and Utah Southern have signed this Addendum below.

PIC Railroad, Inc.	Utah Southern Railroad Company, LLC
By: <u>[Signature]</u>	By: <u>[Signature]</u>
Title: <u>President & CEO</u>	Title: <u>President</u>

**RAIL TRACK OPERATING AGREEMENT
between**

**PIC Railroad, Inc.
and
Iron Bull Railroad Company, LLC**

This Rail Track Operating Agreement ("Agreement") dated July 31, 2008 (the "Effective Date"), is made and entered into between PIC RAILROAD, INC., a Utah Corporation ("PICR"), as "Lessee," and IRON BULL RAILROAD COMPANY, LLC ("IBR"), a Utah Corporation, as "Rail Operator", collectively the "Parties."

RECITALS

A. PICR is the Lessee of the Union Pacific ("UP") rail line known as the Comstock Subdivision, extending between milepost 0.1 at or near Iron Springs, Utah and milepost 14.7 at or near Iron Mountain, Utah, a distance of approximately 14.6 miles, located in Iron County, Utah (the "Track"), with rights to certain other tracks in the vicinity (the Track and the other tracks to which PICR has rights are sometimes referred to herein as the "Project"). A copy of the UP Lease is attached hereto as Exhibit "A," and a map showing the location of the Track is attached hereto as Exhibit "B."

B. IBR desires to operate, and handle day-to-day maintenance and repair of the Track on behalf of PICR on the terms set forth in this Agreement in accordance with FRA Class 2 Standards.

C. PICR desires to engage IBR for the purpose of switching, operating, maintaining and repairing the Track on behalf of PICR subject to the terms, conditions and provisions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the Parties agree as follows:

Article 1. Definitions

1.00 Definitions. As used in this Agreement, the following terms

shall have the following definitions:

a. "Applicable Laws" shall mean all current and future laws, statutes, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, and requirements of all municipal, state and federal authorities, including but not limited to the Surface Transportation Board, the Utah Public Utilities Commission, the Federal Railroad Administration, the Federal Employees Liability Act, Worker's Compensation, now or later in force, including but not limited to; Environmental Laws, the requirements of the local fire department and any applicable insurance underwriter (fire or otherwise) or rating bureau relating in any manner to the use, occupancy or operation of the Track (including but not limited to matters pertaining to: (i) railroad operators; (ii) railroad safety; (iii) the transportation and/or storage of goods, products or any other items in or on rail cars; (iv) industrial hygiene; (v) occupational safety and health; (vi) fire safety; (vii) environmental conditions on, in, under or about the Track, including soil and groundwater conditions; and (viii) the use, generation, manufacture, production, installation, maintenance or removal, transportation, storage, spill or release of any Hazardous Substance or storage tank, now in effect or which may hereafter come into effect (including retrofits or changes in building and health and safety codes), and whether or not reflecting a change in policy from any previously existing policy.

b. "Assignment" shall mean any assignment, transfer, mortgage, or other transfer or encumbrance of this Agreement whether voluntarily or by operation of law.

c. "Environmental Laws" shall mean all current and future federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, occupational or environmental conditions on, under, or about the Project, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Hazardous Materials Transportation Act, the federal laws and regulations governing the storage and transportation of hazardous materials by rail, the state laws and regulations governing the storage and transportation of hazardous materials by rail, the Superfund Amendments and Re-authorization Act, the Emergency Planning and Community Right to Know, the Occupational Safety and Health Act, together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Project, or the regulation or protection of the environment,

including ambient air, soil, soil vapor, groundwater, surface water, or land use.

d. "Event of Default" shall mean any one or more of the events or occurrences set forth in Section 11.00 of the Agreement.

e. "Hazardous Substance" shall mean any product, substance, chemical, material or waste whose presence, nature or quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or affect, either by itself or in combination with other materials which is either: (i) potentially injurious to the public health, safety or welfare, the environment, the Track, or the Project; (ii) regulated or monitored by any governmental authority; or (iii) a basis for liability of PICR or IBR to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include but not be limited to: (i) those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in or under any other Environmental Law; (ii) those substances listed in the United States Department of Transportation (DOT), or by the environmental Protection Agency, or any successor agency, as hazardous substances; (iii) other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and (iv) any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance, a flammable explosive, or a radioactive material.

f. "Hazardous Substance Condition" shall mean the occurrence or discovery of any deposit, spill, seepage, release or any other condition involving the presence of or a contamination by a Hazardous Substance, in, under or about the Track, Project, and/or any rail car on the Track as the case may be.

g. "Reportable Use" shall mean: (i) the installation or use of any above or below ground storage tank; and (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority, including IBR's being responsible for the presence in, on or about the Track of a Hazardous Substance with respect to which any Applicable Laws require that a notice be given the persons using, entering or occupying the Track or neighboring properties. "Reportable Use" shall not be interpreted to limit the reporting of any Hazardous Substances under this Agreement to a "Reportable quantity" under the Environmental Law.

h. "Rules and Regulations" shall mean the rules and regulations for the operation as established and issued by PICR, as amended from time to time. The Rules and Regulations are attached as Exhibit "C" hereto and incorporated herein by this reference.

i. "IBR's Related Parties" shall mean IBR's employees, officers, directors, agents, contractors, invitees, licensees, vendors, shippers, customers and any other individuals related by business or otherwise to IBR.

Article 2. Track in Project

2.00 Track. PICR will allow IBR to use the Track on the terms, provisions and conditions set forth in this Agreement.

2.01 Rehabilitation. For the first year, the scope of work as provided in Exhibit E, shall be completed on or before October 1, 2008. PICR shall rehabilitate and upgrade the Track to a FRA Class 2 Standard.

Article 3. Use and Condition of Track

3.00 Responsibilities of IBR; Permitted Use of the Track. IBR shall be responsible during the term of this Agreement for the operation, maintenance and repair of the Track. Except as otherwise provided in this Agreement or in a written agreement between IBR and PICR, IBR shall be solely responsible for all costs and expenses incurred in connection with the operation, maintenance and repair of the Track. In carrying out its duties and responsibilities hereunder, IBR shall be permitted to use the Track for the switching of rail cars, to conduct maintenance and repair of the track and the track bed, and for no other use or purpose whatsoever (the "Permitted Use").

3.01 Prohibited Activities. IBR shall not use or permit the use of the Track in any way or manner that creates or threatens to create waste or a nuisance, or that disturbs, interrupts or interferes with the PICR or other PICR pre-approved occupants of the line or to the neighboring premises or properties.

3.02 Responsibility for Rail Cars. In connection with the operation of the Track, rail cars will be provided by PICR. Once rail cars or a unit train is consigned, delivered, or otherwise placed on the track for interchange, the rail cars and their contents shall be deemed to be delivered to IBR and IBR assumes full responsibility for all loss or damage to the rail car and its contents that occurs while the rail car is on the track or otherwise in the custody and/or control of IBR, until the rail car is delivered to Union Pacific at interchange. PICR shall have no responsibility or liability whatsoever for rail cars on the Track unless, as the result of negligence or intentional act on the part of PICR resulting in the loss or damage of said railcars.

3.03 Rules and Regulations. PICR may from time to time create, establish, enact, amend, modify or change the Rules and Regulations, within

PICR's sole and absolute discretion including, but not limited to, rules and regulations for the management, safety, care, and cleanliness of the area, the grounds, and the preservation of good order. IBR agrees that it will abide by, keep, and observe all of the Rules and Regulations. IBR acknowledges PICR's absolute authority to establish, create and amend the Rules and Regulations. If, however, the amended Rules and Regulations are found unacceptable to IBR then IBR shall have the right to negotiate terms acceptable to both parties. If no agreement can be reached, then IBR shall have the right, via thirty-day written notice, to terminate this agreement.

Article 4. Operations

4.00 Delivery of Rail Cars. IBR shall communicate and coordinate with UP for the timely pickup and/or delivery of rail cars to and from the rail line. IBR shall use all reasonable efforts to coordinate with UP to comply with the pick-up and/or delivery times requested by PICR.

4.01 Switching Rail Cars. IBR shall, at IBR's sole cost and expense, switch or cause to be switched all rail cars and unit trains delivered to, stored or otherwise placed at the interchange tracks within a reasonable amount of time.

4.02 Rail Locomotives. IBR shall at all times, at IBR's sole cost and expense, maintain rail locomotives in good working order and condition in compliance with applicable laws ready to provide the switching services pursuant to this Agreement. Once the Track is upgraded, UP may allow its locomotives to be operated over the Track. For the movement of up to and including 2.0 million tons of material annually, IBR locomotives shall be used. For the movement of material beyond 2.0 million tons on an annual basis, it shall be at PICR's discretion whether IBR or UP locomotives will be used. Accordingly, PICR shall provide written direction to IBR regarding the use of locomotive power.

4.03 Operating Authority. PICR will file a Notice of Exemption at the STB for its acquisition of the rail line by lease from UP and its operation. IBR will file a Notice of Exemption at the STB for its operation of the rail line by operating agreement with PICR. Those filings made be made jointly if PICR and IBR so agree. In the event that the Operating Agreement were to be lawfully terminated, or expires by its terms, IBR agrees that it will promptly file at the STB for authority to discontinue rail service over the line.

4.04 IBR Tracking System. IBR shall provide PICR full access to all unit trains/cars handled at the interchange point, along the Track.

Article 5. Term

5.00 Term. The initial term of this Agreement shall commence on the Effective Date of this Agreement and shall expire five (5) years following the Effective Date (the "Term"). This Agreement shall be automatically renewed thereafter for successive one (1) year terms (each, a "Renewed Term") unless either party gives written notice to the other party at least sixty (60) days prior to the expiration of the Term or any Renewed Term that the Agreement shall not be renewed.

Article 6. Fees

6.00 Per Car Fee. As compensation for its services hereunder, IBR shall be compensated by PICR based upon the number of rail cars handled by IBR. The per-car rates to be paid by PICR to IBR are set forth on Exhibit "D" of this Agreement. The schedule of rates set forth on Exhibit "D" may be modified or amended upon the written consent of both Parties. IBR will submit to PICR a list of cars handled each month on an itemized invoice. PICR agrees to pay such monthly invoices within 30 days of receipt.

6.01 IBR's Books and Records. IBR shall keep and maintain full, complete, and appropriate books and records of all cars handled from the Track in accordance with generally accepted accounting principles. Not more often than once per calendar year, PICR shall have the right to audit IBR's books and records relating to IBR's operation of the Track for the purpose of verifying the number of rail cars reported by IBR as having been handled by IBR. The Parties shall adjust the amounts paid or owed by PICR if such audit shows that the number of rail cars handled by IBR was incorrectly reported by IBR. If such audit discloses that IBR has overstated the number of rail cars handled by IBR by two percent (2%) or more as to any given period, IBR shall pay the reasonable cost of such audit and shall immediately refund the amount due to PICR with interest thereon from the date such amount was paid by PICR at the rate of twelve percent (12%) per annum.

Article 7. Maintenance and Repair

7.00 IBR's Track Maintenance and Repair Obligations. IBR shall, at IBR's sole cost and expense:

- (a) Inspect the Track weekly and notify PICR monthly in writing of any maintenance and/or repair required to operate safely on the Track. All work shall be in accordance with FRA Class 2 Standards.
- (b) Provide normal maintenance and repair work on the

Track. For work deemed outside the scope of normal maintenance and repair, IBR shall provide PICR written notification including, but not limited to the option of completing the necessary work at PICR expense. PICR may at its discretion hire a third-party to complete the necessary work.

- (c) On an annual basis, contract a third-party, agreeable to IBR and PICR, for the purpose of controlling potential overgrowth of vegetation on or around the Track.

Article 8. Insurance; indemnity

8.00 IBR's Insurance. IBR shall obtain, keep in full force and effect, and provide to PICR written evidence of the insurance required under this Agreement. Insurance required hereunder shall be in companies duly licensed to transact business in Utah and maintaining during the policy term a "General Policyholders Rating" as set forth in the most current issue of "Best's Insurance Guide" acceptable to PICR. IBR shall not do or permit to be done anything which shall invalidate the insurance policies set forth herein. IBR shall cause to be delivered to PICR certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insureds and loss payable clauses as required by this Agreement. IBR shall name PICR as an additional insured on all their policies. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to PICR. IBR shall, at least thirty (30) days prior to the expiration of such policies, furnish PICR with evidence of renewals, certificates or "insurance binders" evidencing renewal thereof, or PICR may order such insurance and charge the cost thereof to IBR, which amount shall be payable by IBR to PICR upon demand

8.01 Liability Insurance. IBR shall obtain and keep in force during the term of this Agreement a Comprehensive Commercial General Liability policy of insurance protecting IBR, and naming PICR as additional insured, against claims for bodily injury, personal injury, and property damage based upon, involving, or arising out of the use, operation, maintenance or repair of the Track, (including but not limited to fires, chemical spills, seepage, or other Hazardous Substance Conditions) and all areas appurtenant or adjacent thereto, including areas used in common with others at the Project. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$5,000,000 per occurrence with an "Additional Insured-Managers or Contractors of Premises" Endorsement and contain the "Amendment of the Pollution Exclusion" for damage caused by heat, smoke, or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this

Agreement as an "insured contract" for the performance of IBR's indemnity obligations under this Agreement. PICR shall have the right to increase required minimum limits not to exceed \$7,500,000, as it deems necessary, via written notice to IBR. Additionally, railroad employees of IBR will be covered under the Federal Employers Liability Act (FELA).

8.02 Auto Liability Insurance. IBR shall carry automobile (including vehicular liability) insurance with a minimum combined single limit of \$1,000,000 covering all owned, hired, and non-owned autos, vans, trucks and any other vehicles entering the Project and/or driving within Project on IBR's behalf. PICR shall be named as an additional insured on all such policies. PICR shall have the right to increase required minimum limits not to exceed \$1,500,000, as it deems necessary, via written notice to IBR.

8.03 Indemnity. IBR shall indemnify, protect, defend, and hold harmless the Track, PICR, and their respective employees and agents from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, permits, attorney's and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the use, operation, maintenance or repair of the Track by IBR and the conduct of IBR's business, unless caused by the negligence or intentional misconduct of PICR.

8.04 Exemption of PICR from Liability. PICR shall not be liable for injury or damage to the person or goods, wares, merchandise, or other property of IBR, IBR's Related Parties or agents, or any other person in or about the Track or the property, whether such damage or injury is caused by or results from fire, explosion, steam, electricity, gas, water or rain or snow, or from the breakage, leakage, obstruction, or other defects of pipes, wires, or from any other cause, whether the said injury or damage results from conditions arising upon the Track or upon other portions of property, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Except as otherwise provided in this Agreement, PICR shall not be liable to IBR for any damages, claims or losses, nor shall IBR be entitled to terminate this Agreement or to any abatement of user fees for any damage to IBR's property or any injury to IBR or IBR's Related Parties, or loss to IBR's business arising out of any cause whatsoever. PICR immunity from liability shall be excepted if the loss or damage is the result of negligence or an intentional act on the part of PICR.

Article 9. Hazardous Substances

9.00 Reportable Users Require Prior Consent. IBR shall not engage in any activity in, on or about the property or the Track which constitutes a Reportable Use of Hazardous Substances without the express prior written

consent of PICR and compliance in a timely manner (at IBR's sole cost and expense) with all Applicable Laws. Notwithstanding the foregoing, IBR may, without PICR's prior consent, but in compliance with all Applicable Laws, use any ordinary and customary materials reasonably required to be used by IBR in the normal course of IBR's business permitted on the Track, so long as such use is not a Reportable Use of a Hazard Substance and does not expose the property or neighboring properties to any meaningful risk of contamination or damage or expose PICR to any liability therefore.

9.01 Duty to Inform PICR of Hazardous Substance Condition. If IBR knows, or has reasonable cause to believe, that a Hazardous Substance Condition has occurred in, on, under, or about the Track, other than as previously consented to by PICR, IBR shall immediately: (i) give verbal and written notice of such fact to PICR; and (ii) give PICR a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to IBR, or received by IBR from, any governmental authority or private party, or persons entering or occupying the Track, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on or about the Track, including but not limited to all such documents as may be involved in any Reportable Uses involving the Track.

9.02 Hazardous Substance Condition Responsibilities. If a Hazardous Substance Condition occurs for which IBR is legally responsible, IBR shall make whatever investigation and remediation thereof is required by Applicable Laws, and this Agreement shall continue in full force and effect, subject to PICR's rights under Article 11. If a Hazardous Substance Condition occurs for which IBR is not legally responsible, PICR may, at PICR's option, either: (i) investigate and remediate such Hazardous Substance Condition at PICR's expense, in which event this Agreement shall continue in full force and effect; or (ii) if the estimated cost to investigate and remediate such condition exceeds twelve (12) times the then monthly Base Revenue Fee, PICR may, within thirty (30) days after it learns of the occurrence, terminate this Agreement upon sixty (60) days prior written notice to IBR.

9.03 Expiration and Termination Option. Upon expiration or earlier termination of this Agreement, PICR may request IBR to perform all of the following activities at IBR's sole expense: (i) obtain an environmental assessment of the Track to evaluate the environmental condition of the Track and the area immediately surrounding the track, and any potential environmental liabilities under this Agreement; (ii) all remedial or other work identified in such environmental assessment and all applicable Environmental Laws; (iii) all corrective, remedial, repair, or other work necessary to correct any alleged violations, deficiencies, or hazards noted by any environmental governmental agency; and (iv) all steps necessary to terminate, close, or transfer all environmental permits, licenses, and other approvals or authorizations for the Track or for activities, equipment, or conditions on the Track, in accordance with all Environmental Laws. The above will only occur if during the term of this

Agreement a hazardous incident has occurred.

9.04 Environmental Indemnification. IBR shall indemnify, protect, defend and hold PICR and its respective agents, officers, and employees harmless from and against any and all losses damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorney's and consultant's fees arising out of the actions of IBR and its agents and representatives in bringing any Hazardous Substance on the Track or the immediately surrounding area or in controlling any such Hazardous Substance.

Article 10. Compliance with Laws

10.00 IBR Compliance with Laws. IBR shall, at IBR's sole cost and expense: (i) obtain and maintain any and all necessary licenses, permits and/or approvals under Applicable Laws and Regulations for IBR's business in, on or about the Track as provided herein; and (ii) fully, diligently and in a timely manner comply with all Applicable Laws and Regulations concerning the Track or IBR's use thereof, whether foreseen or unforeseen, regardless of cost, and regardless of when during the Term the proper paperwork is filed. IBR shall, within five (5) days after receipt of PICR's written request, provide PICR with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing IBR's compliance with any Applicable Laws and Regulations specified by PICR, and shall immediately upon receipt, notify PICR in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by IBR, the Track to comply with any Applicable Laws and Regulations. Without in any way limiting the generality of the foregoing, IBR shall prior to conducting any activities or use of the Track, obtain at IBR's sole expense all use or occupancy permits and licenses required by Applicable Laws and Regulations for the Permitted Use.

Article 11. Default; Remedies

11.00 Event of Default. Any one or more of the following events or occurrences shall constitute a material breach of the Agreement by IBR and after the expiration of any applicable grace period shall constitute an Event of Default:

(a) **Failure to Provide Insurance or Fulfill Other Obligations.** Except as expressly otherwise provided in this Agreement: (i) the failure by IBR to provide PICR with reasonable evidence of insurance required under this Agreement where such failure continues for three (3) days following written notice thereof by or on behalf of PICR; or (ii) the failure of IBR to fulfill any

obligation under this Agreement which endangers or threatens life or property, where such failure continues for a period of three (3) days following the written notice thereof by or on behalf of PICR to IBR. Notwithstanding the foregoing, grossly unsafe practices as determined by any applicable local, state, or federal governmental agency, or as reasonably determined by an insurance rating bureau or underwriter regularly used by PICR to evaluate such matters shall be sufficient cause for PICR to immediately terminate IBR's right to possession and eject IBR from the Track without waiving other rights and remedies PICR may have against IBR.

(b) Failure to Provide Switching Services. A default, breach or failure of IBR to perform or comply with IBR's obligations in Article 4 where such default, breach or failure continues for a period of three (3) days after written notice thereof by or on behalf of PICR to IBR.

(c) Failure to Provide Certain Written Notices. Except as expressly otherwise provided in this Agreement, the failure by IBR to provide PICR with reasonable written evidence (in duly executed original form, if applicable) of: (i) compliance with Applicable Laws and Regulations pursuant to Section 10.00; or (ii) the execution of any document or other information which PICR may reasonably require of IBR under the terms of this Agreement, where any such failure continues for a period of three (3) days following written notice by or on behalf of PICR to IBR.

(d) Default of Agreement or Rules and Regulations. A default or breach by IBR as to the terms, covenants, conditions, or provisions of this Agreement except as otherwise provided for herein, or of the Rules and Regulations where such default or breach continues for a period of three (3) days after written notice thereof by or on behalf of PICR to IBR.

Article 12. Right of Entry

12.00 Access and Entry. PICR reserves the right at any and all times to access and enter the Track for inspection, showing to prospective tenants, or for other reasonable purposes.

Article 13. Alterations

13.00 No Alterations. IBR shall not make any alterations, improvements or other changes whatsoever to the Track, without the prior written consent of PICR in PICR's sole and absolute discretion. PICR reserves the right, at any time, to make improvements, additions, modifications or changes to any portion of the Track, including, but not limited to, track layout provided, however,

that any such changes shall not adversely affect IBR's rail operations.

Article 14. Miscellaneous Provisions

14.00 Severability. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

14.01 Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Agreement.

14.02 No Prior or Other Agreements. This Agreement contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

14.03 Notices. All notices required by the terms of this Agreement and supporting documents, shall be deemed to have been properly given if such notice is in writing, addressed to the party at such address as the party may have last designated in writing (if different from the address listed herein), sent by facsimile transmission:

If to PICR:

Palladon Iron Corporation
Attn: Donald G. Foot, Jr.
554 South 300 East, Suite 250
Salt Lake City, UT 84111
Facsimile No. (801) 521-5454

If to IBR:

Iron Bull Railroad Company
19014 East Tonto Verde Drive
Rio Verde, AZ 85263
Attention: Michael Root
Facsimile No. ()

Any changes in addresses or numbers for notices shall be promptly forwarded to all PARTIES. Unless otherwise stipulated hereunder, all notices shall be effective as of the date and time on which faxed. If any notice is transmitted by facsimile transmission

14.04 Waivers. No waiver by PICR of any Event of Default or breach of any term, covenant or condition hereof by IBR, shall be deemed a

waiver of any other term, covenant, or condition hereof, or of any subsequent Event of Default or breach by IBR of the same or of any other term, covenant, or condition hereof. PICR's consent to, or approval of, any act shall be deemed to render unnecessary the obtaining of PICR's consent to, or approval of, any subsequent or similar act by IBR, or be construed as the basis of an estoppel to enforce the provision or provisions of this Agreement requiring such consent. Regardless of PICR's knowledge of an Event of Default or breach at the time of accepting user fees, the acceptance of user fees by PICR shall not be a waiver of any preceding Event of Default or breach by IBR of any provision hereof, other than the failure of IBR to pay the particular rent so accepted. Any payment given PICR by IBR may be accepted by PICR on account of moneys or damages due PICR, notwithstanding any qualifying statements or conditions made by IBR in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by PICR at or before the time of deposit of such payment.

14.05 No Right to Holdover. IBR has no right to retain possession of the Track or any part thereof beyond the expiration or earlier termination of this Agreement.

14.06 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

14.07 Covenants and Conditions. All provisions of this Agreement to be observed or performed by IBR are both covenants and conditions.

14.08 Binding Effect; Choice of Law. This Agreement shall be binding upon the parties, their personal representatives, successors, and assigns and be governed by the laws of the State of Utah. Any litigation between the Parties hereto concerning this Agreement shall be initiated in Iron County, Utah, provided, however, that federal law shall apply to matters affecting interstate commerce, and actions thereon shall be instituted in federal court in Utah.

14.09 Attorneys' Fees. If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees and court costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse

all attorney's fees reasonably incurred. PICR shall be entitled to attorney's fees, costs, and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with an Event of Default.

14.10 Termination. Unless specifically stated otherwise in writing by PICR, the voluntary or other surrender of this Agreement by IBR, the mutual termination or cancellation hereof, or a termination hereof by PICR for breach or default by IBR, shall automatically terminate any subcontract on the Premises; provided, however, PICR shall, in the event of any such surrender, termination, or cancellation, have the option to continue any one or all of any existing subcontractors. PICR's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute PICR's election to have such event constitute the termination of such interest.

14.11 Reservations. PICR reserves to itself the right, from time to time, to grant, without the consent or joinder of IBR, such easements, rights and dedications that PICR deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps, and restrictions do not unreasonably interfere with the use of the Track by IBR. IBR agrees to sign any documents reasonably requested by PICR to effectuate any such easement rights, dedication, map, or restrictions.

14.12 Authority. If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Agreement on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on its behalf. If IBR is a corporation, trust, or partnership, IBR shall, within thirty (30) days after request by PICR, deliver to PICR evidence satisfactory to PICR of such authority.

14.13 Assignment. IBR may not assign or transfer its obligations under this agreement. Assignment of this contract by IBR shall constitute a default.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

Lessee:
PIC Railroad, Inc.

By: 
Title: President & CEO

Rail Operator:
Iron Bull Railroad Company, LLC

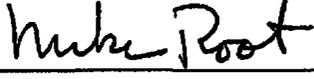
By: 
Title: President

EXHIBIT A

**Lease Agreement Between Union Pacific Railroad Company and PIC Railroad,
Inc. :**

To Be Inserted Once Signed.

EXHIBIT B

Map of Rail Short Line

QuickTime™ and a
decompressor
are needed to see this picture.

EXHIBIT C

Rules and Regulations

To be established by PICR as needed according to 1. h. & 3.03

- **IBR must meet all Federal, State and Local Laws.**
- **IBR will be under MSHA and Palladon Iron Corporation's safety requirements while operating within the boundaries of the mine property.**
- **IBR must follow all Federal rail administration rules and regulations.**

EXHIBIT D

IBR will submit to PICR a list of cars handled each month on an itemized invoice. PICR will pay IBR the following per car rates:

- a. Cars handled using Union Pacific Railroad locomotives: \$26.50 per car.
- b. Cars handled using IBR locomotives: \$66.00 per car.

PICR will pay IBR monthly invoices within 30 days of receipt.

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EXHIBIT D

IBR will submit to PICR a list of cars handled each month on an itemized invoice. PICR will pay IBR the following per car rates:

- a. Cars handled using Union Pacific Railroad locomotives: \$26.50 per car.
- b. Cars handled using IBR locomotives: \$66.00 per car.
- c. Rates shall be adjusted annually on the anniversary date of this agreement by the application of the index in the Rail Cost Adjustment Factor, governed by the Surface Transportation Board (STB) and calculated by the Association of American Railroads (AAR).
- d. "Car Handled" shall be defined as movement of an "empty" car from the Interchange Track at Iron Springs, to the mine site and load-out facility at Iron Mountain, and delivered back to the Interchange Track as a "full" car, regardless of how often the car is moved by IBR in the interim.

PICR will pay IBR monthly invoices within 30 days of receipt.

EXHIBIT E
Scope of Work

From: mike_root@hotmail.com
Subject: Crossings and trees
Date: July 15, 2008 3:26:41 PM MDT
To: ghawkins@palladoniron.com, frank.dolce@palladoniron.com,
frankddolce@msn.com, hawkins.palladon@gmail.com

I offer Palladon the following quote for crossing repairs and tree removal:

CROSSING REPAIRS (2)

Install 133# rail as needed in crossing area
Replace all crossties in crossing area with new ties
Place correct ballast under ties
Surface track
Replace crossing surface with man made crossing planks
Replace crossing signs to comply with regulations
Clean up

\$15,000 per crossing
\$30,000 for both crossings

TREE REMOVAL

Excavator w/operator \$250 hr
24 hours
\$6,000

Signed: _____

Title: _____

Date: _____

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

STB DOCKET NO. FD 35558

UTAH SOUTHERN RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
IRON BULL RAILROAD COMPANY, LLC

PETITION TO REJECT OR REVOKE

EXHIBIT D

IBRC ARTICLES OF DISSOLUTION FILING AND RELATED RECORDS

02/02/2010 13:46 FAX

FedEx Kinko's

001/001

DUPLICATE - 6438

This form must be type written or computer generated.



State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations & Commercial Code
Articles of Dissolution of Limited Liability Company

IRON BULL RAILROAD COMPANY, LLC

Limited Liability Company Name

Pursuant to the provisions of the Utah Limited Liability Company Act, the undersigned Limited Liability Company adopts the following Articles of Dissolution:

File Number: 6953871-0160

First: The address of the designated office:

492 WEST GRANT STREET, LEBANON OR 97355 or 51 E 400 N #1, CEDAR CITY UT 84720

Street Address

City

State

Zip

Second: The effective date of the dissolution DECEMBER 31, 2009

Third: Reason for dissolution:

NO LONGER IN BUSINESS

Fourth: If dissolution occurred by written agreement of the members, a statement to that effect. Please attach statement.

Under penalties of perjury, I declare that these Articles of Dissolution have been examined by me and are, to the best of my knowledge and belief true, correct and complete.

Dated FEBRUARY 2, 2010

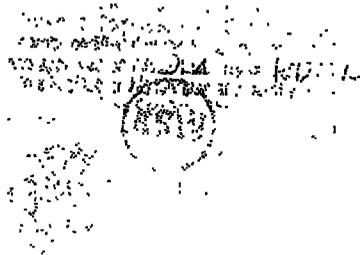
By: *Michael R. Roub*, manager

MICHAEL R. ROUB, MANAGER

Additional filing requirements

One (1) original or true copy of the Articles of Dissolution. If the filer registers a copy of the Articles of Dissolution an additional exact copy of the filed document along with a return addressed envelope with adequate first-class postage must also be submitted.

The filer shall submit to the State of Utah a statement of the filer's compliance with the provisions of the Utah Limited Liability Company Act, which may be the business entity's original statement or a copy of the statement if the filer is a registered agent.



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. FD 35558

**UTAH SOUTHERN RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
IRON BULL RAILROAD COMPANY, LLC**

PETITION TO REJECT OR REVOKE

EXHIBIT E

2011 OPERATING AGREEMENT

**RAIL TRACK OPERATING AGREEMENT
between**

**CML Metals Corporation
and
Utah Southern Railroad Company, LLC**

This Rail Track Operating Agreement ("Agreement") dated January 20, 2011 (the "Effective Date"), is made and entered into between CML METALS CORPORATION, a Utah Corporation ("CML"), as "Lessee," and UTAH SOUTHERN RAILROAD COMPANY, LLC ("USRR"), a Utah Corporation, as "Rail Operator", collectively the "Parties."

RECITALS

A. CML is the Lessee of the Union Pacific ("UP") rail line known as the Cornstock Subdivision, extending between milepost 0.1 at or near Iron Springs, Utah and milepost 14.7 at or near Iron Mountain, Utah, a distance of approximately 14.6 miles, located in Iron County, Utah (the "Track"), with rights to certain other tracks in the vicinity (the Track and the other tracks to which CML has rights are sometimes referred to herein as the "Project"). A copy of the UP Lease is attached hereto as Exhibit "A," and a map showing the location of the Track is attached hereto as Exhibit "B."

B. USRR desires to operate, and handle day-to-day maintenance and repair of the Track on behalf of CML on the terms set forth in this Agreement in accordance with FRA Class 2 Standards.

C. CML desires to engage USRR for the purpose of switching, operating, maintaining and repairing the Track on behalf of CML subject to the terms, conditions and provisions of this Agreement.

NOW THEREFORE, for good valuable consideration, the Parties agree as follows:

Article 1. Definitions

1.00 Definitions. As used in this Agreement, the following terms shall have the following definitions:

a. "Applicable Laws" shall mean all current and future laws, statutes, rules, regulations, ordinances, directives, covenants, easements, and restrictions of record, permits, and requirements of all municipal, state and federal authorities, including but not limited to the Surface Transportation Board, the Utah Public Utilities Commission, the Federal Railroad Administration, the Federal Employees Liability Act, Worker's Compensation, now or later in

force, including but not limited to, Environmental Laws, the requirements of the local fire department and any applicable insurance underwriter (fire or otherwise) or rating bureau relating in any manner to the use, occupancy or operation of the Track (including but not limited to matters pertaining to: (i) railroad operators; (ii) railroad safety; (iii) the transportation and/or storage of goods, products or any other items in or on rail cars; (iv) industrial hygiene; (v) occupational safety and health; (vi) fire safety; (vii) environmental conditions on, in, under or about the Track, including soil and groundwater conditions; and (viii) the use, generation, manufacture, production, installation, maintenance or removal, transportation, storage, spill or release of any Hazardous Substance or storage tank, now in effect or which may hereafter come into effect (including retrofits or changes in building and health and safety codes), and whether or not reflecting a change in policy from any previously existing policy.

b. "Assignment" shall mean any assignment, transfer, mortgage, or other transfer or encumbrance of this Agreement whether voluntarily or by operation of law.

c. "Environmental Laws" shall mean all current and future federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, occupational or environmental conditions on, under, or about the Project, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Hazardous Materials Transportation Act, the federal laws and regulations governing the storage and transportation of hazardous materials by rail, the Superfund Amendments and Re-authorization Act, the Emergency Planning and Community Right to Know, the Occupational Safety and Health Act, together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene laws, ordinances, or regulation relate to Hazardous Substances on, under, or about the Project, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

d. "Event of Default" shall mean any one or more of the events or occurrences set forth in Section 11.00 of the Agreement.

e. "Hazardous Substance" shall mean any product, substance, chemical, material or waste whose presence, nature or quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or affect, either by itself or in combination with other materials which is either: (i) potentially injurious to the public health, safety or welfare, the environment, the Track, or the Project; (ii) regulated or monitored by any governmental authority; or (iii) a basis for liability of CML or USRR to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include but not

be limited to: (i) those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in or under any other Environmental Law; (ii) those substances listed in the United States Department of Transportation (DOT), or by the environmental Protection Agency, or any successor agency, as hazardous substances; (iii) other substances, material, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and (iv) any material, waste, or polychlorinated biphenyl, designated as a hazardous substance, a flammable explosive, or a radioactive material.

f. "Hazardous Substance Condition" shall mean the occurrence or discovery of any deposit, spill, seepage, release or any other condition involving the presence of or a contamination by Hazardous Substance, in, under or about the Track, Project, and/or any rail car on the Track as the case may be.

g. "Reportable Use" shall mean: (i) the installation or use of any above or below ground storage tank; and (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from or with respect to which a report, notice, registration or business plan is required to be filed with any government authority, including USRR's being responsible for the presence in, on or about the Track of a Hazardous Substance with respect to which any Applicable Laws require that a notice be given the persons using, entering or occupying the Track or neighboring properties. "Reportable Use" shall not be interpreted to limit the reporting of any Hazardous Substances under this Agreement to a "Reportable quantity" under the Environmental Law.

h. "Rules and Regulations" shall mean the rules and regulations for the operation as established and issued by CML, as amended from time to time. The Rules and Regulations are attached as Exhibit "C" hereto and incorporated herein by this reference.

i. "USRR's Related Parties" shall mean USRR's employees, officers, directors, agents, contractors, invitees, licensees, vendors, shippers, customers and any other individuals related by business or otherwise to USRR.

Article 2. Track in Project

2.00 ~~Track~~. CML will allow USRR to use the Track on the terms, provisions and conditions set forth in this Agreement.

2.01 Rehabilitation. For the first year, the scope of work as provided in Exhibit E, shall be completed on or before JAN 20, 2011. CML shall rehabilitate and upgrade the Track to a FRA Class 2 Standard.

Article 3. Use and Condition of Track

3.00 Responsibilities of USRR: Permitted Use of the Track. USRR shall be responsible during the term of this Agreement for the operation, maintenance and repair of the Track. Except as otherwise provided in this Agreement or in a written agreement between USRR and CML, USRR shall be solely responsible for all costs and expenses incurred in connection with the operation, maintenance and repair of the Track. In carrying out its duties and responsibilities hereunder, USRR shall be permitted to use the Track for the switching of rail cars, to conduct maintenance and repair of the track and the track bed, and for no other use or purpose whatsoever (the "Permitted Use").

3.01 Prohibited Activities. USRR shall not use or permit the use of the Track in any way or manner that creates or threatens to create waste or a nuisance, or that disturbs, interrupts or interferes with CML or other CML pre-approved occupants of the line or to the neighboring premises or properties.

3.02 Responsibility for Rail Cars. In connection with the operation of the Track, rail cars will be provided by CML. Once rail cars or a unit train is consigned, delivered, or otherwise placed on the track for interchange, the rail cars and their contents shall be deemed to be delivered to USRR and USRR assumes full responsibility for all loss or damage to the rail car and its contents that occurs while the rail car is on the track or otherwise in the custody and/or control of USRR, until the rail car is delivered to Union Pacific at interchange. CML shall have no responsibility or liability whatsoever for rail cars on the Track unless, as the result of negligence or intentional act on the part of CML resulting in the loss or damage of said railcars.

3.03 Rules and Regulations. CML may from time to time create, establish, enact, amend, modify or change the Rules and Regulations, within CML's sole and absolute discretion including, but not limited to, rules and regulations for the management, safety, care, and cleanliness of the area, the grounds, and the preservation of good order. USRR agrees that it will abide by, keep, and observe all of the Rules and Regulations. USRR acknowledges CML's absolute authority to establish, create and amend the Rules and Regulations. If, however, the amended Rules and Regulations are found unacceptable to USRR then USRR shall have the right to negotiate terms acceptable to both parties. If no agreement can be reached, the USRR shall have the right, via thirty-day written notice, to terminate this agreement.

Article 4. Operations

4.00 Delivery of Rail Cars. USRR shall communicate and coordinate with UP for the timely pickup and/or delivery of rail cars to and from the rail line. USRR shall use all reasonable efforts to coordinate with UP to comply with the pickup and/or delivery times requested by CML.

4.01 Switching Rail Cars. USRR shall, at USRR's sole cost and expense, switch or cause to be switched all rail cars and unit trains delivered to, stored, or otherwise placed at the interchange tracks within a reasonable amount of time.

4.02 Rail Locomotives. USRR shall at all times, at USRR's sole cost and expense, maintain rail locomotives in good working order and condition in compliance with applicable laws ready to provide the switching services pursuant to this Agreement. Once the Track is upgraded, UP may allow its locomotives to be operated over the Track. For the movement of up to and including 2.0 million tons of material annually, USR locomotives shall be used. For the movement of material beyond 2.0 million tons on an annual basis, it shall be at CML's discretion whether USRR or UP locomotives will be used. Accordingly, CML shall provide written direction to USRR regarding the use of locomotive power.

4.03 Operating Authority. CML will file a Notice of Exemption at the STB for its acquisition of the rail line by lease from UP and its operation. USRR will file a Notice of Exemption at the STB for its operation of the rail line by operating agreement with CML. Those filings made be made jointly if CML and USRR so agree. In the event that the Operating Agreement were to be lawfully terminated, or expires by its terms, USRR agrees that it will promptly file at the STB for authority to discontinue rail service over the line.

4.04 USRR Tracking System. USRR shall provide CML full access to all units trains/cars handled at the interchange point, along the Track.

Article 5. Term

5.00 Term. The initial term of this Agreement shall commence on the Effective Date of this Agreement and shall expire July 31, 2013 (the "Term"). This Agreement shall be automatically renewed thereafter for successive one (1) year terms (each, a "Renewed Term") unless either party gives written notice to the other party at least sixty (60) days prior to the expiration of the Term or any Renewed Term that the Agreement shall not be renewed.

Article 6. Fees

6.00 Per Car Fee. As compensation for its services hereunder, USRR shall be compensated by CML based upon the number of rail cars handled by USRR. The per-car rates to be paid by CML to USRR are set forth on Exhibit "D" of this Agreement. The schedule of rates set forth on Exhibit "D" may be modified or amended upon the written consent of both Parties. USRR will submit to CML a list of cars handled each month on an itemized invoice. CML agrees to pay such monthly invoices within 30 days of receipt.

6.01 USRR's Books and Records. USRR shall keep and maintain full, complete, and appropriate books and records of all cars handled from the Track in accordance with

generally accepted accounting principles. Not more often than once per calendar year, CML shall have the right to audit USRR's books and records relating to USRR's operation of the Track for the purpose of verifying the number of rail cars reported by USRR as having been handled by USRR. The Parties shall adjust the amounts paid or owed by CML if such audit shows that the number of rail cars handled by USRR was incorrectly reported by USRR. If such audit discloses that USRR has overstated the number of rail cars handled by USRR by two percent (2%) or more as to any given period, USRR shall pay the reasonable cost of such audit and shall immediately refund the amount due to CML with interest thereon from the date such amount was paid by CML at the rate of twelve percent (12%) per annum.

Article 7. Maintenance and Repair

7.00 USRR's Track Maintenance and Repair Obligations. USRR shall, at USRR's sole cost and expense:

- (a) Inspect the Track weekly and notify CML monthly in writing of any maintenance and/or repair required to operate safely on the Track. All work shall be in accordance with FRA Class 2 Standards.
- (b) Provide normal maintenance and repair work on the Track. For work deemed outside the scope of normal maintenance and repair, USRR shall provide CML written notification including, but not limited to the option of completing the necessary work at CML expense. CML may at its discretion hire a third-party to complete the necessary work.
- (c) On an annual basis, contract a third-party, agreeable to USRR and CML, for the purpose of controlling potential overgrowth of vegetation on or around the Track.

Article 8. Insurance; Indemnity

8.00 USRR's Insurance. USRR shall obtain, keep in full force and effect, and provide to CML written evidence of the insurance required under this Agreement. Insurance required hereunder shall be in companies duly licensed to transact business in Utah and maintaining during the policy term a "General Policyholders Rating" as set forth in the most current issue of "Best's Insurance Guide" acceptable to CML. USRR shall not do or permit to be done anything which shall invalidate the insurance policies set forth herein. USRR shall cause to be delivered to CML certified copies of policies of such insurance of certificates evidencing the existence and amounts of such insurance with the insured's and loss payable clauses as required by this Agreement. USRR shall name CML as an additional insured on all their policies. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to CML. USRR shall, at least thirty (30) days prior to the expiration of such policies,

furnish CML with evidence of renewals, certificates or "insurance binders" evidencing renewal thereof, or CML may order such insurance and charge the cost thereof to USRR, which amount shall be payable by USRR to CML upon demand.

8.01 Liability Insurance. USRR shall obtain and keep in force during the term of this Agreement a Comprehensive Commercial General Liability policy of insurance protecting USRR, and naming CML as additional insured, against claims for bodily injury, personal injury, and property damage based upon, involving, or arising out of the use, operation, maintenance or repair of the Track, (including but not limited to fires, chemical spills, seepage or other Hazardous Substance Conditions) and all areas appurtenant or adjacent thereto, including areas used in common with other at the Project. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$5,000,000 per occurrence with an "Additional Insured-Managers or Contracts of Premises" Endorsement and contain the "Amendment of the Pollution Exclusion" for damage caused by heat, smoke, or fumes from a hostile fire. The policy shall not contain any intra-insured exclusion as between insured persons or organizations, but shall include coverage for liability assumed under this Agreement as an "insured contract" for the performance of USRR's indemnity obligation under this Agreement. CML shall have the right to increase required minimum limits not to exceed \$7,500,000, as it deems necessary, via written notice to USRR. Additionally, railroad employees of USRR will be covered under the Federal Employers Liability Act (FELA).

8.02 Auto Liability Insurance. USRR shall carry automobile (including vehicular liability) insurance with a minimum combined single limit of \$1,000,000 covering all owned, hired, and non-owned autos, vans, trucks, and any other vehicles entering the Project and/or driving within Project on USRR's behalf. CML shall be named as an additional insured on all such policies. CML shall have the right to increase required minimum limits not to exceed \$1,500,000 as it deems necessary, via written notice to IBR.

8.03 Indemnity. USRR shall indemnify, protect, defend, and hold harmless the Track, CML, and their respective employees and agents from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, permits, attorney's and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the use, operation, maintenance or repair of the Track by USRR and the conduct of USRR's business, unless caused by the negligence or intentional misconduct of CML.

8.04 Exemption of CML from Liability. CML shall not be liable for injury or damage to the person or goods, wares, merchandise, or other property of USRR, USRR's Related Parties or agents, or any other person in or about the Track or the property, whether such damage or injury is caused by or results from fire, explosion, steam, electricity, gas, water or rain or snow, or from the breakage, leakage, obstruction, or other defects of pipes, wires, or from any other cause, whether the said injury or damage results from conditions arising upon the Track or upon other portions of property, or from other sources or places, and repairing the

sama is accessible or not. Except as otherwise provided in this Agreement, CML shall not be liable to USRR for any damages, claims or losses, nor shall USRR be entitled to terminate this Agreement or to any abatement of user fees for any damage to USRR's property or any injury to USRR or USRR's Related Parties, or loss to USRR's business arising out of any cause whatsoever. CML immunity from liability shall be excepted if the loss or damage is the result of negligence of an intentional act on the part of CML.

Article 9. Hazardous Substances

9.00 Reportable Users Require Prior Consent. USRR shall not engage in any activity in, on or about the property of the Track which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of CML and compliance in a timely manner (at USRR's sole cost and expense) with all Applicable Laws. Notwithstanding the foregoing, USRR may, without CML's prior consent, but in compliance with all Applicable Laws, use any ordinary and customary materials reasonably required to be used by USRR in the normal course of USRR's business permitted on the Track, so long as such use is not a reportable Use of a Hazard Substance and does not expose the property or neighboring properties to any meaningful risk of contamination or damage or expose CML to any liability therefore.

9.01 Duty to Inform CML of Hazardous Substance Condition. If USRR knows, or has reasonable cause to believe, that a Hazardous Substance Condition has occurred in, on, under, or about the Track, other than as previously consented to by CML, USRR shall immediately: (i) give verbal and written notice to such fact to CML; and (ii) give CML a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to USRR, or received by USRR from, any governmental authority or private party, or persons entering or occupying the Track, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on or about the Track, including but not limited to all such documents as may be involved in any Reportable Uses involving the Track.

9.02 Hazardous Substance Condition Responsibilities. If a Hazardous Substance Condition occurs for which USRR is legally responsible, USRR shall make whatever investigation and remediation thereof is required by Applicable Laws, and this Agreement shall continue in full force and effect, subject to CML's rights under Article 11. If Hazardous Substance Condition occurs for which USRR is not legally responsible, CML may, at CML's option, either: (i) investigate and remediate such Hazardous Substance Condition at CML's expense, in which event this Agreement shall continue in full force and effect; or (ii) if the estimated cost to investigate and remediate such condition exceeds twelve (12) times the then monthly Base Revenue Fee, CML may, within thirty (30) days after it learns of the occurrence, terminate this Agreement upon sixty (60) days prior written notice to USRR.

9.03 Expiration and Termination Option. Upon expiration or earlier termination of this Agreement, CML may request USRR to perform all of the following activities at USRR's sole expense: (i) obtain an environmental assessment of the Track to evaluate the environmental condition of the Track and the area immediately surrounding the track, and any potential environmental liabilities under this Agreement; (ii) all remedial or other work identified in such environmental assessment and all applicable Environmental Laws; (iii) all corrective, remedial, repair, or other work necessary to correct any alleged violations, deficiencies, or hazards noted by any environmental governmental agency; and (iv) all steps necessary to terminate, close, or transfer all environmental permits, licenses, and other approvals or authorizations for the Track or for activities, equipment, or conditions on the Track, in accordance with all Environmental Laws. The above will only occur if during the term of this Agreement a hazardous incident has occurred.

9.04 Environmental Indemnification. USRR shall indemnify, protect, defend and hold CML and its respective agents, officers, and employees harmless from and against any and all losses, damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorneys and consultant's fees arising out of the actions of USRR and its agents and representatives in bringing any Hazardous Substance on the Track or the immediately surrounding area or in controlling any such Hazardous Substance.

Article 10. Compliance with Laws

10.00 USRR Compliance with Laws. USRR shall, at USRR's sole cost and expense: (i) obtain and maintain any and all necessary licenses, permits and/or approvals under Applicable Laws and Regulations for USRR's business in, on or about the Track as provided herein; and (ii) fully, diligently and in a timely manner comply with all Applicable Laws and Regulations concerning the Track or USRR's use thereof, whether foreseen or unforeseen, regardless of cost, and regardless of when during the Term the proper paperwork is filed. USRR shall, within five (5) days after receipt of CML's written request, provide CML with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing USRR's compliance with any Applicable Laws and Regulations specified by CML, and shall immediately upon receipt, notify CML in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by USRR or the Track to comply with any Applicable Laws and Regulations. Without in any way limiting the generality of the foregoing, USRR shall prior to conducting any activities or use of the Track, obtain at USRR's sole expense all use or occupancy permits and licenses required by Applicable Laws and Regulations for the Permitted Use.

Article 11. Default; Remedies

11.00 Event of Default. Any one or more of the following events or occurrences shall constitute a material break of the Agreement by USRR and after the expiration of any applicable grace period shall constitute and Event of Default:

a. **Failure to Provide Insurance or Fulfill Other Obligations.** Except as expressly otherwise provided in this Agreement: (i) the failure by USRR to provide CML with reasonable evidence of insurance required under this Agreement where such failure continues for three (3) days following written notice thereof by or on behalf of CML; or (ii) the failure of USRR to fulfill any obligations under this Agreement which endangers or threatens life or property, where such failure continues for a period of three (3) days following the written notice thereof by or on behalf of CML to USRR. Notwithstanding the foregoing grossly unsafe practices as determined by any applicable local, state, or federal governmental agency, or as reasonably determined by an insurance rating bureau or underwriter regularly used by CML to evaluate such matters shall be sufficient cause for CML to immediately terminate USRR's right to possession and eject USRR from the Track without waiving other rights and remedies CML may have against USRR.

b. **Failure to Provide Switching Services.** A default, breach or failure of USRR to perform or comply with USRR's obligation in Article 4 where such default, breach or failure continues for a periods of three (3) days after written notice thereof by or on behalf of CML to USRR.

c. **Failure to Provide Certain Written Notices.** Except as expressly otherwise provided in this Agreement, the failure by USRR to provide CML with reasonable written evidence (in duly executed original form, if applicable) of: (i) compliance with Applicable Laws and Regulations pursuant to Section 10.00; or (ii) the execution of any document or other information which CML may reasonably require of USRR under the terms of this Agreement where any such failure continues for a period of three (3) days following written notice by or on behalf of CML to USRR.

d. **Default of Agreement or Rules and Regulations.** A default or breach by USRR as to the terms, covenants, conditions, or provisions of this Agreement except as otherwise provided for herein, or of the Rules and Regulations where such default or breach continues for a period of three (3) days after written notice thereof by or on behalf of CML to USRR.

Article 12. Right of Entry

12.00 Access and Entry. CML reserves the right at any and all times to access and enter the Track for inspection, showing to prospective tenants, or for other reasonable purposes.

Article 13. Alterations

13.00 No Alterations. USRR shall not make any alterations, improvements, or other changes whatsoever to the Track, without prior written consent of CML in CML's sole and

absolute discretion. CML reserves the right, at any time, to make improvements, additions, modifications or changes to any portion of the Track, including, but not limited to, track layout provided, however that any such changes shall not adversely affect ISR's rail operations.

Article 14. Miscellaneous Provisions

14.00 Severability. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

14.01 Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Agreement.

14.02 No prior or Other Agreements. This Agreement contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

14.03 Notices. All notices required by the terms of this Agreement and supporting documents, shall be deemed to have been properly given if such notice is in writing, addressed to the party at such address as the party may have last designated in writing (if different from the address listed herein), sent by facsimile transmission:

If to CML:

CML Metals Corporation
Attn: Dale Gilbert
6249 W Gilbert Industrial Court
Hurricane, UT 84737
Facsimile No. (435)627-1411

If to USRR:

Utah Southern Railroad Company, LLC
Attn: Michael Root
19014 East Tonto Verde Drive
Rio Verde, AZ 85263
Facsimile No. ()

Any change in addresses or numbers for notices shall be promptly forwarded to all PARTIES. Unless otherwise stipulated hereunder, all notices shall be effective as of the date and time on which faxed, if any notice is transmitted by facsimile transmission.

14.04 Waivers. No waiver by CML of any Event of Default or breach of any term, covenant or condition hereof by USRR, shall be deemed a waiver of any other term,

covenant, or condition hereof, or any subsequent Event of Default or breach by USRR of the same or of any other term, covenant, or condition hereof. CML's consent to, or approval of, any act shall be deemed to render unnecessary the obtaining of CML's consent to, or approval of, any subsequent or similar act by USRR, or be construed as the basis of an estoppel to enforce the provision or provisions of this Agreement requiring such consent. Regardless of CML's knowledge of an Event of Default or breach at the time of accepting user fees, the acceptance of user fees by CML shall not be waiver of any preceding Event of Default or breach by USRR of any provision hereof, other than the failure of USRR to pay the particular rent so accepted. Any payment given CML by USRR may be accepted by CML on account of moneys or damages due CML, notwithstanding any qualifying statements or conditions made by USRR in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by CML at or before the time of deposit of such payment.

14.05 No Right to Holdover. USRR has no right to retain possession of the Track or any part thereof beyond the expiration or earlier termination of this Agreement

14.06 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

14.07 Covenants and Conditions. All provisions of this Agreement to be observed or performed by USRR are both covenants and conditions

14.08 Binding Effect: Choice of Law. This Agreement shall be binding upon the parties, their personal representatives, successors, and assigns and be governed by the laws of the State of Utah. Any litigation between the Parties hereto concerning this Agreement shall be initiated in Iron County, Utah, provided, however, that federal law shall apply to matters affecting interstate commerce, and actions thereon shall be instituted in federal court in Utah.

14.09 Attorneys' Fees. If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees and court costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred. CML shall be entitled to attorney's fees, costs, and expense incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with an Event of Default.

14.10 Termination. Unless specifically stated otherwise in writing by CML, the voluntary or other surrender of this Agreement by USRR, the mutual termination or cancellation hereof, or the termination hereof by CML for breach or default by USRR, shall automatically terminate any subcontract on the Premises; provided, however, CML shall, in the event of any such surrender, termination, or cancellation, have the option to continue any one or all of the existing subcontractors. CML's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute CML's election to have such event constitute the termination of such interest.

14.11 Reservations. CML reserves to itself the right, from time to time, to grant, without the consent or joinder of USRR, such easements, rights and dedications that CML deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps, and restrictions do not unreasonably interfere with the use of the Track by USRR. USRR agrees to sign any documents reasonably requested by CML to effectuate any easement rights, dedication, map, or restrictions.

14.12 Authority. If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Agreement on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on its behalf. If USRR is a corporation, trust, or partnership, USRR shall, within thirty (30) days after request by CML, deliver to CML evidence satisfactory to CML of such authority.

14.13 Assignment. USRR may not assign or transfer its obligations under this agreement. Assignment of this contract by USRR shall constitute a default.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

Lessee:
CML Metals Corporation

By: [Signature]

Title: President/CEO

Rail Operator:
Utah Southern Railroad Company, LLC

By: [Signature]

Title: PRESIDENT

Lease Agreement Between Union Pacific Railroad Company and CML Metals Corporation:

To Be Inserted Once Signed.

EXHIBIT B

Map of Rail Short Line

EXHIBIT C

Rules and Regulations

To be established by CML as needed according to 1. h. & 9.03

- **USRR must meet all Federal, State and Local Laws.**
- **USRR will be under MSHA and CML's safety requirements while operating within the boundaries of the mine property (to be included).**
- **USRR must follow all Federal Rail Administration rules and regulations.**

USRR will submit to CML a list of cars handled each month on an itemized invoice. CML will pay USRR the following per car rates:

- a. Cars handled using Union Pacific Railroad locomotives: \$26.50 per car
- b. Cars handled using USRR locomotives: \$66.00 per car.
- c. Rates shall be adjusted annually on the anniversary date of this agreement by the application of the index in the Rail Cost Adjustment Factor, governed by the Surface Transportation Board (STB) and calculated by the Association of American Railroads (AAR).
- d. "Car Handled" shall be defined as movement of any "empty" car from the Interchange Track at Iron Springs, to the mine site and load-out facility at Iron Mountain, and delivered back to the Interchange Track as a "full" car, regardless of how often the car is moved by USRR in the interim

CML will pay USRR month invoices within 30 days of receipt.

From: mike_root@hotmail.com
Subject: Crossings and trees
Date: July 15, 2008 3:26:41 PM MDT
To:

I offer CML the following quote for crossing repairs and tree removal:

CROSSING REPAIRS (2)

Install 133# rail as needed in crossing area
Replace all cross-ties in crossing area with new ties
Place correct ballast under ties
Surface track
Replace crossing surface with man made crossing planks
Replace crossing signs to comply with regulations
Clean up

\$15,000 per crossing
\$30,000 for both crossings

TREE REMOVAL

Excavator w/ operator \$250 hr
24 hours
\$6,000

Signed: _____

Title: _____

Date: _____

STB DOCKET NO. FD 35558

UTAH SOUTHERN RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
IRON BULL RAILROAD COMPANY, LLC

PETITION TO REJECT OR REVOKE

EXHIBIT F

**DECLARATION OF DALE GILBERT IN SUPPORT OF MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S REQUEST FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

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Attorneys for Defendant CML Metals Corporation

**IN THE UNITED STATES DISTRICT COURT FOR THE
 DISTRICT OF UTAH, CENTRAL DIVISION**

UTAH SOUTHERN RAILROAD
 COMPANY, LLC

Plaintiff.

v.

CML METALS CORPORATION, and JOHN
 DOES 1 through 5.

Defendants.

**DECLARATION OF DALE GILBERT IN
 SUPPORT OF MEMORANDUM IN
 OPPOSITION TO PLAINTIFF'S
 REQUEST FOR
 TEMPORARY RESTRAINING ORDER
 AND PRELIMINARY INJUNCTION**

Case No.: 2:11-CV-1176-CW

Judge Clark G. Waddoups

I, Dale Gilbert, hereby declare and state as follows:

Introduction

1. I am competent to testify and have personal knowledge of the matters stated in this declaration. I am over the age of 21 years. I am President and CEO of CML Metals Corporation (CML Metals), a Utah corporation, as well as President and CEO of PIC Railroad, Inc., a Utah corporation (PIC Railroad). PIC Railroad is currently doing business as Comstock Mountain Lion Railroad.

2. I make this declaration concerning the motion for a TRO that Utah Southern Railroad (Plaintiff or USRR) obtained. In submitting this declaration, I am not purporting to detail every conversation or fact relevant to the subject matter of this litigation or the dispute between CML Metals and Plaintiff. Rather, I submit this declaration in an effort to put a number of facts before the Court that are relevant to the Court's consideration of Plaintiff's TRO. I understand that I am likely to be deposed and will be a trial witness, and I expect that there will be additional information and detail that I will be able to provide in the course of such testimony.

The Iron Mountain Mine

3. Starting in the 1980s and until about 1996, I was Vice President of Gilbert Development Corporation (Gilbert Development), where I was involved in the iron ore mine known as Iron Mountain near Cedar City, Utah. At the time, Gilbert Development operated the Iron Mountain mine under contract with Geneva Steel. The Iron Mountain mineral estate is extensive, including approximately 250 million tons of drilled and inferred iron ore reserves, covering some 5,000 acres of mostly federal lands.

4. Following Geneva Steel's bankruptcy, the Iron Mountain mine assets were purchased by a Canadian company known as Palladon Ventures. The mine assets were then transferred to a Utah corporation known as Palladon Iron Corporation (Palladon), formed in 2005.

5. Following the acquisition of the Iron Mountain mining property, I worked with Palladon to form a business structure whereby Gilbert Development would play a similar operational role as it had during the time that the Iron Mountain mine was controlled by Geneva Steel, except that Palladon intended to sell iron ore to buyers in China, with iron ore being shipped by rail to ports in California and in turn by ship to China.

CML Metals Corporation

6. Following significant business development efforts, the Palladon operation failed due to a variety of factors and Palladon's primary creditor took control of Palladon. Following the change in control, I worked out a similar business arrangement with Palladon, under its new management, whereby Gilbert Development would continue to operate as a mining contractor and I would serve as President and Chief Executive Officer of Palladon, which also changed its corporate name to CML Metals. I am no longer an officer or director of Gilbert Development.

7. Following a great deal of effort and investment, the current CML Metals operation has become very successful. CML Metals produces, ships, markets, and sells iron ore, primarily for export to China but also sells ore to domestic buyers. CML Metals is a private corporation with corporate offices in Cedar City, Utah. CML Metals has grown into a strategic mining company with assets in mineral property and rights, mining claims, real estate, water

rights, facilities and infrastructure. CML Metals, Gilbert Development, and PIC Railroad collectively employ over 100 people directly and are currently in the process of hiring many more, as its mining and processing operations are scaling up. CML Metals is a forward thinking strategic company with development and expansion projects being worked on continuously to broaden the market for its products and promote growth in the company. CML Metals is committed to being a world-class reputable supplier of minerals to markets all over the world.

8. At this time, CML Metals owns or leases approximately 525 rapid discharge open top railcars to support its operations and ships five unit trains per week, consisting of 84 to 100 cars per unit train. Each car is loaded with approximately 109 tons of iron ore. At this time, CML Metals ships iron ore to two ports in California, one in Richmond, California, and another in Stockton, California. At the ports, the railcars are unloaded and the iron ore is stockpiled for loading onto ships bound for China.

9. At this time, CML Metals produces approximately 180,000 tons of iron ore per month, with a market value of roughly \$90 to 95 per ton, or \$12 to \$15 million per month. Each month, CML Metals pays approximately \$9 million in costs (over \$100 million annually) in the form of payroll to employees, materials and supplies, such as diesel fuel and mining equipment, trade vendors and contractors, transportation costs, railroad equipment, and taxes. In the near future, due to recent capital improvements at the Iron Mountain mine, production is scheduled to double and then triple to six million tons per year or 500,000 tons per month.

Rail Shipping Logistics and Operating Authority

10. After producing the iron ore at the mine, CML Metals begins the shipping process, which is integral to its entire operation. With the shipping process, CML Metals loads the iron ore onto rail cars, which are then carried, by rail, from the mine on a rail line located in Iron County, Utah, known as the Comstock Subdivision. This line extends between milepost 0.1 at or near Iron Springs and milepost 14.7 at or near Iron Mountain, a distance of approximately 14.6 miles (the "Comstock Subdivision").

11. From the Comstock Subdivision, the iron ore then goes to an interchange rail line where Union Pacific Railroad (UP) then hauls the ore by railroad to port in California where it is shipped to overseas to fulfill contractual obligations CML Metals has with its customers.

12. Union Pacific Railroad (UP) is the owner of the Comstock Subdivision.

13. PIC Railroad leases the Comstock Subdivision from UP under a Lease Agreement dated July 31, 2008, and amended by Addendum dated April 21, 2009. A true and correct copy of this Lease Agreement (with Addendum thereto) is attached hereto as **Exhibit A**. UP also has an Interchange Agreement with PIC Railroad dated July 31, 2008, and amended by Addendum dated April 24, 2009, to effect delivery and receipt of interchange of railroad equipment between UP and PIC Railroad at Iron Springs, Utah. A true and correct copy of this Interchange Agreement (with Addendum thereto) is attached hereto as **Exhibit B**.

14. PIC Railroad is a wholly-owned subsidiary of CML Metals. PIC Railroad leases and operates as a Class III railroad pursuant to an exemption from the Surface Transportation Board (STB) dated September 14, 2006 that permits it to lease and operate the Comstock

Subdivision. PIC Railroad was created, in part, to streamline CML Metal's railroad shipping operations. Attached hereto as Exhibit C is a true and correct copy of the Verified Notice of Exemption filed by PIC Railroad, Inc. with the Surface Transportation Board on August 15, 2006, seeking authority (a) to lease the Comstock Subdivision from Union Pacific Railroad and (b) to operate the Comstock Subdivision. Attached hereto as Exhibit D is a true and correct copy of the Order from the Surface Transportation Board dated September 14, 2006, authorizing PIC Railroad (a) to lease the Comstock Subdivision from UP and (b) to operate the Comstock Subdivision. The STB Order provides, in part, as follows: "Although [PIC Railroad] will enter into an agreement whereby [Iron Bull Railroad] will operate the [Comstock Subdivision] line, [PIC Railroad] also seeks an exemption to operate to fulfill its common carrier obligation in the event [Iron Bull Railroad] were to cease operations." *Id.* at 1, n.1.

15. CML Metals has recently completed a loan with Credit Suisse for the sum of \$45 million so that it could finance the construction of a SAG mill in order to increase production and the purity of the iron produced at the mine. CML Metals' timely production and delivery of iron ore is required under the Credit Suisse loan agreement.

16. In this period of delay, CML Metals was scheduled to ship \$2.1 million worth of iron ore. The shipping process is critical to getting its product to port. Any delays in shipping from the mine on the Comstock Subdivision create delays in interchanging CML Metal's product with UP, which in turn, can cause CML Metals to miss the ships that will take its product from port in California overseas including to China.

17. CML Metal's contracts with its overseas customers require CML Metals to provide its shipments on time in a very punctual manner. Rail shipping occurs on a 24 hour basis every day of each year and the time increments to load and unload shipments are meticulously timed to meet both the rail shipping and port dock times. In short, rail shipping is the life blood of CML Metal's business. The logistics of shipping such volumes of iron ore in interstate commerce is extraordinarily complicated and any delay at any stage of the process causes a ripple effect at other stages because of the scale of its operations. For example, during the first two weeks of December, 2011, one of the inbound ships from China was delayed by weather, resulting in two empty ships coming into port in close proximity. There was insufficient iron ore stockpiled at the port to fill two ships, so ramping up rail deliveries of iron ore to fill back-to-back ships was critical in order to be in a position to fill the second ship. This is the scenario CML Metals was facing during the weekend of December 17, 2011 when the state TRO shut down its operations.

Plaintiff's Service Contract

18. CML Metals had a contract dated January 20, 2011, titled Rail Track Operating Agreement (the "Track Operating Agreement") with Plaintiff. A true and correct copy of this Track Operating Agreement is attached hereto as **Exhibit E**.

19. Pursuant to that Track Operating Agreement, Plaintiff was required to perform switching, operating, maintaining and repairing the Comstock Subdivision on behalf of CML Metals, subject to the terms, conditions and provisions of the Track Operating Agreement.

20. Between January 1, 2011 and December 1, 2011, CML Metals has shipped approximately 1.5 million tons of iron ore through Plaintiff under the Track Operating Agreement.

21. Under the Track Operating Agreement, CML Metals paid Plaintiff \$66 per round trip car, meaning the round trip movement of one full iron ore car from the mine to the UP interchange and one empty iron ore car from the UP interchange back to the mine, including all ancillary switching and exchange services and regardless of how many times a given car is actually moved.

22. Plaintiff billed CML Metals every two weeks. As of December 15, 2011, all of Plaintiff's services under the Track Operating Agreement have been paid current. Between January 1, 2011 and December 15, 2011, CML has paid Plaintiff a total of \$1,037,265 for its services under the Track Operating Agreement.

23. Based on my industry experience, I understand that a railroad operating the Comstock Subdivision will take in a profit margin of between five and eight percent, depending on how much capital the operation has invested in equipment, primarily locomotives. If locomotives are owned, profit margins would be in the range of eight percent; if they are leased, profit margins would be in the lower range of around five percent. To my knowledge, the Comstock Subdivision cannot be operated at a profit margin more than about ten percent.

24. Based on the foregoing, it is readily apparent to me that Plaintiff's total 2011 revenue to date of \$1,037,265 likely represents net profit in the range of \$51,000. Even if

Plaintiff's profit margin is a full ten percent, which is not likely based on my understanding of the industry and Plaintiff's operations, its 2011 net profits would be in the range of \$103,000.

25. Since the inception of that Track Operating Agreement, CML Metals experienced extensive problems with Plaintiff's performance and cooperation, in particular with pickup, delivery times and coordination, delivery dates, failure to perform on agreed upon schedules, as well as failing to consistently deliver rail cars to and from UP's rail line for shipment in a timely manner, all of which resulted in serious operational disruptions, including mining, loading, UP, ports, vessels, and CML Metal's customers.

26. As set forth above, because CML Metal's business depends on the timeliness of product shipments, the Track Operating Agreement was clear with Plaintiff, at Section 14.01: "Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Track Operating Agreement."

Plaintiff's Material Breaches of the Track Operating Agreement

27. CML Metals also advised Plaintiff at the inception of the Track Operating Agreement, which included me personally advising Michael Root, Plaintiff's president, on numerous occasions that CML Metals would increase its production volume and, consequently, the amount of product that needs to be shipped on the rail line. Yet, as CML Metal's shipping requirements increased, Plaintiff's performance significantly declined, with a substantial change when the number of Plaintiff's locomotives used decreased from three to two. This change came after statements from Root asking for a long-term contract with CML Metals. When an agreement to extend the contract was not forthcoming, Root warned CML Metals that Plaintiff

would reduce its operating capacity to two locomotives. In response, I explained to Root that the long-term contract extension he wanted would require performance and cooperation, not threats.

28. When Plaintiff went from three locomotives down to two, it was unable to keep up with CML Metal's shipping requirements in a timely fashion. The third locomotive is the key locomotive to achieve the production volumes required by CML Metals at this time and CML Metals has plans to at least double its production during 2012. While the other two locomotives are hauling product, the third locomotive should be at the Loadout, which is the facility at the mine where the iron ore is loaded into the cars, where the mine operator's loading crews are loading the cars. Without the third locomotive, the mine operator's loading crews are left waiting at the mine and there is significant down time, waiting for the other two locomotives to return. For example, Plaintiff's turnaround time has gone from under 10 hours to 20 hrs or more (at five trains per week that is a delay of 50 hours per week with a corresponding drop in production and income for the month). This also delays the turnover with UP because it throws the UP locomotive crews out of scheduled service turn-around times.

29. After CML Metals requested that Plaintiff return the third locomotive to its operation on September 12, 2011. Root indicated that he tried to get a third locomotive in an email to CML Metal's mine manager, Penn Leavitt. In the email, Root claims that he had been in the process of leasing a third locomotive, implying that it would be put into service. (A true and correct copy of this email is attached hereto as **Exhibit F**.) Root and Plaintiff never placed a third locomotive into service for CML Metals thereafter.

30. Moreover, the environment in which CML Metals was operating with Plaintiff and Root reached the point that the companies simply cannot work together constructively. For example, Root threatened on several occasions that he will not haul CML Metal's products. Root recently attempted to disable Plaintiff's locomotives on the Comstock Subdivision to prevent CML Metals from shipping with PIC Railroad. Root also threatened that if CML Metals did not extend the Plaintiff's contract, Root would not put additional locomotives back on the mine.

31. CML Metals on multiple occasions has attempted to reason with and assist Plaintiff to better both companies' operations. CML Metals has met with Root on many occasions to try to figure out solutions to shipping delays and make the operation more efficient. This is particularly important at this time because CML Metals is making every effort to double and triple present production rates. CML's efforts to resolve its problems with Plaintiff have been futile because Plaintiff has attempted to unilaterally dictate to CML Metals when Plaintiff will and will not perform its shipping obligations.

32. In October of 2011, I met with business people at UP for an annual review of CML Metals' shipping rates with UP. I was informed that UP had undertaken a detailed economic model of the shipping arrangement and was in a position to require an immediate increase of 6% in CML Metals' previous shipping rates because of two factors: operational inefficiencies caused by Plaintiff in connection with the exchange at Iron Springs and inefficiencies relating to the port at Richmond, California. A 6% increase in UP's shipping rate resulted in an increase of approximately \$1.68 per ton or \$300,000 per month in additional cost.

When CML Metals' production doubles, the shipping cost increase will increase accordingly, to \$600,000 per month. Because of this unanticipated cost increase, the CML Metals board of directors, to which I report, required that I make every effort to increase efficiency with Plaintiff at Iron Springs and with the port officials at the Redmond port. My efforts with Plaintiff were futile, while the Redmond port officials have been happy to attempt to accommodate CML Metals' request.

33. Following this significant shipping cost increase, I met with Root on behalf of Plaintiff in mid October 2011 in order to attempt to resolve the problems at Iron Springs and the UP shipping cost increases. Because of the amount of money at stake, CML Metals was willing to offer a number of solutions to Root to get to a solution including: leasing an additional locomotive directly and allowing Plaintiff to utilize the locomotive with direct cost reimbursements, CML Metals taking over Plaintiff's operations, leasing additional locomotives, and hiring Root as a consultant to assist in the operation, and outright buying out Plaintiff's contract. Root refused to work with CML Metals on any level even though Plaintiff is contractually obligated to do so.

34. During that October 2011 meeting, Root stated that Plaintiff would no longer inspect the track (a contractual obligation under the Track-Operating Agreement and one Plaintiff had been performing previously) and would not move any trains or cars until a certified inspector inspected the track, further hindering CML Metals' operations. CML Metals has spent millions of dollars to rehabilitate and maintain the Comstock Line and it is in full compliance

with or exceeds applicable federal safety requirements, so Plaintiff's allegations about requiring additional track inspections are entirely lacking in foundation or merit.

35. Out of options, and in light of Plaintiff's non-performance and the significant risk position facing CML Metals due to Plaintiff's material, uncured breaches of contract, only some of which are identified here, CML Metals followed the October meeting by sending Plaintiff a notice of default (the "Default Notice"), dated October 13, 2011. A true and correct copy of this Default Notice is attached hereto as Exhibit G.

36. As indicated in the Default Notice, Plaintiff was falling behind in its payments with its vendors, further threatening shipments. This is demonstrated, by example, in the attached email from Gilbert Development to Plaintiff. The email, a true and correct copy of which is attached hereto as Exhibit H was forwarded to me by Keith Gilbert from Gilbert Development, which provides fuel to Plaintiff.

37. After sending the Default Notice, the relationship between the parties and operations became increasingly more complex and difficult. In one instance Plaintiff failed to notify Balfour Beatty (a company who CML Metals hired to perform over \$1 million of refurbishment of the Comstock Subdivision) of a train movement (something Plaintiff had been coordinating with them directly on) thereby resulting in a near accident that occurred on or around October 21, 2011.

Contract Termination and Irreparable Harm to CML Metals

38. CML Metals operates its mine on a 24 hour per day/ 365 day per year basis. Any single unit train missed on the UP-side represents a loss of revenue to CML Metals in the range of \$540,000, in addition to ancillary damages such as UP delay charges and mine operation delay damages. If missing one or more unit trains results in missing a China-bound ore ship, the lost revenue to CML Metals would be in the range of \$5.4 million. Missed shipments also place CML Metals at significant risk for potentially catastrophic contract damages to the buyers of CML Metals' iron ore, including the cost of sourcing iron ore from other suppliers. CML Metals terminated Plaintiff's Track Operating Agreement because, among other things, Plaintiff was failing to perform Plaintiff's obligations in getting CML Metals' shipments delivered on time. A true and correct copy of CML Metals' termination notice is attached hereto as **Exhibit I**.

39. After terminating Plaintiff's contract, on December 15, 2011, CML Metals began to have PIC Railroad ship its product, which is authorized as both a lessee and operator of the Comstock Subdivision.

40. On Thursday, December 15, 2011, following termination of the Rail Operating Agreement and CML Metals' demand that Plaintiff vacate the property, Plaintiff's employees, apparently under the direction of Root, parked their two locomotives on the active spur line at the Iron Springs interchange. I was concerned because the locomotives were parked in a location on the UP line that would completely block access to the Comstock Subdivision. The locomotives were idling the first time that I saw them. Approximately one hour later I returned

to the location and noted that the locomotives were still located in a blocking position but that they had been shut down and that work signs had been placed near them. This was of grave concern to me because the temperature outside was approximately 16 degrees and once a locomotive's engine is shut down under those conditions, in a matter of a few hours the locomotive will dump all of its water and become completely inoperable. Having worked to restart locomotives that have been shut down under similar conditions, with a crew of perhaps eight people supplied with proper equipment, including industrial space heaters, it would take at least 8 hours to restart a locomotive. I immediately explained the situation to the Iron County Sheriff, who in turn asked Plaintiff's employees whether the locomotives were, in fact, subject to valid work or whether they had been operational just an hour or two before. Plaintiff's employees indicated to the sheriff that the locomotives had been operational. The sheriff then informed the employees that if the locomotives were to become disabled and UP were to remove them from the track, as is its contractual obligation to do, Plaintiff should not bother calling the sheriff to complain. Immediately thereafter, Plaintiff's two employees removed the work signs from the locomotives, started them up, and moved them to the rip track, where they were out of the way from any operations.

41. Following issuance of the state court Temporary Restraining Order on Friday, December 16, 2011, CML Metals was forced to stop loading trains at the Iron Mountain mine. At that time, UP was in the process of returning two empty unit trains from California and exchange them for two other unit trains being loaded at the mine. As of Saturday, December 17, 2011, UP had placed these two empty unit trains on sidings and discharged its locomotive crews.

All of the foregoing delay and confusion caused UP significant difficulty in managing not only CML Metals' shipments but those of UP's other customers in the UP rail system between California and southern Utah. The UP representatives that I deal with on a daily basis were extremely frustrated with the situation and indicated to me that its sidings were full and UP had to start rolling trains immediately, and asked me what CML Metals intended to do to clear up the situation.

42. Also on Saturday, December 17, 2011, I was contacted by a special investigator from UP, stating that he was investigating a report, apparently made by Plaintiff, that I was intentionally interfering with UP's operations by setting a track on derail. After explaining that the report was false and the underlying facts and the situation with Root and Plaintiff, the investigator stated that he had no concerns with CML Metals' actions, thanked me for my time, and has not contacted me again.

43. On Saturday, December 17, 2011, I discovered that certain electronic Bills of Ladings relating to CML Metals' iron ore shipments in the UP electronic shipping system had been tampered with and changed so that they were erroneous. I immediately worked with UP, CML Metals and PIC Railroad employees to correct the Bills of Lading. I understand that UP has since removed Root and Plaintiff from access to UP's electronic shipping system. Because of this problem with the Bills of Lading, it became impossible for UP to return the two CML Metals empty unit trains and pick up two full unit trains on Sunday, December 18, 2011, as previously planned when this Court lifted the state court temporary restraining order. Thus, the four unit trains in transit in interstate commerce are still under delay and will not be turned

around until at least Monday, December 18, 2011, if the UP crew scheduling works out as currently planned. This is so because the UP technical IT employees do not work on weekends and have not been able to correct the computer system bills of lading that have been altered. This matter is currently under further investigation by UP.

44. Based on the foregoing, compelling CML Metals to use Plaintiff to ship its product and requiring CML Metals to allow Plaintiff and its employees, including Root, uninhibited access to the Comstock Subdivision and the mine threatens critical irreparable harm to CML Metals. The Iron County Sheriff has made several trips in the past week to the mine to ensure there are no physical confrontations. However, the sheriff cannot remain at the mine and on the Comstock Subdivision during all hours of operation. In essence, CML Metals is forced to be in business with Plaintiff and Root which threatened and have actually diminished and disrupted CML Metals' operations.

45. CML Metals had four shipments to make this weekend (December 17-18, 2011) worth approximately \$3 million. The TRO issued by the state court, without prior notice to CML Metals, enjoined these shipments until it was lifted by this Court. Putting an injunction back into effect would cause CML Metals to miss additional shipments as explained more fully above.

46. Plaintiff has not demonstrated any ability to compensate CML Metals for the damage its efforts are causing to CML Metals and UP, particularly because of its failure to pay its own bills as stated above, which further threatens the core business of CML Metals.

47. The foregoing facts are true and correct to the best of my knowledge, information and belief.

48. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED THIS 19 day of December 2011.



DALE GILBERT

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2011, I caused the foregoing
**DECLARATION OF DALE GILBERT IN SUPPORT OF MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION** to be served via email to the
following:

James W. Jensen
jim@southernutahlaw.com
JENSEN LAW OFFICE
250 South Main
P.O. Box 726
Cedar City, UT 84721

/s/ J. Mark Gibb
An employee of Durham Jones & Pinegar

EXHIBIT A

LEASE AGREEMENT
BY AND BETWEEN
UNION PACIFIC RAILROAD COMPANY
AND
PIC RAILROAD LLC

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LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of the 31st day of July, 2008 (the "Lease") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Lessor") and **PIC RAILROAD LLC**, a Utah limited liability corporation ("Lessee").

RECITALS:

- A. Lessee intends to lease from Lessor, that certain line of railroad known as the Comstock Subdivision from Milepost 0.1 (the southerly clearance point between the Subdivision and Lessor's Track 403) at Iron Springs, UT to milepost 14.7 near Iron Mountain, UT, plus UP Track 401 and UP right of way underlying the Lessee owned second interchange track adjacent southerly to Track 401 at Iron Springs (hereinafter referred to as the "Leased Premises"), as indicated on **Exhibit A**, which is attached hereto and hereby made a part hereof; and
- B. The parties desire to enter into this Lease setting forth terms and conditions for the use, management and operation of the Leased Premises described above.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, intending to be legally bound, the parties do hereby agree as follows:

SECTION I.
LEASED PREMISES

SECTION 1.01 – Lessor does hereby lease to Lessee and Lessee does hereby lease from Lessor the Leased Premises described in the Recitals above and the property described in Section 1.02.

SECTION 1.02 – The Leased Premises shall include, without limitation, right-of-way, tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, culverts, buildings, crossing warning devices and any and all improvements or fixtures affixed to the right-of-way as indicated on Exhibit A, but excluding any and all (a) communications equipment, and (b) items of personal property not owned by Lessor or not affixed to the land, including, without limitation, railroad rolling stock, locomotives, equipment, machinery, tools, inventories, materials and supplies. Within thirty (30) days after the Commencement Date (which is defined in Section 2.01), Lessor shall remove all its personal property from the Leased Premises. Items not so removed shall be deemed included in the Leased Premises. Lessee expressly acknowledges that Lessor has previously leased and/or licensed portions of the Leased Premises. This Lease is made subject to those leases and licensees. To the extent that there exists, on the Leased Premises, property owned by such prior lessees or licensees, that property may remain on the Leased Premises to the extent permitted by the terms of the lease or license under which it was placed on the Leased Premises.

SECTION II.
LEASE TERM

SECTION 2.01 -- Unless this Lease is terminated earlier in accordance with Section XV, Lessee shall have and hold the Leased Premises unto itself, its successors and assigns, for an initial term of five (5) years ("the "Initial Term") beginning on the Commencement Date. Lease shall renew for one (1) additional like term unless Lessee or Lessor informs the other party in writing 90 days in advance of expiration of lease term that it wishes to terminate this Lease, or, Lessor terminates this Lease by virtue of Lessee violating the terms and agreements of this Lease in a material respect, and not making suitable effort to correct such violations. The Commencement Date shall be five (5) days after Lessor has notified Lessee in writing that Lessor has satisfactory evidence of compliance with the conditions precedent provided in Section V unless such notice period is waived by mutual agreement.

SECTION 2.02 – If, subject to the right of Lessor to evict or remove Lessee from the Leased Premises by all available legal means, Lessee holds over and remains in possession of the Leased Premises following expiration of the then current term, or following an early termination of this Lease pursuant to Section XV, such holding over will create a month-to-month tenancy only. During any such hold over period, Lessee agrees to pay to Lessor as rent, the sum of \$12,000 per month. Such monthly payments shall be due each month on the same day of the month as the Anniversary Date of this Lease. Any profits or losses from Lessee's operations during any holdover period shall enure and accrue to the Lessee.

SECTION 2.03 – Lessor retains the right to sell all or any portion of the Leased Premises. However, any such sale shall be made subject to the terms of this Lease.

SECTION III.
RAIL SERVICE

SECTION 3.01 -- Beginning on the Commencement Date and throughout the term of this Lease, and subject only to Lessor's retained right to use the Leased Premises north of milepost 1.0, including the Iron Springs sidings, in support of its customer switching at Iron Springs, Lessee shall be entitled to full and exclusive use of the Leased Premises for operation of rail freight service, including the right to access and interchange traffic directly with all present and future railroads at Iron Springs, UT, provided, however that Lessee may not use the Leased Premises for passenger operations. During the term hereof, Lessor shall not have the right to operate freight trains over the Leased Premises, except for its retained right or for interchange purposes, nor shall it grant such right to any third party. Lessor retains the sole right to operate passenger trains over the Leased Premises. Lessor further warrants that as of the date of this Lease, there is no other freight rail carrier to which Lessor has granted rights to use the Leased Premises other than pursuant to joint facility agreements or arrangements that are superior to those granted herein to Lessee. During the term hereof, Lessee shall not grant to any third party the right to operate over the Leased Premises, nor shall it enter into any commercial or other agreement to move the traffic of any third party over the Leased Premises without the prior written consent of Lessor. During the term hereof, Lessee shall not use the Leased Premises for any purpose other than for rail freight service.

SECTION 3.02 -- During the term of this Lease, Lessee will not suspend or discontinue its operation by rail over all or any part of the Leased Premises without first applying for and obtaining from the Surface Transportation Board (STB), and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and

necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Leased Premises; PROVIDED, HOWEVER, that Lessee will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue its operations on the Leased Premises, without first giving Lessor sixty (60) days' notice of Lessee's intent to do so.

SECTION 3.03 -- Upon suspension or discontinuance of Lessee's operations as a rail carrier of freight over all or any part of the Leased Premises during the term or any extended term hereof, for reasons other than events of force majeure or a lawful embargo, whether or not pursuant to necessary and proper regulatory authority as required by Section 3.02 of this Section III, Lessee will immediately relinquish to Lessor possession of the Leased Premises and this Lease Agreement will terminate as provided by Section XV of this Lease; PROVIDED, HOWEVER, any discontinuance of service or abandonment of any portion(s) of the Leased Premises which are inconsequential to rail freight service over the Leased Premises will be permitted and will not result in a termination of this Lease or require relinquishment of possession of the Leased Premises by Lessee. A suspension or discontinuance of Lessee's operations as a rail carrier of freight for a period of seven days or less will be presumed to be inconsequential.

SECTION 3.04 -- It is agreed by the parties hereto that Lessee will contract with Iron Bull Railroad Company ("Lessee's Operator") to provide all or a portion of the Rail Service agreed to be provided by Lessee in Section 3 of this Agreement. It is also agreed by the parties hereto that Lessee shall remain solely responsible for all Rail Service to be provided by Lessee under this Agreement regardless of the acts or omissions of Lessee's Operator. Lessee's Operator will not be replaced without

Lessor's express written consent and in no event may Lessee's Operator be owned, controlled, become, acquire, or be acquired by a Class I railroad as currently defined by the Federal Railroad Administration or any successor administration thereto, by merger, acquisition, sale, consolidation, or otherwise.

SECTION IV.
RENT

SECTION 4.01 – In consideration of this Lease, and subject to the terms and provisions set forth herein, Lessee agrees to pay Lessor rent for the Leased Premises in the amount of Ten Dollars (\$10.00) per year payable annually in advance beginning with the Commencement Date.

SECTION 4.02 – Lessee agrees in addition to paying annual rental, that Lessee will pay Lessor a "Going Business Concern" payment of Nine Hundred Ninety-Five Dollars (\$995.00) per carload for each carload not interchanged to Lessor at Iron Springs, UT, that originated or terminated from present or future rail customers on the Leased Premises.

SECTION 4.03 – Any "Going Business Concern" charges will be due and payable fifteen (15) days after the close of the preceding month in which charges are incurred. Lessee shall provide monthly documentation supporting its calculation of the "Going Business Concern" charges, in the event such charges are incurred.

SECTION 4.04 – Lessee shall make all due rent payments and all other payments required by this Lease, to Lessor at 1400 Douglas Street, Mailstop 1350, Omaha, Nebraska 68179, Attn: Director-Rail Line Planning, or at such other location or to such other individual as may be designated by Lessor in writing.

SECTION 4.05 – Acceptance by Lessor, its successors, assigns or designees of rent or other payments shall not be deemed to constitute a waiver of any other provision of this Lease.

SECTION 4.06 – As additional security for the payment by Lessee to Lessor of any sums of money required hereunder to be paid by Lessee, it is agreed that in the event Lessee fails, neglects or refuses to timely pay any sums due and owing to Lessor hereunder, Lessor may use any and all sums which it may collect from any third party and which may, in whole or in part, be payable to Lessee, as an offset against any and all payments for which Lessee is delinquent. In addition, any sums at any time due and payable to Lessee by Lessor may also be used by Lessor and credited to Lessor's account to the extent of any delinquent payment owed by Lessee to Lessor.

**SECTION V.
CONDITIONS PRECEDENT**

As conditions precedent to either party's obligations hereunder:

SECTION 5.01 -- There shall not be a work stoppage imminent or in effect on the lines of Lessor or any of its affiliated companies as a result of the execution and/or implementation of this Lease.

SECTION 5.02 -- Lessee shall have acquired the right to conduct rail freight service over the Leased Premises from the STB, and shall have obtained such judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

SECTION 5.03 -- Lessor and Lessee shall not be prevented from fulfilling their respective obligations under this Lease as a result of legislative, judicial or administrative action.

SECTION 5.04 -- Lessor and Lessee shall execute the "Interchange Agreement", Exhibit C, whereby Lessor and Lessee will grant to each other the right to operate over each other's track at Iron Springs, UT, solely for the purpose of interchanging traffic between the parties, on tracks to be designated by mutual agreement. The form of Interchange Agreement is attached hereto as Exhibit C and is hereby made a part hereof.

SECTION 5.05 -- Lessee shall not have discovered any contract, agreement, award, judgment, title defect or condition which would prevent Lessee from operating a rail freight operation on the Leased Premises in substantially the same manner as presently conducted by Lessor.

SECTION VI.
MAINTENANCE

SECTION 6.01 -- During the term hereof, Lessee shall maintain that portion of the Leased Premises from milepost 0.1 to milepost 11.4, the "Comstock Segment", to Class 2 standards, as defined by the Federal Railroad Administration and capable of operating speeds up to 25 miles an hour, at Lessee's own cost and expense and to a standard that is sufficient to continue rail freight service commensurate with the needs of the rail users located thereon. If, at any time during the term of this Lease, Lessee serves that portion of the Leased Premises from milepost 11.4 to milepost 14.7, the "Iron Mountain Segment", Lessee shall maintain that portion of the Leased Premises at Lessee's own cost and expense and to a standard sufficient to continue rail freight service commensurate with the needs of the rail users located thereon, but at no less a standard than FRA Class I. Lessor shall have no obligation under the terms of this Lease to perform any maintenance upon, or furnish any materials for the maintenance of the Leased Premises during the term hereof. Lessee shall comply with all applicable

federal, state or local laws, ordinances and regulations and shall protect the Leased Premises against all encroachments or unauthorized uses. While Lessee shall not apply for any Federal or State funding for rehabilitation or maintenance of the Leased Premises unless Lessor provides written consent to such application, Lessor's consent to an application for rehabilitation or maintenance of the Leased Premises will not be unreasonably withheld.

SECTION 6.02 -- Lessor shall have the right to inspect the Leased Premises at all reasonable times. Lessor shall notify Lessee in writing of any failure of Lessee to maintain the trackage to the standards specified in Section 6.01 and Lessee shall, within ninety (90) days of its receipt of such notice, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence. Lessee may relocate switches and industrial tracks from one location on the Leased Premises to another location on the Leased Premises upon receiving any necessary and proper regulatory authority and after ten (10) days' written notice to Lessor. Any rehabilitation or reconstruction, including but not limited to that necessitated by an Act of God, will be the sole responsibility of Lessee. Such maintenance will include any function which Lessor, but for this Lease, would be required to perform pursuant to applicable federal, state, and municipal laws, ordinances, and regulations.

SECTION 6.03 -- Nothing herein shall preclude Lessee, at its sole cost and expense, from maintaining the Leased Premises to a standard higher than the minimum herein provided, but Lessee shall not be required hereunder to do so.

SECTION 6.04 -- Lessee's maintenance obligations hereunder shall include, but shall not be limited to, highway grade crossings, grade crossing signal protection devices, bridges, culverts and other structures, and sub-roadbed. Lessee agrees that

all grade crossings and grade crossing protection devices will be given a high priority in Lessee's maintenance program.

SECTION 6.05 -- Without the prior written consent of Lessor, Lessee will not replace existing track and other track materials ("OTM") on the Leased Premises with substitute or replacement track or OTM having a lighter weight, or lesser quality, or having a lower fair market value. Such requirement shall also apply to all other facilities leased hereunder. Any repair or replacement of welded rail shall also be welded. Lessee may make any replacement and substitute with any material having the same or higher weight and quality as the materials being replaced, without the prior written consent of the Lessor, provided that the work being performed by the Lessee and the materials being provided by the Lessee are sufficient to maintain the trackage to the standards set forth in Section 6.01.

SECTION 6.06 -- Subject to Section XII, Lessee will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by Lessee during the term of this Lease in any construction, repair, maintenance, or removal on the Leased Premises and any improvements located thereon, whether said improvements are the property of Lessor or of Lessee, and Lessee will indemnify and save harmless Lessor from all such claims, liens, or demands whatsoever.

SECTION VII.
ACCOUNTING AND REPORTING

SECTION 7.01 -- Lessee agrees to furnish to Lessor such copies of reports pertaining to Lessee, the Leased Premises, and Lessee's Operator prepared in the normal course of Lessee's business as Lessor may reasonably request and Lessee may lawfully furnish. Upon request, Lessee will deliver to Lessor copies of all financial

statements showing the financial condition of Lessee which are furnished by Lessee to the STB, FRA (pursuant to any agreement between FRA and Lessee relating to financial assistance), the Securities & Exchange Commission ("SEC") or stockholders. All such financial statements will be furnished to Lessor at the same time as they are furnished to other parties.

SECTION VIII.
MODIFICATIONS AND IMPROVEMENTS

SECTION 8.01 – In connection with its use of the Leased Premises, Lessee shall have the right to remove, replace, add to or relay elements of the Leased Premises in the interest of cost or operating efficiency, provided that a continuous and usable line of railroad between the termini in effect on the Commencement Date is maintained. Lessee shall have the right to apply the net proceeds from salvaged materials to maintenance or improvement of the Leased Premises; provided that any such net proceeds not reinvested in the Leased Premises shall be paid to Lessor. Improvements to the Leased Premises, whether normal maintenance or otherwise, will be treated as capital expenditures or operating expenses under the then current rules of the STB; and, except as provided in Section 8.03, such improvements shall become part of the Leased Premises and, at the termination of this Lease, shall be the property of Lessor unless Lessor has determined that Lessee may retain ownership as provided in Section 8.03.

SECTION 8.02 -- The provisions of Section 8.01 shall also apply and govern any work or maintenance done by Lessee pursuant to Section VI. On or before February 1st of each calendar year, Lessee shall provide Lessor with a written summary of all salvage or other materials removed from the Leased Premises, the proceeds received therefore and the manner in which the proceeds were reinvested. Failure to

either reinvest such proceeds or pay any unreinvested proceeds to Lessor within six months following such reporting date shall, at Lessor's sole discretion, constitute a Default hereunder.

SECTION 8.03 -- Prior to making any improvement of the Leased Premises to which it desires to retain ownership, Lessee shall notify Lessor of its intent to make such improvement, and its desire to retain ownership thereof. If Lessor determines that an improvement may be removed or severed from the Leased Premises upon termination of this Lease without diminishing Lessor's investment in the Leased Premises and without interfering with the utilization of the Leased Premises as part of an interstate rail system, Lessor will notify Lessee that such improvement shall be Lessee's sole property and may be removed by Lessee upon termination of this Lease subject to Section XV of this Lease. Regardless of eventual ownership, Lessee shall notify Lessor prior to making any improvements.

SECTION 8.04 -- Lessee may from time to time establish, relocate or remove sidetracks or industrial spur tracks on the Leased Premises after Lessee obtains any necessary regulatory authority. Lessor shall have no obligation to bear any cost of materials, construction or maintenance of said industrial spur tracks. That portion of any such spur track which is located upon the Leased Premises shall become part of the Leased Premises and, upon termination of this Lease, the property of Lessor. Any industry track agreement executed by Lessee shall first be submitted to Lessor for written approval, which shall not unreasonably be withheld. All industry track agreements, regardless of duration, shall contain provisions indemnifying Lessor and holding it harmless from all liability in connection with the construction, maintenance or operation thereof.

SECTION IX.
REPRESENTATIONS AND WARRANTIES

SECTION 9.01 -- Lessor represents and warrants that:

(a) It has full statutory power and authority to enter into this Lease and to carry out the obligations of Lessor hereunder.

(b) Its execution of and performance under this Lease do not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

SECTION 9.02 -- Lessee represents and warrants that:

(a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Utah and is qualified to do business in the State of Utah.

(b) It has full power and authority to enter into this Lease, and, subject to necessary judicial and regulatory authority, to carry out its obligations hereunder.

(c) Upon expiration of the original or any extended term of this Lease or upon termination hereof by Lessor pursuant to Section XV, Lessee will bear any and all costs of protection of its current or future employees, including former employees of Lessor that may be employed by Lessee, arising from any labor protective conditions imposed by the STB, any other regulatory agency or statute as a result of Lessee's lease or operation of the Leased Premises and any related agreements or arrangements, or arising as a result of the termination of this Lease. Nothing contained herein is intended to be for the benefit of any such employee nor should any employee be considered a third party beneficiary hereunder. Nothing in this Lease shall be construed as an assumption by Lessee of any obligations to Lessor's current or former employees under collective bargaining or other agreements that may exist or have existed between Lessor and its employees, or any of them.

SECTION X.
OBLIGATIONS OF THE PARTIES

SECTION 10.01 -- Bills. During the term hereof, Lessee will pay all bills for water, sewer, gas and electric service to the Leased Premises. If Lessor is required to, or does pay, any such bills, Lessee will promptly reimburse Lessor upon receipt of a bill or bills therefore. If the Leased Premises are not billed separately but as a part of a larger tract or parcel, Lessee shall pay that portion of such bills as is attributable to usage on or in connection with the Leased Premises.

SECTION 10.02 -- LAWS. During the term of the Lease, Lessee at its sole cost and expense will comply with all applicable federal, state and municipal laws, ordinances, and regulations.

SECTION 10.03 -- AS IS. LESSEE AND ITS REPRESENTATIVES, PRIOR TO THE COMMENCEMENT DATE OF THIS LEASE WILL HAVE BEEN AFFORDED THE OPPORTUNITY TO MAKE SUCH INSPECTIONS OF THE LEASED PREMISES AND MATTERS RELATED THERETO AS LESSEE AND ITS REPRESENTATIVES DESIRE. LESSEE SHALL TAKE THE LEASED PREMISES IN AN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR VOLUME OR QUALITY OF TRAFFIC ON THE LEASED PREMISES AND SUBJECT TO:

(A) RESERVATIONS OR EXCEPTIONS OF RECORD OF MINERALS OR MINERAL RIGHTS, INCLUDING BUT NOT LIMITED TO ALL COAL, OIL, GAS, CASINGHEAD GASOLINE AND MINERALS OF ANY NATURE AND CHARACTER WHATSOEVER UNDERLYING THE LEASED PREMISES TOGETHER WITH THE SOLE EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE, FOR, REMOVE, AND DISPOSE OF SAID

MINERALS BY ANY MEANS OR METHODS SUITABLE TO LESSOR, (B) ALL EASEMENTS, PUBLIC UTILITY EASEMENTS AND RIGHTS-OF-WAY, HOWSOEVER CREATED, FOR CROSSINGS, PIPELINES, WIRELINES, FIBER OPTIC FACILITIES, ROADS, STREETS, HIGHWAYS AND OTHER LEGAL PURPOSES; (C) EXISTING AND FUTURE BUILDING ZONING, SUBDIVISION AND OTHER APPLICABLE FEDERAL, STATE, COUNTY, MUNICIPAL AND LOCAL LAWS, ORDINANCES AND REGULATIONS; (D) ENCROACHMENTS OR OTHER CONDITIONS THAT MAY BE REVEALED BY A SURVEY, TITLE SEARCH OR INSPECTION OF THE PROPERTY; (E) ALL EXISTING WAYS, ALLEYS, PRIVILEGES, RIGHTS, APPURTENANCES AND SERVITUDES, HOWSOEVER CREATED; (F) ANY LIENS OF MORTGAGE OR DEEDS OF TRUST ENCUMBERING SAID PROPERTY; (G) THE LESSOR'S EXCLUSIVE RIGHT TO GRANT ANY AND ALL EASEMENTS, LEASES, LICENSES OR RIGHTS OF OCCUPANCY IN, ON, UNDER, THROUGH, ABOVE, ACROSS OR ALONG THE LEASED PREMISES, OR ANY PORTION THEREOF, FOR THE PURPOSE OF CONSTRUCTION, INSTALLATION, OPERATION, USE, MAINTENANCE, REPAIR, REPLACEMENT, RELOCATION AND RECONSTRUCTION OF ANY FIBER OPTIC FACILITIES, SIGNBOARDS OR COAL SLURRY PIPELINE PROVIDED, HOWEVER, THAT THE EXERCISE OF THESE RIGHTS SHALL NOT MATERIALLY INTERFERE WITH LESSEE'S RAILROAD OPERATIONS, AND THAT THE ENTRY ONTO THE LEASED PREMISES BY LESSOR OR AN AUTHORIZED THIRD PARTY IN ORDER TO ACCOMPLISH THE FOREGOING PURPOSES SHALL BE UPON PRIOR WRITTEN NOTICE TO LESSEE, WHICH NOTICE SHALL INCLUDE A REASONABLY DETAILED EXPLANATION OF THE ACTS TO BE TAKEN OR WORK TO BE PERFORMED; AND (H) THE RIGHT, INTERESTS, CONTRACTS,

AGREEMENTS, LEASES, LICENSES AND EASEMENTS (WHICH ARE HEREINAFTER REFERRED TO AS "LESSOR AGREEMENTS" OR "LESSEE AGREEMENTS" AS DEFINED IN SECTION 14.03) AND ANY SUPPLEMENTAL AGREEMENTS OR AMENDMENTS THERETO WHICH ARE OR BECOME EFFECTIVE ON OR PRIOR TO THE COMMENCEMENT DATE HEREOF. THE LESSEE AGREEMENTS TO BE ASSIGNED TO LESSEE ARE IDENTIFIED IN THE ATTACHED EXHIBIT B.

SECTION 10.04 -- RELEASE. FROM AND AFTER THE LEASE COMMENCEMENT DATE, LESSEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES LESSOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE LEASED PREMISES (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE LEASED PREMISES 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) INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF LESSOR, LESSEE OR ANY THIRD-PARTY, AND DAMAGE TO PROPERTY OF LESSOR, LESSEE OR ANY THIRD-PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF LESSOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

SECTION 10.05 -- ENVIRONMENTAL LAWS. DURING THE TERM OF THE LEASE, LESSEE WILL COMPLY WITH ALL FEDERAL, STATE, AND LOCAL LAWS, RULES, REGULATIONS, AND ORDINANCES CONTROLLING AIR, WATER, NOISE, HAZARDOUS WASTE, SOLID WASTE, AND OTHER POLLUTION OR RELATING TO THE STORAGE, TRANSPORT, RELEASE, OR DISPOSAL OF HAZARDOUS MATERIALS, SUBSTANCES, WASTE, OR OTHER POLLUTANTS. LESSEE AT ITS OWN EXPENSE WILL MAKE ALL MODIFICATIONS, REPAIRS, OR ADDITIONS TO THE LEASED PREMISES, INSTALL AND BEAR THE EXPENSE OF ANY AND ALL STRUCTURES, DEVICES, OR EQUIPMENT, AND IMPLEMENT AND BEAR THE EXPENSE OF ANY REMEDIAL ACTION WHICH MAY BE REQUIRED UNDER ANY SUCH LAWS, RULES, REGULATIONS, ORDINANCES, OR JUDGMENTS. DURING THE TERM OF THIS LEASE, LESSEE WILL NOT DISPOSE OF ANY WASTES OF ANY KIND, WHETHER HAZARDOUS OR NOT, ON THE LEASED PREMISES.

SECTION 10.06 -- ENVIRONMENTAL INDEMNITY. FROM AND AFTER THE LEASE COMMENCEMENT, LESSEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS LESSOR, 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 (COLLECTIVELY, "COSTS"), IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE LEASED PREMISES (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE LEASED PREMISES 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), AND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF LESSOR, LESSEE OR ANY THIRD PARTY, AND DAMAGE TO PROPERTY OF LESSOR, LESSEE OR ANY THIRD PARTY. THE FOREGOING SHALL APPLY ONLY IF THE COSTS ARE INCURRED AS A RESULT OF LESSEE'S USE OF THE LEASED PREMISES DURING THE TERM OF THIS LEASE OR ANY HOLD OVER PERIOD AND SHALL INCLUDE ALL COSTS INCURRED THAT ARE ATTRIBUTABLE TO A LESSEE USE WHICH EXACERBATES A PREEXISTING CONDITION ON THE LEASED PREMISES AND ALL COSTS ATTRIBUTABLE TO THE ACTIONS OF ANY THIRD PARTY DURING THE TERM OF THE LEASE OR ANY HOLD OVER PERIOD.

SECTION 10.07 -- GENERAL INDEMNITY. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, REGARDLESS OF THE NEGLIGENCE, NEGLIGENCE PER SE OR STRICT LIABILITY OF LESSOR OR LESSOR'S AGENTS, EMPLOYEES, SERVANTS, AFFILIATED COMPANIES, SUCCESSORS OR ASSIGNS (COLLECTIVELY THE "LESSOR'S AGENTS"), LESSEE SHALL PROTECT, DEFEND, HOLD HARMLESS, AND INDEMNIFY AND REIMBURSE LESSOR FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, SUITS, PENALTIES, FINES, EXPENSES, DAMAGES, LOSSES AND COSTS, INCLUDING ATTORNEY'S FEES (COLLECTIVELY, "COST"), INCURRED BY OR ASSESSED AGAINST LESSOR AND/OR THE LESSOR'S AGENTS, DUE TO OR RESULTING FROM PERSONAL INJURIES, DEATH, OR PROPERTY LOSS OR DAMAGE ARISING DURING OR FROM LESSEE'S USE, OPERATION OR MAINTENANCE OF THE LEASED PREMISES AFTER THE LEASE COMMENCEMENT DATE OR AS A RESULT OF LESSEE'S BREACH OF, OR FROM ITS FAILURE TO COMPLY WITH, ANY PROVISIONS OF THIS LEASE, EVEN IF THE COST (I) RESULTS IN WHOLE OR IN PART FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE LESSOR OR THE LESSOR'S AGENTS, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, AND THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA") OR (II) IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, NEGLIGENCE PER SE, OR STRICT LIABILITY OF THE LESSOR; PROVIDED, HOWEVER, THAT ALL COST INCLUDING COST FOR ANY PERSONAL INJURIES, DEATH OR PROPERTY LOSS, OR DAMAGES ARISING IN CONNECTION WITH TOXIC WASTE OR

ENVIRONMENTAL CONDITIONS, SHALL BE GOVERNED BY THE PROVISIONS OF SECTIONS 10.03, 10.04, 10.05, 10.06 AND 10.08.

LESSEE WAIVES AND WILL NOT ASSERT AS A DEFENSE AGAINST LESSOR ANY STATUTE OF LIMITATIONS APPLICABLE TO ANY CONTROVERSY OR DISPUTE ARISING UNDER THIS SECTION X, AND LESSEE WILL NOT RAISE OR PLEAD A STATUTE OF LIMITATIONS DEFENSE AGAINST LESSOR OR ITS LESSORS IN ANY ACTION ARISING OUT OF LESSEE'S FAILURE TO COMPLY WITH THIS SECTION X.

SECTION 10.08 – NOTICE OF VIOLATIONS. Lessee will promptly furnish Lessor written notice of any and all (i) releases of hazardous wastes or substances of which it becomes aware which occur during the term of this Lease whenever such releases are required to be reported to any federal, state, or local authority, and (ii) alleged water or air permit condition violations, and (iii) any notification received by Lessee alleging any violation of any state, federal or local statute, ordinance, ruling, order or regulation pertaining to environmental protection and/or hazardous material, handling transportation or storage. To the extent practicable, such written notice will identify the substance releases, the amount released, and the measures undertaken to clean up and remove the released material and any contaminated soil or water, will identify the nature and extent of the alleged violation and the measures taken to eliminate the violation, and will certify that Lessee has complied with all applicable regulations, orders, judgments or decrees in connection therewith, or the date by which such compliance is expected. Lessee will also provide Lessor with copies of any and all reports made to any governmental agency which relate to such releases or such alleged violations during the term of this Lease.

SECTION 10.09 -- INSPECTION OF LEASED PREMISES. During the term of this Lease, Lessor will have the right to enter the Leased Premises for the purpose of inspecting the Leased Premises to ensure compliance with the requirements of this Lease. If Lessor detects any violation, including any contamination of the Leased Premises which it deems to be the responsibility of Lessee under this Section X, Lessor will notify Lessee of the violation. Upon receipt of such notice Lessee will take immediate steps to eliminate the violation or remove the contamination to the satisfaction of any governmental agency with jurisdiction over the subject matter of the violation. Should Lessee inadequately remedy or fail to eliminate the violation, Lessor or its representative will have the right, but not the obligation, to enter the Leased Premises and to take whatever corrective action Lessor deems necessary to eliminate the violation, at the sole expense of Lessee.

SECTION 10.10 -- Lessee shall not permit any liens or encumbrances on the Leased Premises unless such liens or encumbrances are approved in writing by Lessor.

SECTION 10.11 -- Lessor shall not be responsible for nor absorb any switch charge of any carrier not a party to this Lease Agreement.

SECTION XI.
EMINENT DOMAIN

SECTION 11.01 -- In the event that at any time during the term of this Lease the whole or any part of the Leased Premises shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose the following provisions shall be applicable:

SECTION 11.02 -- If such proceeding shall result in the taking of the whole or a portion of the Leased Premises which materially interferes with Lessee's use of the

Leased Premises for railroad purposes, Lessee shall have the right, upon written notice to Lessor, to terminate this Lease in its entirety. In that event, and subject to any necessary regulatory approvals or exemptions, this Lease shall terminate and expire on the date title to the Leased Premises vests in the condemning authority, and the rent and other sums or charges provided in this Lease shall be adjusted as of the date of such vesting.

SECTION 11.03 -- If such proceeding shall result in the taking of less than all of the Leased Premises which does not materially interfere with Lessee's use of the Leased Premises for railroad purposes, then the Lease shall continue for the balance of its term as to the part of the Leased Premises remaining, without any reduction, abatement or effect upon the rent or any other sum or charge to be paid by the Lessee under the provisions of this Lease.

SECTION 11.04 -- Except as otherwise expressly provided in this Section, Lessor shall be entitled to any and all funds payable for the total or partial taking of the Leased Premises without any participation by Lessee; provided, however, that nothing contained herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority for loss of its business or for the value of its leasehold estate.

SECTION 11.05 -- Each party shall provide prompt notice to the other party of any eminent domain proceeding involving the Leased Premises. Each party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other party, its attorneys, and experts. Lessee and Lessor shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and

to use their best efforts to ensure Lessee's continued ability to use the Leased Premises for the conduct of freight railroad operations.

SECTION XII.
INSURANCE

SECTION 12.01 -- Lessee shall, at its own sole cost and expense, procure the insurance listed on Exhibit E, Contract Insurance Requirements which is attached and hereby made a part hereof and promptly pay when due all premiums for that insurance. Such minimum insurance coverage shall be kept in force by Lessee and Lessee's successors for so long as Lessee or its successors operate the Leased Premises.

SECTION 12.02 -- The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.

SECTION 12.03 -- The limits of Insurance Coverage required under this Section shall be increased every seven (7) years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index.

SECTION XIII.
TAXES

SECTION 13.01 -- It is understood and agreed that Lessee shall pay all taxes and assessments, general and special or otherwise which may be levied, assessed or imposed upon the Leased Premises during the Lease Term. Lessee shall pay such taxes and assessments directly to the taxing authorities on or before the due date, but reserves the right to contest any tax or assessment, in good faith, by appropriate proceeding, as it may deem necessary or appropriate.

SECTION 13.02 -- Lessee shall be liable for and pay all special assessments and/or taxes levied against the Leased Premises as may be imposed by any taxing jurisdiction having authority in the premises. Lessor shall promptly notify Lessee of any asserted or claimed special assessments that are brought to its attention affecting the Leased Premises and Lessee may, upon given timely notice to Lessor and the taxing authority, contest any such assessment, in good faith, by appropriate legal proceedings. Lessee shall pay (or reimburse Lessor) any special assessment which is not contested or which becomes legally final and binding.

SECTION 13.03 -- Unitary and non-unitary property taxes, and special assessments, if any, shall be prorated between Lessor and Lessee as of the Commencement Date. Lessee shall be responsible for paying any and all such taxes, fees or assessments accruing after the Commencement Date and Lessor shall pay or reimburse Lessee for the portion thereof, if any, accrued during or based on the time prior to the Commencement Date; PROVIDED, HOWEVER, Lessee shall only be liable to Lessor for Lessee's pro-rata portion of property taxes on the Line as determined by Lessee's property tax for the year 2009. On or before April 30, 2010, Lessee shall pay to Lessor an amount equal to Lessee's 2009 property taxes multiplied by a fraction, the numerator of which is the number of days from the Commencement Date to and including December 31, 2008 and the denominator of which is 366.

**SECTION XIV.
EASEMENTS, LEASES AND LICENSES**

SECTION 14.01 -- Nothing in this Lease shall prevent Lessor from selling any portion or portions of the Leased Premises which is or are located beyond 50 feet of the centerline of any branch or main line track, including areas of any station ground provided such areas are not being used in connection with Lessee's rail freight

operations. All proceeds from such real estate sales shall accrue solely to Lessor and Lessee shall either execute an amendment to this Lease which deletes any such sale property from the description and terms hereof, or shall execute any other document reasonably necessary to remove the encumbrance of this Lease from such property.

SECTION 14.02 – From and after the Commencement Date, Lessor will manage all Lessor Agreements (generally including easements, leases and licenses). From and after the Commencement Date, Lessee will manage all agreements, other than Lessor Agreements, applicable to the Leased Premises (hereinafter referred as "Lessee Agreements" and generally including track agreements, grade crossing agreements and other operating agreements). Lessee shall document all of such Lessee Agreements using standardized forms prepared and approved by Lessor in accordance with Lessor's policies concerning hazardous materials storage and handling, and engineering standards. Lessee shall not execute or deliver any Lessee Agreement, including any renewal, termination or cancellation thereof, which deviates from Lessor's standard forms, engineering standards or operating instructions without first receiving the written concurrence of Lessor. Lessor's concurrence or non-concurrence (as the case may be) shall be delivered to Lessee within thirty (30) days of Lessee's written request therefore.

All preparation fees and all expenses billed by Lessor applicable to the Lessor Agreements shall be retained by Lessor. All preparation fees and expenses billed by Lessee applicable to the Lessee Agreements shall be retained by Lessee.

SECTION 14.03 – Lessee shall not execute any Lessee Agreements affecting the Leased Premises having a term extending beyond the initial term of this Lease (or beyond any given extended term which may be in effect at the time of execution) without securing Lessor's express written consent.

Cancellation of any Lessee Agreement for any reason during the term of this Lease must be approved, in advance and in writing, by Lessor. This approval or non-approval (as the case may be) shall be forwarded to Lessee within thirty (30) days of Lessee's request therefore.

SECTION 14.04 – Lessee shall carefully supervise the use of the Leased Premises by any third party to ensure that the value of the Leased Premises is not diminished by reason of such use. In particular, Lessee shall ensure that (i) all uses of the Leased Premises are pursuant to appropriate documentation and that all unauthorized use is either covered by agreement or promptly removed from the Leased Premises; (ii) no use is permitted which could jeopardize the value of the Leased Premises and that Lessee Agreements for storage or handling of hazardous materials are strictly in conformity with Lessor's policies; and (iii) upon the termination of any Lessee Agreement for any reason whatsoever, the Leased Premises are cleared and restored as required by the terms of the Lessee Agreements. In addition, if the unauthorized use is of a type which would be covered by a Lessor Agreement, Lessee shall promptly bring the unauthorized use to Lessor's attention.

SECTION 14.05 – Lessor reserves the exclusive right to grant easements or other occupations by coal slurry pipelines, or fiber optic or other communication systems or signboards. Any requests for such permits or easements shall be referred to Lessor for appropriate action. Lessor will give at least thirty (30) days notice to

Lessee prior to initiation of any easements or other occupations pursuant to this Section. Revenues from the granting by Lessor of those agreements shall accrue solely to Lessor.

SECTION 14.06 -- As soon as reasonably practicable after the Commencement Date, Lessor shall assign to Lessee all Lessee Agreements affecting the Leased Premises and Lessee shall assume Lessor's duties and obligations thereunder. The form of the Assignment and Assumption Agreement to be executed by Lessor and Lessee is attached hereto as **Exhibit D** and hereby made a part hereof.

**SECTION XV.
TERMINATION**

SECTION 15.01 -- This Lease may be terminated as follows:

(a) By Lessee or Lessor:

1. on or at any time prior to the Commencement Date if any substantive condition unacceptable to Lessee or to Lessor is imposed in the regulatory approvals or exemptions contemplated by Section V of this Lease for Lessee's lease and operation of the Leased Premises;
2. upon the occurrence of an Event of Default as provided in Section XIX;
3. upon thirty (30) days' notice to Lessee, as a consequence of an uninterrupted abandonment or discontinuance of operations, as the case may be, for six (6) months by Lessee over any line segment of the Leased Premises (other than an inconsequential abandonment or discontinuance not affecting rail service generally over the Line)

other than by reason of an event of force majeure, a lawful embargo, or changes in the demand for service; or

4. upon thirty (30) days' notice to Lessor, following Lessee's obtaining all necessary regulatory approvals or exemptions to permit Lessee to abandon or discontinue rail operations.

(b) By Lessor pursuant to Section XIX.

(c) By Lessee in the event Lessor is no longer able to interchange traffic with the Lessee at Iron Springs, UT, or at an alternate location satisfactory to both Lessee and Lessor.

(d) In the event that within 180 days after Commencement Date any of Lessor's labor organizations cause a work stoppage as a result of this Lease and Lessor is unable to negotiate a satisfactory resolution with the organization, Lessor shall have the right, anytime within such 180 day period, to terminate this Lease by giving thirty (30) days' written notice to Lessee. In such event Lessee shall deliver possession of the Leased Premises to Lessor on such 30th day, subject to all necessary prior regulatory approvals or exemptions, and Lessee shall comply with the provisions of Section XV within such thirty (30) day period. Thereafter, Lessor will give Lessee the right of first refusal to lease the Leased Premises, exercisable within one year following Lessor's notice to Lessee, on the same terms as set forth in this Lease, provided the conditions which caused termination pursuant to this Section 15.01(d) have, in Lessor's sole opinion, been remedied:

SECTION 15.02 -- In the event of termination as provided in Section 15.01 above, future rental shall be abated as of the date this Lease is terminated and no equity in title shall be deemed to have been accumulated by Lessee except as provided

in Section 8.03. Lessee shall be liable for, and pay to Lessor, all rent accruing prior to the date of such termination.

SECTION 15.03 -- In the event this Lease is terminated, Lessee shall cooperate with Lessor and/or its designee in obtaining operating rights equivalent to those enjoyed by Lessee. Lessee shall assign all Lessee Agreements affecting the Leased Premises to Lessor.

SECTION 15.04 -- In the event of termination of this Lease, Lessee shall immediately vacate the Leased Premises in an orderly manner. Upon any termination resulting from an Event of Default by Lessee, Lessor or its designee may immediately re-enter and take possession of the Leased Premises by providing written notice to Lessee that this Lease has been terminated. Upon any termination resulting from an Event of Default, Lessor may immediately assign this Lease to a new lessee and that lessee may immediately begin operation over the Leased Premises pursuant to the terms of this Lease. Lessor or its designee at Lessor's discretion may immediately begin operation over the Leased Premises if Lessee ceases operation on the Leased Premises.

SECTION 15.05 -- Upon any termination of this Lease, Lessee agrees to make available for sixty (60) days thereafter, without charge, any improvements thereon which it may own or hold under lease (pursuant to Section 8.03 or otherwise) to Lessor or its designee for use in rail freight service. For an additional period of sixty (60) days, Lessor or its designee may purchase such improvements at market value less Lessee's cost of removal; PROVIDED, HOWEVER, that if Lessee receives and is willing to accept a bona fide offer to purchase any such improvement(s), Lessee shall notify

Lessor and Lessor shall have the right to purchase the said improvement for the same price offered to Lessee within fifteen (15) days of Lessor's receipt of such notice.

SECTION 15.06 -- In the event of termination of this Lease howsoever, Lessee shall immediately file and prosecute in good faith and with full diligence any necessary formal request for authorization for discontinuance of Lessee's operation over the Leased Premises. In the event of Lessee's failure to immediately comply with this requirement, Lessee agrees that (a) Lessor may make the necessary formal request for authorization for Lessee's discontinuance of operation, (b) Lessee will not oppose such request filed by Lessor, (c) Lessee will pay all costs, including attorneys fees, incurred by Lessor for filing and progressing such formal request and (d) Lessee will reimburse Lessor for all other expenses and/or damages incurred by Lessor as a result of Lessee's failure to comply with the requirement.

SECTION XVI.
COMPLIANCE WITH LAW

SECTION 16.01 -- Lessee agrees to comply with all provisions of law, and Lessee will not knowingly do, or permit to be done, upon or about the Leased Premises, anything forbidden by law or ordinances. Lessee further agrees to use its best efforts to secure all necessary governmental authority for its operation on the Leased Premises.

SECTION XVII.
FORCE MAJEURE

SECTION 17.01 – Lessee shall have no obligation to operate over any portion of the Leased Premises as to which it is prevented from operating by Acts of God, public authority, strikes, riots, labor disputes, or any cause beyond its control; PROVIDED, HOWEVER, Lessee shall use its best efforts to take whatever action is necessary or appropriate to be able to resume its operations. In the event of damage or destruction caused by an Act of God, Lessee shall commence repairs within 10 days of the occurrence causing same and shall pursue such repairs with reasonable diligence. Provided however, in the event that such damage or destruction is to such an extent as to make repairs uneconomic, either party may terminate this lease provided both parties have received STB authority to abandon that portion of the Leased Premises so damaged or destroyed.

SECTION XVIII.
DEFEASANCE

SECTION 18.01 – Lessee shall not make any use of the Leased Premises inconsistent with Lessor's right, title and interest therein and which may cause the right to use and occupy the Leased Premises to revert to any party other than Lessor or Railroad. So long as the Leased Premises are sufficient to permit Lessee to operate between the termini described in Section 1, this Lease shall not be affected by any determination, whether by judicial order, decree or otherwise, that ownership of any portion of the Leased Premises is vested in a person other than Lessor or Lessee, and there shall be no abatement of rent on account of such determination. Lessor and Lessee shall make all reasonable efforts to defend Lessor's title to the Leased Premises against any adverse claims.

SECTION XIX.
EVENTS OF DEFAULT

SECTION 19.01 – The following shall be Events of Default:

(a) Failure by Lessee to make payments of rent or other amounts due and payable for any reason arising in connection with this Lease or Lessee's operation over the Leased Premises, or failure to provide insurance coverage as required under this Lease, and such failure continues for ten (10) days following written demand therefore.

(b) Filing of petition for bankruptcy, reorganization or arrangement of Lessee by Lessee pursuant to the Bankruptcy Reform Act or any similar proceeding, which petition is not dismissed within thirty (30) days.

(c) Lessee breaches any provision of this Lease other than for the payment of rent which is subject to subparagraph (a) above, and fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the Lessor or fails to commence to cure such default within thirty (30) days, or, once commenced, fails to use due diligence to complete the cure.

(d) The filing of any involuntary bankruptcy, receivership or arrangement proceeding, which filing is not dismissed within 120 days.

SECTION XX.
BREACHES; REMEDIES

SECTION 20.01 -- Upon the occurrence of any breach of any term hereof the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach. If, upon the expiration of thirty (30) days from the receipt of said notice, the breach has not been cured (or, if such breach cannot be cured within 30 days, steps have not been taken to effect such cure and pursued with all due diligence within said period) and is a material breach, the injured party shall

have the right, at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof, including any and all reasonable attorney's fees, and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured party from resorting to any other remedy permitted under this Lease or at law or equity, including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole in the premises. Failure of the injured party to demand or enforce a cure for breach in one instance shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

SECTION 20.02 -- The failure of any party hereto to enforce at any time any of the provisions of this Lease or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Lease or any part hereof or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Lease shall be held to be a waiver of any other or subsequent breach.

SECTION XXI.
ARBITRATION

SECTION 21.01 -- If at any time a question or controversy shall arise between the parties hereto in connection with this Lease upon which the parties cannot agree, (other than questions or controversies arising under Sections XIX or XX which shall not be subject to arbitration), such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party. If the parties cannot so agree, the party demanding such arbitration (the demanding party) shall notify the other party (the

noticed party) in writing of such demand, stating the question or questions to be submitted for decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator, notify the demanding party in writing of such appointment, and at its option submit a counter-statement of question(s). Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party shall select one for the noticed party so failing. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Utah upon application by any party after ten (10) days' written notice to the other party.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in the parties' statements, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Lease shall continue in the manner and form existing prior to the

rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

SECTION 21.02 – Each party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, Exhibits and counsel. The compensation, cost and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

The non-privileged books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the other parties and the arbitrator(s).

**SECTION XXII.
DIVISIONS, RECIPROCAL SWITCH CHARGES, EQUIPMENT,
COMMERCIAL SUPPORT. AAR AGREEMENTS**

SECTION 22.01 – For the term of this Lease, Lessee will collect from its customers charges for its movement of traffic interchanged with Lessor at Iron Springs, UT. Lessor will collect charges for the movement of freight on its lines beyond Iron Springs, UT.

SECTION 22.02 --

(a) Except as modified by this Lease, the Code of Rules of the Association of American Railroads ("AAR") governing the interchange and accounting of freight cars between railroads then in effect shall apply.

(b) Lessee shall be responsible for furnishing freight car equipment, for loading by shippers and industries located on the Leased Premises. If Lessee does not have available freight car equipment at any given time when Lessor is to be the connecting road haul carrier, Lessor shall have the first right of refusal to furnish freight

car equipment for loading on Lessee. Lessor will make every reasonable effort to supply such equipment upon receipt of reasonable notice from Lessee. If Lessor is unable to supply freight car equipment after reasonable notice, Lessee shall obtain such equipment from any other supplier.

(c) Lessee shall be responsible for payment of all car hire and shall perform its own car hire accounting in accordance with AAR Code of Car Hire Rules - Freight.

(d) In performing repairs to railcars, the Lessee agrees that the then current AAR Interchange Rules (the "Rules") shall govern all repairs and that any type of repair work that is not covered or required by the Rules must be authorized in advance by the owner or lessee of the railcar as set forth in the Rule.

(e) Prior to the Commencement Date of this Lease , Lessee, at its sole expense, will have arranged with a reliable vendor (acceptable to Lessor) for electronic transmission of information between Lessor and Lessee or its affiliated companies with such electronic transmissions to be in compliance with all applicable federal, state and local laws and regulations and also all applicable Lessor standards including , without limitation , timely and accurate transmissions to Railinc.

SECTION 22.05 – Lessee agrees to the following: (i) Lessor shall permit Lessor's maintenance of way employees (Lessor Employees) currently working on the Leased Premises to seek employment with Lessee. Lessee agrees to give priority consideration for employment to said Lessor Employees for one year following the commencement date of this Lease. The terms of such employment (including, but not limited to, seniority, rates of pay, benefits and employees' responsibilities) shall be determined by Lessee; and (ii) if an effort is undertaken by the Brotherhood of Maintenance of Way

Employees (BMW) to organize maintenance of way employees working on the Leased Premises, Lessee will assume a neutral stance in such union organizing effort.

**SECTION XXIII.
MISCELLANEOUS**

SECTION 23.01 -- Entire Agreement. This Lease expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of this Lease shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

SECTION 23.02 -- Notices. All notices, demands, requests or other communications which may be or are required to be given, served or sent by any party to the other pursuant to this Lease shall be in writing and shall be deemed to have been properly given or sent:

(a) If intended for Lessor, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Lessor at:

Union Pacific Railroad Company
1400 Douglas Street
Mailstop 1350
Omaha, Nebraska 68179
Attention: Director Rail Line Planning

(b) If intended for Lessee, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Lessee at:

Palladon Iron
554 South 300 East, Suite 250
Salt Lake City, UT 84111
Attention: Vice President

SECTION 23.03 -- Each notice, demand, request or communication which shall be mailed by registered or certified mail to any party in the manner aforesaid shall be

deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Any party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

SECTION 23.04 -- This Lease shall be binding upon and inure to the benefit of Lessor and Lessee, and shall be binding upon the successors and assigns of Lessee, subject to the limitations hereinafter set forth. Lessee may not assign its rights under this Lease or any interest therein, or attempt to have any other person assume its obligations under this Lease, without the prior written consent of Lessor, which consent shall not unreasonably be withheld; PROVIDED, HOWEVER, in the event Lessee elects to assign its interest in the Leased Premises, and Lessor consents to this assignment, Lessee will first secure the approval of the STB, and/or, such other regulatory approvals as may be then required; and PROVIDED FURTHER, that Lessor has approved the financial condition and operational ability of the new Lessee, which approval will not be unreasonably withheld and which evaluation of the new Lessee will be consistent with then existing practices in the industry.

SECTION 23.05 -- For purposes of this Lease the term "knowledge" shall mean that which is known by an officer of the Lessor at the level of Vice President or above.

SECTION 23.06 -- If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Lease in whole or in part, then such clause or provision only shall be held ineffective, as

though not herein contained, and the remainder of this Lease shall remain operative and in full force and effect.

SECTION 23.07 -- Article headings used in this Lease are inserted for convenience of reference only and shall not be deemed to be a part of this Lease for any purpose.

SECTION 23.08 -- This Lease shall be governed and construed in accordance with the laws of the State of Utah. Lessee's operations under this Lease shall also comply with the applicable provisions of Federal law and the applicable rules, regulations and policies of any agency thereof.

SECTION 23.09 -- No modification, addition or amendments to this Lease or any of the Appendices shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties.

SECTION 23.10 -- This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed on their behalf, as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: [Signature]
Title: SVP

PIC RAILROAD LLC

By: [Signature]
Title: President & CEO

LEASE EXHIBITS

- Exhibit A** **Map**
- Exhibit B** **Track, Crossing, Operation Agreements being assigned to Lessee**
- Exhibit C** **Interchange Agreement**
- Exhibit D** **Assignment & Assumption Agreement**
- Exhibit E** **Insurance Certificate**

Constock Assignment List

AUD_NBR	PROJ_NBR	PURP_DESC	PART_NAME	CITY	SABV	MP_STRT	ANNU_AMT
82894	667805	Crossing - Private Roadway	Utah Construction Company	Iron Mountain	UT	11.45	0

Exhibit B

EXHIBIT C**UP-PIC INTERCHANGE AGREEMENT
IRON SPRINGS, UTAH**

THIS AGREEMENT, made and entered into as of this _____ day of July, 2008, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, hereinafter referred to as "UP", and PIC RAILROAD LLC, a Utah LLC, hereinafter referred to as "PIC". UP and PIC are sometimes referred to herein individually as "Party" and collectively as "Parties";

WHEREAS, the Parties desire to establish an arrangement for effecting the delivery and receipt of interchange railroad equipment between UP and PIC at Iron Springs, Utah; and

WHEREAS, the Parties desire to set forth in writing the understanding of the Parties respecting the use of UP's and PIC's tracks (owned or leased by PIC) for effecting the delivery of said cars to be interchanged.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

Section 1. The tracks of UP and PIC (owned or leased by PIC) at Iron Springs, Utah to be used for interchange of traffic between the Parties (the "Interchange Tracks") shall be mutually designated, from time to time, by the appropriate operating officers of UP and PIC, or their representatives.

Section 2. The Parties hereby grant the right, during the term hereof, to use the Interchange Tracks in or incident to the delivery of cars to be interchanged between the Parties. No cars, engines or other equipment of either Party shall be so placed on the tracks to be used for delivery of interchange as to be dangerously close to, or in such manner as to interfere in any way with the operation of, the track(s) with which tracks used for interchange purposes connect.

Section 3. Interchange of cars between the Parties shall be in accordance with the Field and Office Manuals of the AAR Interchange Rules and Code of Car Service Rules adopted by the Association of American Railroads (AAR), except that each Party in the movement of cars to be interchanged to the other Party shall, for the purposes of liability hereunder, be deemed to have sole care, custody and control of all cars to be interchanged to said other Party until the delivering Party has placed cars to be interchanged on the Interchange Tracks, and the engine or engines of the delivering Party have been uncoupled from such cars.

Section 4. UP and PIC in operating its engines and cars on and over the Interchange Tracks, shall accept such tracks as they find them and shall not, by reason of any failure, deficiency or defect therein or failure or neglect in the maintenance thereof, have or make against UP or PIC any claim or demand for any loss, damage, injury or death whatsoever arising from or incident to such deficiency, defect, failure or neglect.

Section 5. UP and PIC undertake and agree, in respect to their use hereunder of any trackage and the operation of equipment thereon and thereover, to comply with all applicable Federal and State laws or regulations, and all applicable rules, regulations, and orders promulgated by any Municipality, Board or Commission with respect thereto for the protection of employees or other persons or Parties, and if any failure on their part to comply therewith shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the other Party, promptly to reimburse and indemnify the other Party for or on account of such fine, penalty, cost or charge; and further agree in the event of any such action, upon notice thereof being given by the other Party, to defend such action free of cost, charge or expense to the other Party.

In the event the use of the Interchange Tracks in or incident to effecting delivery and receipt of cars to be interchanged hereunder shall be interrupted or traffic thereover delayed at any time from any cause, neither Party shall have any claim against the other Party for liability on account of loss or damage of any kind resulting from such interruption or delay.

Section 6. In the event of any loss, damage, injury or death upon or near the Interchange Tracks, or in the event of any damage to the Interchange Tracks or their appurtenances, caused by the negligence or wrongful act of any employee or employees engaged solely in the service of one of the Parties hereto, or caused by the negligent movement of any locomotive, train, or car of such Party or by defective rolling stock of such Party, all such loss, damage, injury and death and liability with respect thereto shall be borne, assumed and paid by such Party, and such Party shall indemnify and save harmless the other Party hereto from and against any and all cost, damage, expense and liability resulting directly or indirectly therefrom.

In the event of any loss, damage, injury or death on or near the Interchange Tracks, or in the event of any damage to the Interchange Tracks or their appurtenances, caused by the joint or concurring negligence or wrongful acts of employees of both Parties hereto, or by defective rolling stock or equipment of both of the Parties hereto, or by any combination of the above factors involving both Parties, then (1) each Party hereto shall bear all loss, damage and injury to its own property (excepting the Interchange Tracks and appurtenances) and to property in its custody, and all losses, charges, costs and expenses for personal injuries to or deaths of its passengers and employees, and (2) as to other persons and their property and as to the Interchange Tracks and appurtenances, the cost of such loss, damage, injury and/or death shall be equally apportioned between the Parties hereto.

In the event of loss, damage, injury or death from any other cause, or in

the event the cause of such loss, damage, injury or death cannot be determined, (1) each Party hereto shall bear all loss, damage and injury to its own property (except the Interchange Tracks and their appurtenances) and property in its custody, and all losses, charges, costs and expenses for personal injuries to or deaths of its passengers and employees, and (2) as to other persons and their property and as to the Interchange Tracks and their appurtenances, the cost for such loss, damage, injury and/or death shall be equally apportioned between the Parties hereto; provided, however, that if the equipment and/or employees of only one Party hereto is involved, said Party shall bear the entire cost of such loss, damage, injury and/or death.

Any locomotive, train or other equipment used or operated by either Party hereto on the Interchange Tracks shall for the purposes of this Agreement be deemed to be the locomotive, train or other equipment of such Party whether owned by it or not.

Anything hereinbefore in this Section to the contrary notwithstanding, no Party shall have any claim against the other Party for Loss and Damage caused by or resulting from interruption of or delay of such Party's operations or business activities.

Each of the Parties hereto covenants and agrees that it will forever indemnify and save harmless the other Party, its successors and assigns, from and against any and all liability or claims for damages, costs and expenses herein assumed by each of them; PROVIDED, HOWEVER, that the Party liable, in whole or in part, as to any claim or suit filed against the other Party shall be given prompt notice thereof and the opportunity to join in or take over, as may be appropriate, the defense and settlement of such claim or suit. No settlement which would result in one Party's payment of in excess of Fifty Thousand Dollars (\$50,000) shall be made by either of the Parties without the authority of the other Party.

All releases taken pursuant to the settlement of claims or suits involving joint liabilities shall include all Parties hereto involved, and copies shall be furnished to each of them.

Nothing in this Agreement shall act to prohibit any Party from bringing suit against persons or companies not Parties hereto if acts of said persons or companies were the sole or partial cause of damages to that Party.

Section 7. This Agreement shall take effect as of the date herein first written, and shall continue in full force and effect until terminated by either Party on not less than thirty (30) days prior written notice to other Party.

Section 8. This Agreement shall constitute the complete agreement concerning the delivery of interchange traffic between the Parties and shall be binding upon and inure to the benefit of the Parties and their respected successors and assigns. Any change or amendment hereto must be mutually agreed to in writing by the Parties. This Agreement is solely for the benefit of the Parties hereto, and nothing contained herein shall be considered to create any right to any third Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate as of the date first above written.

UNION PACIFIC RAILROAD COMPANY

PIC RAILROAD LLC

By _____

By _____

EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor"), ASSIGNS AND TRANSFERS to PIC RAILROAD LLC, a Utah LLC ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to the agreements, leases and license (collectively, "Licenses") to the extent the Licenses affect the property leased to Assignee under the Lease Agreement by and between Assignor and Assignee dated as of July __, 2008 ("Property") and which Licenses are listed on Appendix A.

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to the Property accruing after the date hereof, and (b) indemnify, defend and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Licenses as they relate to the Property after the date hereof, and (2) claims under the Licenses as they relate to the Property by the licenses named in the Licenses accruing after the date hereof as they relate to the Property.

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

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

Dated this ____ day of July, 2008.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____

Title: _____

PIC RAILROAD LLC, a Utah LLC

By: _____

Title: _____

EXHIBIT E**Comstock Subdivision Lease Union Pacific Railroad
Contract Insurance Requirements****Leased Track**

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$10,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- Lessee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Lessee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer.

D. **Umbrella or Excess** insurance. If Lessee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

E. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 36, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Lessee's liability under the indemnity provisions of this Lease.

F. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

G. Lessee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

H. Prior to commencement of the Lease, Lessee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Lessee, or by Railroad on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Lessee or any third party will not be limited by the amount of the required insurance coverage.

ADDENDUM TO LEASE AGREEMENT

This Addendum to Lease Agreement dated as of April 21, 2009, is entered into between Union Pacific Railroad Company (Lessor) and PIC Railroad, Inc. (Lessee).

RECITALS

WHEREAS, Lessor and PIC Railroad, LLC entered into a Lease Agreement as of July 31, 2008, for PIC Railroad, LLC's operation between Iron Springs, Utah and Iron Mountain, Utah; and

WHEREAS, the Lessee's corporate name was incorrectly stated in that July 31, 2008 Lease Agreement as PIC Railroad, LLC; and

WHEREAS, Lessor and PIC Railroad, Inc. desire to execute an Addendum to the Lease Agreement that correctly designates the Lessee's corporate name.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Addendum and in the Lease Agreement, Lessor and PIC Railroad, Inc. hereby agree as follows:

1. All references in the Lease Agreement to PIC Railroad, LLC shall be changed to PIC Railroad, Inc.
2. This Addendum shall be permanently attached to the Lease Agreement;
and
3. All other provisions of the Lease Agreement shall remain in full force and effect.

WHEREFORE, authorized representatives of Lessor and PIC Railroad, Inc. have signed this Addendum below.

PIC RAILROAD, INC.

By: John W. Cull

Title: CEO

UNION PACIFIC RAILROAD COMPANY

By: Tony K. Love

Title: Assistant Vice President - Real Estate

EXHIBIT B

**UP-PIC INTERCHANGE AGREEMENT
IRON SPRINGS, UTAH**

THIS AGREEMENT, made and entered into as of this 31st day of July, 2008, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, hereinafter referred to as "UP", and PIC RAILROAD LLC, a Utah LLC, hereinafter referred to as "PIC". UP and PIC are sometimes referred to herein individually as "Party" and collectively as "Parties";

WHEREAS, the Parties desire to establish an arrangement for effecting the delivery and receipt of interchange railroad equipment between UP and PIC at Iron Springs, Utah; and

WHEREAS, the Parties desire to set forth in writing the understanding of the Parties respecting the use of UP's and PIC's tracks (owned or leased by PIC) for effecting the delivery of said cars to be interchanged.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

Section 1. The tracks of UP and PIC (owned or leased by PIC) at Iron Springs, Utah to be used for interchange of traffic between the Parties (the "Interchange Tracks") shall be mutually designated, from time to time, by the appropriate operating officers of UP and PIC, or their representatives.

Section 2. The Parties hereby grant the right, during the term hereof, to use the Interchange Tracks in or incident to the delivery of cars to be interchanged between the Parties. No cars, engines or other equipment of either Party shall be so placed on the tracks to be used for delivery of interchange as to be dangerously close to, or in such manner as to interfere in any way with the operation of, the track(s) with which tracks used for interchange purposes connect.

Section 3. Interchange of cars between the Parties shall be in accordance with the Field and Office Manuals of the AAR Interchange Rules and Code of Car Service Rules adopted by the Association of American Railroads (AAR), except that each Party in the movement of cars to be interchanged to the other Party shall, for the purposes of liability hereunder, be deemed to have sole care, custody and control of all cars to be interchanged to said other Party until the delivering Party has placed cars to be interchanged on the Interchange Tracks, and the engine or engines of the delivering Party have been uncoupled from such cars.

Section 4. UP and PIC in operating its engines and cars on and over the Interchange Tracks, shall accept such tracks as they find them and shall not, by reason of any failure, deficiency or defect therein or failure or neglect in the maintenance thereof, have or make against UP or PIC any claim or demand for any loss, damage, injury or death whatsoever arising from or incident to such deficiency, defect, failure or neglect.

Section 5. UP and PIC undertake and agree, in respect to their use hereunder of any trackage and the operation of equipment thereon and thereover, to comply with all applicable Federal and State laws or regulations, and all applicable rules, regulations, and orders promulgated by any Municipality, Board or Commission with respect thereto for the protection of employees or other persons or Parties, and if any failure on their part to comply therewith shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the other Party, promptly to reimburse and indemnify the other Party for or on account of such fine, penalty, cost or charge; and further agree in the event of any such action, upon notice thereof being given by the other Party, to defend such action free of cost, charge or expense to the other Party.

In the event the use of the Interchange Tracks in or incident to effecting delivery and receipt of cars to be interchanged hereunder shall be interrupted or traffic thereover delayed at any time from any cause, neither Party shall have any claim against the other Party for liability on account of loss or damage of any kind resulting from such interruption or delay.

Section 6. In the event of any loss, damage, injury or death upon or near the Interchange Tracks, or in the event of any damage to the Interchange Tracks or their appurtenances, caused by the negligence or wrongful act of any employee or employees engaged solely in the service of one of the Parties hereto, or caused by the negligent movement of any locomotive, train, or car of such Party or by defective rolling stock of such Party, all such loss, damage, injury and death and liability with respect thereto shall be borne, assumed and paid by such Party, and such Party shall indemnify and save harmless the other Party hereto from and against any and all cost, damage, expense and liability resulting directly or indirectly therefrom.

In the event of any loss, damage, injury or death on or near the Interchange Tracks, or in the event of any damage to the Interchange Tracks or their appurtenances, caused by the joint or concurring negligence or wrongful acts of employees of both Parties hereto, or by defective rolling stock or equipment of both of the Parties hereto, or by any combination of the above factors involving both Parties, then (1) each Party hereto shall bear all loss, damage and injury to its own property (excepting the Interchange Tracks and appurtenances) and to property in its custody, and all losses, charges, costs and expenses for personal injuries to or deaths of its passengers and employees, and (2) as to other persons and their property and as to the Interchange Tracks and appurtenances, the cost of such loss, damage, injury and/or death shall be equally apportioned between the Parties hereto.

In the event of loss, damage, injury or death from any other cause, or in the event the cause of such loss, damage, injury or death cannot be determined, (1) each Party hereto shall bear all loss, damage and injury to its own property (except the Interchange Tracks and their appurtenances) and property in its custody, and all losses, charges, costs and expenses for personal injuries to or deaths of its passengers and employees, and (2) as to other persons and their property and as to the Interchange Tracks and their appurtenances, the cost for such loss, damage, injury and/or death

shall be equally apportioned between the Parties hereto; provided, however, that if the equipment and/or employees of only one Party hereto is involved, said Party shall bear the entire cost of such loss, damage, injury and/or death.

Any locomotive, train or other equipment used or operated by either Party hereto on the Interchange Tracks shall for the purposes of this Agreement be deemed to be the locomotive, train or other equipment of such Party whether owned by it or not.

Anything hereinbefore in this Section to the contrary notwithstanding, no Party shall have any claim against the other Party for Loss and Damage caused by or resulting from interruption of or delay of such Party's operations or business activities.

Each of the Parties hereto covenants and agrees that it will forever indemnify and save harmless the other Party, its successors and assigns, from and against any and all liability or claims for damages, costs and expenses herein assumed by each of them; PROVIDED, HOWEVER, that the Party liable, in whole or in part, as to any claim or suit filed against the other Party shall be given prompt notice thereof and the opportunity to join in or take over, as may be appropriate, the defense and settlement of such claim or suit. No settlement which would result in one Party's payment of in excess of Fifty Thousand Dollars (\$50,000) shall be made by either of the Parties without the authority of the other Party.

All releases taken pursuant to the settlement of claims or suits involving joint liabilities shall include all Parties hereto involved, and copies shall be furnished to each of them.

Nothing in this Agreement shall act to prohibit any Party from bringing suit against persons or companies not Parties hereto if acts of said persons or companies were the sole or partial cause of damages to that Party.

Section 7. This Agreement shall take effect as of the date herein first written, and shall continue in full force and effect until terminated by either Party on not less than thirty (30) days prior written notice to other Party.

Section 8. This Agreement shall constitute the complete agreement concerning the delivery of interchange traffic between the Parties and shall be binding upon and inure to the benefit of the Parties and their respected successors and assigns. Any change or amendment hereto must be mutually agreed to in writing by the Parties. This Agreement is solely for the benefit of the Parties hereto, and nothing contained herein shall be considered to create any right to any third Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate as of the date first above written.

UNION PACIFIC RAILROAD COMPANY

PIC RAILROAD LLC

By 

By 

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ADDENDUM TO UP-PIC INTERCHANGE AGREEMENT

This Addendum to UP-PIC Interchange Agreement dated as of April 24, 2009, is entered into between Union Pacific Railroad Company (UP) and PIC Railroad, Inc. (PICR).

RECITALS

WHEREAS, UP and PIC Railroad, LLC entered into a UP-PIC Interchange Agreement as of July 31, 2008, for interchange of traffic at Iron Springs, Utah; and

WHEREAS, the PICR's corporate name was incorrectly stated in that July 31, 2008 UP-PIC Interchange Agreement as PIC Railroad, LLC; and

WHEREAS, UP and PICR desire to execute an Addendum to the UP-PIC Interchange Agreement that correctly designates PICR's corporate name.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Addendum and in the UP-PIC Interchange Agreement, UP and PICR hereby agree as follows:

1. All references in the UP-PIC Interchange Agreement to PIC Railroad, LLC shall be changed to PIC Railroad, Inc.
2. This Addendum shall be permanently attached to the UP-PIC Interchange Agreement; and
3. All other provisions of the UP-PIC Interchange Agreement shall remain in full force and effect.

WHEREFORE, authorized representatives of UP and PICR have signed this Addendum below.

PIC RAILROAD, INC.

By: John W. Cull

Title: CEO

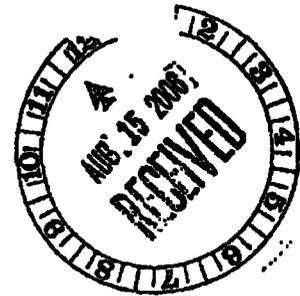
UNION PACIFIC RAILROAD COMPANY

By: M. C. Green

Title: Director Joint Facilities

EXHIBIT C

LAW OFFICE
THOMAS F. MCFARLAND, PC.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com



THOMAS F. MCFARLAND

August 14, 2006

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
AUG 15 2006
Part of
Public Record

217289

Re: Finance Docket No. 34896, *PIC Railroad LLC -- Lease and Operation Exemption -- Union Pacific Railroad Company Between Iron Springs and Iron Mountain, UT*

217288

Finance Docket No. 34897, *Iron Bull Railroad Company LLC -- Operation Exemption -- PIC Railroad LLC Between Iron Springs and Iron Mountain, UT*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Verified Notices of Exemption Under 49 C.F.R. 1150.31, for filing with the Board in the above referenced matter.

Also enclosed is \$3,000 for the filing fee.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Applicants

TMCF:kl:enc:wp8.011671(utb1)

FEE RECEIVED
AUG . 5 2006
SURFACE
TRANSPORTATION BOARD

FILED
AUG 15 2006
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

PIC RAILROAD LLC -- LEASE AND)	
OPERATION EXEMPTION -- UNION)	FINANCE DOCKET
PACIFIC RAILROAD COMPANY)	NO. 34896
BETWEEN IRON SPRINGS AND IRON)	
MOUNTAIN, UT)	
)	
IRON BULL RAILROAD COMPANY LLC)	
-- OPERATION EXEMPTION -- PIC)	FINANCE DOCKET
RAILROAD LLC BETWEEN IRON)	NO. 34897
SPRINGS AND IRON MOUNTAIN, UT)	

**VERIFIED NOTICES OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

PIC RAILROAD LLC
554 South 300 East, Suite 250
Salt Lake City, UT 84111

IRON BULL RAILROAD
COMPANY LLC
P.O. Box 1339
Cedar City, UT 84721

Applicants

By: THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Applicants

DATE FILED: August 15, 2006

The Notice in Finance Docket No. 34897 is related to a Verified Notice of Exemption from 49 C.F.R. § 1180.2(d)(2) filed on the same date in Finance Docket No. 34898, *Michael R. Root -- Continuance in Control Exemption -- Iron Bull Railroad Company LLC*, wherein Mr. Michael Root has provided verified notice under the class exemption for common control of noncontiguous rail lines at 49 C.F.R. § 1180.2(d)(2) of an exemption from 49 U.S.C. § 11323 for his continuance in control of IBR when IBR becomes a rail carrier.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) The full name and address of the applicants;

The full name of applicant in Finance Docket No. 34896 is PIC Railroad LLC, 554 South 300 East, Suite 250, Salt Lake City, UT 84111. The full name of applicant in Finance Docket No. 34897 is Iron Bull Railroad Company LLC, P.O. Box 1339, Cedar City, UT 84721.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

Applicants' representative is Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204.

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

An agreement between PICR and UP has been reached for PICR's lease of the Rail Line. An agreement has been reached between PICR and IBR for IBR's operation of the Rail Line.

Under the terms of the above referenced agreements, PICR will remain in title to all rights and shall be subject to all obligations under the lease of the Rail Line between PICR and UP even though PICR has entered into an agreement with IBR relating to operation of the Rail Line.

(d) The operator of the property;

IBR will operate the Rail Line. PICR will have a residual common carrier obligation to operate the Rail Line.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property,

The Lessor of the Rail Line is Union Pacific Railroad Company (UP), 1400 Douglas Street, Omaha, NE 68179.

(2) The proposed time schedule for consummation of the transaction,

The proposed lease and operation are scheduled to be consummated no earlier than seven days after the filing of these Verified Notices.

(3) The mile-posts of the subject property, including any branch lines,

The Rail Line extends between Milepost 0.1 at or near Iron Springs and Milepost 14.7 at or near Iron Mountain in Iron County, UT.

(4) The total route miles being acquired;

A total of approximately 14.6 miles of rail line are proposed to be leased and operated.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and

The required map is attached hereto as Appendix 1.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

The required certificate is attached to these Verified Notices as Appendix 2.

VERIFICATION

A verification of the facts in this Notice is attached as Appendix 3.

CAPTION SUMMARY

The caption summary required by 49 C.F.R. § 1150.34 is attached to these Verified Notices as Appendix 4.

LABOR PROTECTION

By virtue of 49 U.S.C. § 10901(c), no labor protective conditions are to be imposed in regard to the proposed lease and operation.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

By virtue of 49 C.F.R. § 1105.6(c)(2)(i) and § 1105.8(b)(1), no environmental or historic reporting is required for the proposed lease and operation.

CONCLUSION

WHEREFORE, the Board should publish these Verified Notices in the Federal Register within 30 days of its filing.

Respectfully submitted,

PIC RAILROAD LLC
554 South 300 East, Suite 250
Salt Lake City, UT 84111

IRON BULL RAILROAD
COMPANY LLC
P.O. Box 1339
Cedar City, UT 84721

Applicants

Thomas F. McFarland

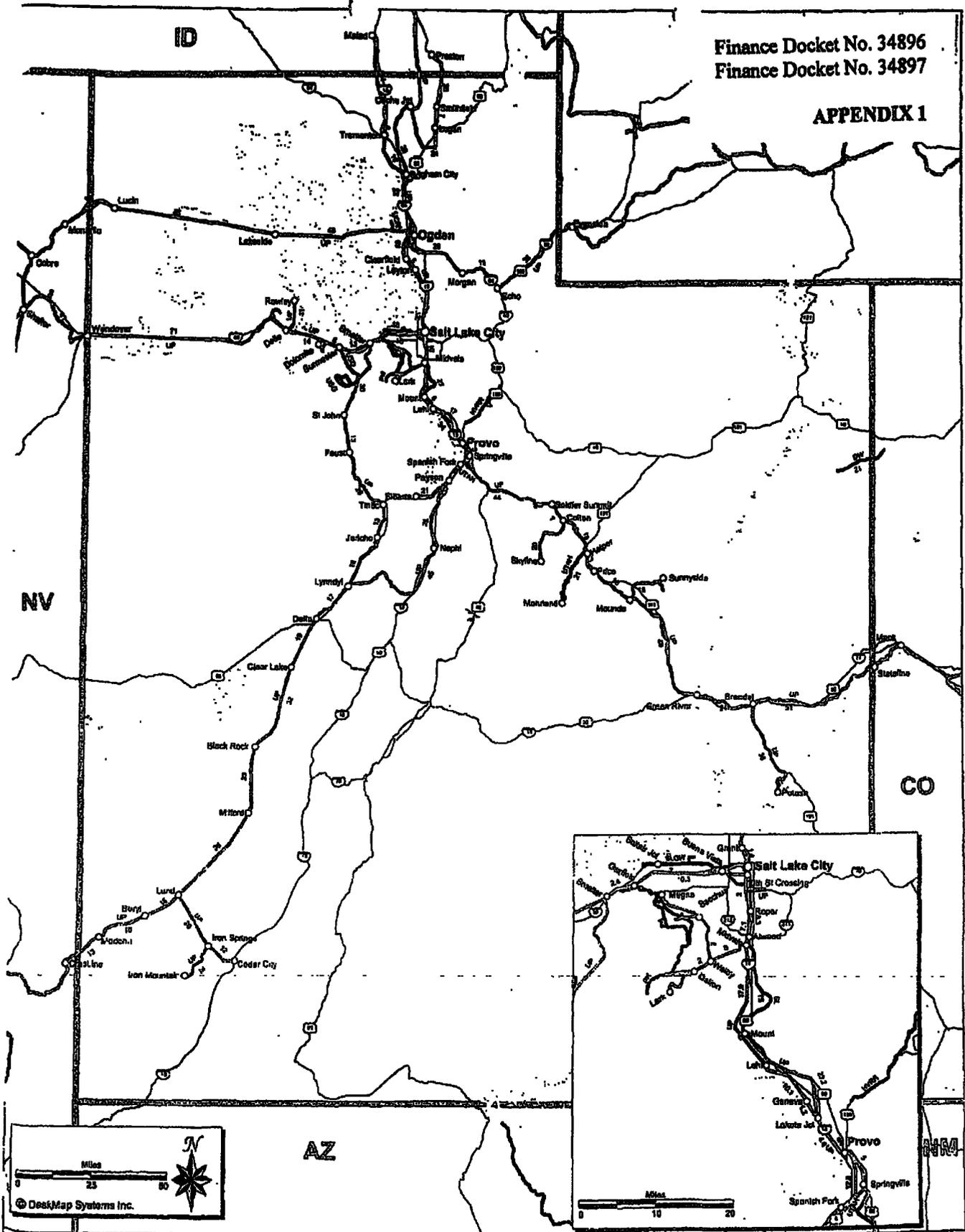
By: THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Applicants

DATE FILED: August 15, 2006

Finance Docket No. 34896
Finance Docket No. 34897

APPENDIX 1



Finance Docket No. 34896
Finance Docket No. 34897

APPENDIX 2

CERTIFICATION

THOMAS F. McFARLAND, on oath, states that the projected revenues of PIC Railroad LLC and Iron Bull Railroad Company LLC, as a result of the lease and operation in these dockets would not exceed those that would qualify them as Class III rail carriers.



Thomas F. McFarland

Thomas F. McFarland

SUBSCRIBED and SWORN
to before me this 14th
day of August, 2006

Kathleen Lenhan

Notary Public

My commission expires: 1/29/2010

Finance Docket No. 34896
Finance Docket No. 34897

APPENDIX 3

VERIFICATION

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

THOMAS F. McFARLAND, being duly sworn on oath, deposes and states that he has read the notices in these dockets, that he knows the contents thereof, and that the facts therein stated are true and correct.



Thomas F. McFarland

Thomas F. McFarland

SUBSCRIBED and SWORN
to before me this 14th
day of August, 2006.

Kathleen Lenhan

Notary Public

My commission expires: 1/29/2010

Finance Docket No. 34896
Finance Docket No. 34897

APPENDIX 4

CAPTION SUMMARY

**SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION**

(Finance Docket No. 34896)

**PIC RAILROAD LLC
-- LEASE AND OPERATION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY
BETWEEN IRON SPRINGS AND IRON MOUNTAIN, UT**

(Finance Docket No. 34897)

**IRON BULL RAILROAD COMPANY LLC
-- OPERATION EXEMPTION --
PIC RAILROAD LLC
BETWEEN IRON SPRINGS AND IRON MOUNTAIN, UT**

PIC Railroad LLC (PICR), a noncarrier, has filed a notice of exemption from 49 U.S.C. § 10901 to lease from Union Pacific Railroad Company and operate a rail line known as the Comstock Subdivision extending between Milepost 0.1 at or near Iron Springs and Milepost 14.7 at or near Iron Mountain, a distance of 14.6 miles in Iron County, UT (the Rail Line).

Iron Bull Railroad Company LLC (IBR), a noncarrier, has filed a notice of exemption from 49 U.S.C. § 10901 for its operation of the Rail Line pursuant to an operating agreement with PICR.

The notice in Finance Docket No. 34897 is related to Finance Docket No. 34898, *Michael Root -- Continuance in Control Exemption -- Iron Bull Railroad Company LLC*, wherein Mr. Michael R. Root seeks an exemption from 49 U.S.C. § 11323 for its continuance in control of IBR upon IBR becoming a rail carrier.

Any comments must be filed with the Board and must be served on applicants' representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204.

These notices of exemption are filed under 49 C.F.R. § 1150.31. If the notices contain false or misleading information, the exemptions are void *ab initio*. Petitions to revoke the exemptions under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transactions.

(SEAL)

By the Board

EXHIBIT D

37289

SERVICE DATE – SEPTEMBER 14, 2006

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34896]

PIC Railroad LLC—Lease and Operation Exemption—Union Pacific Railroad Company

[STB Finance Docket No. 34897]

Iron Bull Railroad Company LLC—Operation Exemption—PIC Railroad LLC

In STB Finance Docket No. 34896, PIC Railroad LLC (PICR), a noncarrier, has filed a verified notice of exemption under 49 U.S.C. 1150.31 to lease from Union Pacific Railroad Company (UP) and operate a rail line known as the Comstock Subdivision, extending between milepost 0.1 at or near Iron Springs and milepost 14.7 at or near Iron Mountain, a distance of approximately 14.6 miles in Iron County, UT.

In STB Finance Docket No. 34897, Iron Bull Railroad Company LLC (IBR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 for its operation of the rail line pursuant to an operating agreement with PICR.¹

The transactions were scheduled to be consummated on or shortly after August 22, 2006, the effective date of these exemptions (7 days after the exemptions were filed).

¹ Although PICR will enter into an agreement whereby IBR will operate the line, PICR also seeks an exemption to operate to fulfill its common carrier obligation in the event IBR were to cease operations.

STB Finance Docket No. 34896, et al.,

The transactions are related to STB Finance Docket No. 34898, Michael R. Root and Albany & Eastern Railroad Company—Continuance in Control Exemption—Iron Bull Railroad Company LLC, wherein Mr. Michael R. Root and Albany & Eastern Railroad Company will continue in control of Iron Bull Railroad Company LLC (IBR), upon IBR becoming a rail carrier as a result of the transaction in STB Finance Docket No. 34897.

PICR and IBR certify that their projected annual revenues as a result of these transactions will not exceed those that would qualify them as Class III carriers and will not exceed \$5 million.

If the notice contains false or misleading information, the exemptions are void ab initio. Petitions to revoke the exemptions under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transactions.

An original and 10 copies of all pleadings, referring to STB Finance Docket Nos. 34896 and 34897, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

STB Finance Docket No. 34896, et al.,

Decided: September 8, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

RAIL TRACK OPERATING AGREEMENT
between

CML Metals Corporation
and
Utah Southern Railroad Company, LLC

This Rail Track Operating Agreement ("Agreement") dated January 20, 2011 (the "Effective Date"), is made and entered into between CML METALS CORPORATION, a Utah Corporation ("CML"), as "Lessee," and UTAH SOUTERN RAILROAD COMPANY, LLC ("USRR"), a Utah Corporation, as "Rail Operator", collectively the "Parties."

RECITALS

A. CML is the Lessee of the Union Pacific ("UP") rail line known as the Comstock Subdivision, extending between milepost 0.1 at or near Iron Springs, Utah and milepost 14.7 at or near Iron Mountain, Utah, a distance of approximately 14.6 miles, located in Iron County, Utah (the "Track"), with rights to certain other tracks in the vicinity (the Track and the other tracks to which CML has rights are sometimes referred to herein as the "Project"). A copy of the UP Lease is attached hereto as Exhibit "A," and a map showing the location of the Track is attached hereto as Exhibit "B."

B. USRR desires to operate, and handle day-to-day maintenance and repair of the Track on behalf of CML on the terms set forth in this Agreement in accordance with FRA Class 2 Standards.

C. CML desires to engage USRR for the purpose of switching, operating, maintaining and repairing the Track on behalf of CML subject to the terms, conditions and provisions of this Agreement.

NOW THEREFORE, for good valuable consideration, the Parties agree as follows:

Article 1. Definitions

1.00 Definitions. As used in this Agreement, the following terms shall have the following definitions:

a. "Applicable Laws" shall mean all current and future laws, statutes, rules, regulations, ordinances, directives, covenants, easements, and restrictions of record, permits, and requirements of all municipal, state and federal authorities, including but not limited to the Surface Transportation Board, the Utah Public Utilities Commission, the Federal Railroad Administration, the Federal Employees Liability Act, Worker's Compensation, now or later in

force, including but not limited to, Environmental Laws, the requirements of the local fire department and any applicable insurance underwriter (fire or otherwise) or rating bureau relating in any manner to the use, occupancy or operation of the Track (including but not limited to matters pertaining to: (i) railroad operators; (ii) railroad safety; (iii) the transportation and/or storage of goods, products or any other items in or on rail cars; (iv) industrial hygiene; (v) occupational safety and health; (vi) fire safety; (vii) environmental conditions on, in, under or about the Track, including soil and groundwater conditions; and (viii) the use, generation, manufacture, production, installation, maintenance or removal, transportation, storage, spill or release of any Hazardous Substance or storage tank, now in effect or which may hereafter come into effect (including retrofits or changes in building and health and safety codes), and whether or not reflecting a change in policy from any previously existing policy.

b. "Assignment" shall mean any assignment, transfer, mortgage, or other transfer or encumbrance of this Agreement whether voluntarily or by operation of law.

c. "Environmental Laws" shall mean all current and future federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, occupational or environmental conditions on, under, or about the Project, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Hazardous Materials Transportation Act, the federal laws and regulations governing the storage and transportation of hazardous materials by rail, the Superfund Amendments and Re-authorization Act, the Emergency Planning and Community Right to Know, the Occupational Safety and Health Act, together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene laws, ordinances, or regulation relate to Hazardous Substances on, under, or about the Project, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

d. "Event of Default" shall mean any one or more of the events or occurrences set forth in Section 11.00 of the Agreement.

e. "Hazardous Substance" shall mean any product, substance, chemical, material or waste whose presence, nature or quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or affect; either by itself or in combination with other materials which is either: (i) potentially injurious to the public health, safety or welfare, the environment, the Track, or the Project; (ii) regulated or monitored by any governmental authority; or (iii) a basis for liability of CML or USRR to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include but not

be limited to: (i) those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in or under any other Environmental Law; (ii) those substances listed in the United States Department of Transportation (DOT), or by the environmental Protection Agency, or any successor agency, as hazardous substances; (iii) other substances, material, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and (iv) any material, waste, or polychlorinated biphenyl, designated as a hazardous substance, a flammable explosive, or a radioactive material.

f. "Hazardous Substance Condition" shall mean the occurrence or discovery of any deposit, spill, seepage, release or any other condition involving the presence of or a contamination by Hazardous Substance, in, under or about the Track, Project, and/or any rail car on the Track as the case may be.

g. "Reportable Use" shall mean: (i) the installation or use of any above or below ground storage tank; and (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from or with respect to which a report, notice, registration or business plan is required to be filed with any government authority, including USRR's being responsible for the presence in, on or about the Track of a Hazardous Substance with respect to which any Applicable Laws require that a notice be given the persons using, entering or occupying the Track or neighboring properties. "Reportable Use" shall not be interpreted to limit the reporting of any Hazardous Substances under this Agreement to a "Reportable quantity" under the Environmental Law.

h. "Rules and Regulations" shall mean the rules and regulations for the operation as established and issued by CML, as amended from time to time. The Rules and Regulations are attached as Exhibit "C" hereto and incorporated herein by this reference.

i. "USRR's Related Parties" shall mean USRR's employees, officers, directors, agents, contractors, invitees, licensees, vendors, shippers, customers and any other individuals related by business or otherwise to USRR.

Article 2. Track in Project

2.00 Track. CML will allow USRR to use the Track on the terms, provisions and conditions set forth in this Agreement.

2.01 Rehabilitation. For the first year, the scope of work as provided in Exhibit E, shall be completed on or before JAN 20, 2011. CML shall rehabilitate and upgrade the Track to a FRA Class 2 Standard.

Article 3. Use and Condition of Track

3.00 Responsibilities of USRR: Permitted Use of the Track. USRR shall be responsible during the term of this Agreement for the operation, maintenance and repair of the Track. Except as otherwise provided in this Agreement or in a written agreement between USRR and CML, USRR shall be solely responsible for all costs and expenses incurred in connection with the operation, maintenance and repair of the Track. In carrying out its duties and responsibilities hereunder, USRR shall be permitted to use the Track for the switching of rail cars, to conduct maintenance and repair of the track and the track bed, and for no other use or purpose whatsoever (the "Permitted Use").

3.01 Prohibited Activities. USRR shall not use or permit the use of the Track in any way or manner that creates or threatens to create waste or a nuisance, or that disturbs, interrupts or interferes with CML or other CML pre-approved occupants of the line or to the neighboring premises or properties.

3.02 Responsibility for Rail Cars. In connection with the operation of the Track, rail cars will be provided by CML. Once rail cars or a unit train is consigned, delivered, or otherwise placed on the track for interchange, the rail cars and their contents shall be deemed to be delivered to USRR and USRR assumes full responsibility for all loss or damage to the rail car and its contents that occurs while the rail car is on the track or otherwise in the custody and/or control of USRR, until the rail car is delivered to Union Pacific at interchange. CML shall have no responsibility or liability whatsoever for rail cars on the Track unless, as the result of negligence or intentional act on the part of CML resulting in the loss or damage of said railcars.

3.03 Rules and Regulations. CML may from time to time create, establish, enact, amend, modify or change the Rules and Regulations, within CML's sole and absolute discretion including, but not limited to, rules and regulations for the management, safety, care, and cleanliness of the area, the grounds, and the preservation of good order. USRR agrees that it will abide by, keep, and observe all of the Rules and Regulations. USRR acknowledges CML's absolute authority to establish, create and amend the Rules and Regulations. If, however, the amended Rules and Regulations are found unacceptable to USRR then USRR shall have the right to negotiate terms acceptable to both parties. If no agreement can be reached, the USRR shall have the right, via thirty-day written notice, to terminate this agreement.

Article 4. Operations

4.00 Delivery of Rail Cars. USRR shall communicate and coordinate with UP for the timely pickup and/or delivery of rail cars to and from the rail line. USRR shall use all reasonable efforts to coordinate with UP to comply with the pickup and/or delivery times requested by CML.

4.01 Switching Rail Cars. USRR shall, at USRR's sole cost and expense, switch or cause to be switched all rail cars and unit trains delivered to, stored, or otherwise placed at the interchange tracks within a reasonable amount of time.

4.02 Rail Locomotives. USRR shall at all times, at USRR's sole cost and expense, maintain rail locomotives in good working order and condition in compliance with applicable laws ready to provide the switching services pursuant to this Agreement. Once the Track is upgraded, UP may allow its locomotives to be operated over the Track. For the movement of up to and including 2.0 million tons of material annually, USR locomotives shall be used. For the movement of material beyond 2.0 million tons on an annual basis, it shall be at CML's discretion whether USRR or UP locomotives will be used. Accordingly, CML shall provide written direction to USRR regarding the use of locomotive power.

4.03 Operating Authority. CML will file a Notice of Exemption at the STB for its acquisition of the rail line by lease from UP and its operation. USRR will file a Notice of Exemption at the STB for its operation of the rail line by operating agreement with CML. Those filings made be made jointly if CML and USRR so agree. In the event that the Operating Agreement were to be lawfully terminated, or expires by its terms, USRR agrees that it will promptly file at the STB for authority to discontinue rail service over the line.

4.04 USRR Tracking System. USRR shall provide CML full access to all units trains/cars handled at the interchange point, along the Track.

Article 5. Term

5.00 Term. The initial term of this Agreement shall commence on the Effective Date of this Agreement and shall expire July 31, 2013 (the "Term"). This Agreement shall be automatically renewed thereafter for successive one (1) year terms (each, a "Renewed Term") unless either party gives written notice to the other party at least sixty (60) days prior to the expiration of the Term or any Renewed Term that the Agreement shall not be renewed.

Article 6. Fees

6.00 Per Car Fee. As compensation for its services hereunder, USRR shall be compensated by CML based upon the number of rail cars handled by USRR. The per-car rates to be paid by CML to USRR are set forth on Exhibit "D" of this Agreement. The schedule of rates set forth on Exhibit "D" may be modified or amended upon the written consent of both Parties. USRR will submit to CML a list of cars handled each month on an itemized invoice. CML agrees to pay such monthly invoices within 30 days of receipt.

6.01 USRR's Books and Records. USRR shall keep and maintain full, complete, and appropriate books and records of all cars handled from the Track in accordance with

generally accepted accounting principles. Not more often than once per calendar year, CML shall have the right to audit USRR's books and records relating to USRR's operation of the Track for the purpose of verifying the number of rail cars reported by USRR as having been handled by USRR. The Parties shall adjust the amounts paid or owed by CML if such audit shows that the number of rail cars handled by USRR was incorrectly reported by USRR. If such audit discloses that USRR has overstated the number of rail cars handled by USRR by two percent (2%) or more as to any given period, USRR shall pay the reasonable cost of such audit and shall immediately refund the amount due to CML with interest thereon from the date such amount was paid by CML at the rate of twelve percent (12%) per annum.

Article 7. Maintenance and Repair

7.00 USRR's Track Maintenance and Repair Obligations. USRR shall, at USRR's sole cost and expense:

- (a) Inspect the Track weekly and notify CML monthly in writing of any maintenance and/or repair required to operate safely on the Track. All work shall be in accordance with FRA Class 2 Standards.
- (b) Provide normal maintenance and repair work on the Track. For work deemed outside the scope of normal maintenance and repair, USRR shall provide CML written notification including, but not limited to the option of completing the necessary work at CML expense. CML may at its discretion hire a third-party to complete the necessary work.
- (c) On an annual basis, contract a third-party, agreeable to USRR and CML, for the purpose of controlling potential overgrowth of vegetation on or around the Track.

Article 8. Insurance; Indemnity

8.00 USRR's Insurance. USRR shall obtain, keep in full force and effect, and provide to CML written evidence of the insurance required under this Agreement. Insurance required hereunder shall be in companies duly licensed to transact business in Utah and maintaining during the policy term a "General Policyholders Rating" as set forth in the most current issue of "Best's Insurance Guide" acceptable to CML. USRR shall not do or permit to be done anything which shall invalidate the insurance policies set forth herein. USRR shall cause to be delivered to CML certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insured's and loss payable clauses as required by this Agreement. USRR shall name CML as an additional insured on all their policies. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to CML. USRR shall, at least thirty (30) days prior to the expiration of such policies,

furnish CML with evidence of renewals, certificates or "insurance binders" evidencing renewal thereof, or CML may order such insurance and charge the cost thereof to USRR, which amount shall be payable by USRR to CML upon demand.

8.01 Liability Insurance. USRR shall obtain and keep in force during the term of this Agreement a Comprehensive Commercial General Liability policy of insurance protecting USRR, and naming CML as additional insured, against claims for bodily injury, personal injury, and property damage based upon, involving, or arising out of the use, operation, maintenance or repair of the Track, (including but not limited to fires, chemical spills, seepage or other Hazardous Substance Conditions) and all areas appurtenant or adjacent thereto, including areas used in common with other at the Project. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$5,000,000 per occurrence with an "Additional Insured-Managers or Contracts of Premises" Endorsement and contain the "Amendment of the Pollution Exclusion" for damage caused by heat, smoke, or fumes from a hostile fire. The policy shall not contain any Intra-Insured exclusion as between insured persons or organizations, but shall include coverage for liability assumed under this Agreement as an "insured contract" for the performance of USRR's indemnity obligation under this Agreement. CML shall have the right to increase required minimum limits not to exceed \$7,500,000, as it deems necessary, via written notice to USRR. Additionally, railroad employees of USRR will be covered under the Federal Employers Liability Act (FELA).

8.02 Auto Liability Insurance. USRR shall carry automobile (including vehicular liability) insurance with a minimum combined single limit of \$1,000,000 covering all owned, hired, and non-owned autos, vans, trucks, and any other vehicles entering the Project and/or driving within Project on USRR's behalf. CML shall be named as an additional insured on all such policies. CML shall have the right to increase required minimum limits not to exceed \$1,500,000 as it deems necessary, via written notice to IBR.

8.03 Indemnity. USRR shall indemnify, protect, defend, and hold harmless the Track, CML, and their respective employees and agents from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, permits, attorney's and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the use, operation, maintenance or repair of the Track by USRR and the conduct of USRR's business, unless caused by the negligence or intentional misconduct of CML.

8.04 Exemption of CML from Liability. CML shall not be liable for injury or damage to the person or goods, wares, merchandise, or other property of USRR, USRR's Related Parties or agents, or any other person in or about the Track or the property, whether such damage or injury is caused by or results from fire, explosion, steam, electricity, gas, water or rain or snow, or from the breakage, leakage, obstruction, or other defects of pipes, wires, or from any other cause, whether the said injury or damage results from conditions arising upon the Track or upon other portions of property, or from other sources or places, and repairing the

same is accessible or not. Except as otherwise provided in this Agreement, CML shall not be liable to USRR for any damages, claims or losses, nor shall USRR be entitled to terminate this Agreement or to any abatement of user fees for any damage to USRR's property or any injury to USRR or USRR's Related Parties, or loss to USRR's business arising out of any cause whatsoever. CML immunity from liability shall be excepted if the loss or damage is the result of negligence of an intentional act on the part of CML.

Article 9. Hazardous Substances

9.00 Reportable Users Require Prior Consent. USRR shall not engage in any activity in, on or about the property of the Track which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of CML and compliance in a timely manner (at USRR's sole cost and expense) with all Applicable Laws. Notwithstanding the foregoing, USRR may, without CML's prior consent, but in compliance with all Applicable Laws, use any ordinary and customary materials reasonably required to be used by USRR in the normal course of USRR's business permitted on the Track, so long as such use is not a reportable Use of a Hazard Substance and does not expose the property or neighboring properties to any meaningful risk of contamination or damage or expose CML to any liability therefore.

9.01 Duty to Inform CML of Hazardous Substance Condition. If USRR knows, or has reasonable cause to believe, that a Hazardous Substance Condition has occurred in, on, under, or about the Track, other than as previously consented to by CML, USRR shall immediately: (i) give verbal and written notice to such fact to CML; and (ii) give CML a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to USRR, or received by USRR from, any governmental authority or private party, or persons entering or occupying the Track, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on or about the Track, including but not limited to all such documents as may be involved in any Reportable Uses involving the Track.

9.02 Hazardous Substance Condition Responsibilities. If a Hazardous Substance Condition occurs for which USRR is legally responsible, USRR shall make whatever investigation and remediation thereof is required by Applicable Laws, and this Agreement shall continue in full force and effect, subject to CML's rights under Article 11. If Hazardous Substance Condition occurs for which USRR is not legally responsible, CML may, at CML's option, either: (i) investigate and remediate such Hazardous Substance Condition at CML's expense, in which event this Agreement shall continue in full force and effect; or (ii) if the estimated cost to investigate and remediate such condition exceeds twelve (12) times the then monthly Base Revenue Fee, CML may, within thirty (30) days after it learns of the occurrence, terminate this Agreement upon sixty (60) days prior written notice to USRR.

9.03 Expiration and Termination Option. Upon expiration or earlier termination of this Agreement, CML may request USRR to perform all of the following activities at USRR's sole expense: (i) obtain an environmental assessment of the Track to evaluate the environmental condition of the Track and the area immediately surrounding the track, and any potential environmental liabilities under this Agreement; (ii) all remedial or other work identified in such environmental assessment and all applicable Environmental Laws; (iii) all corrective, remedial, repair, or other work necessary to correct any alleged violations, deficiencies, or hazards noted by any environmental governmental agency; and (iv) all steps necessary to terminate, close, or transfer all environmental permits, licenses, and other approvals or authorizations for the Track or for activities, equipment, or conditions on the Track, in accordance with all Environmental Laws. The above will only occur if during the term of this Agreement a hazardous incident has occurred.

9.04 Environmental Indemnification. USRR shall indemnify, protect, defend and hold CML and its respective agents, officers, and employees harmless from and against any and all losses, damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorneys and consultant's fees arising out of the actions of USRR and its agents and representatives in bringing any Hazardous Substance on the Track or the immediately surrounding area or in controlling any such Hazardous Substance.

Article 10. Compliance with Laws

10.00 USRR Compliance with Laws. USRR shall, at USRR's sole cost and expense: (i) obtain and maintain any and all necessary licenses, permits and/or approvals under Applicable Laws and Regulations for USRR's business in, on or about the Track as provided herein; and (ii) fully, diligently and in a timely manner comply with all Applicable Laws and Regulations concerning the Track or USRR's use thereof, whether foreseen or unforeseen, regardless of cost, and regardless of when during the Term the proper paperwork is filed. USRR shall, within five (5) days after receipt of CML's written request, provide CML with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing USRR's compliance with any Applicable Laws and Regulations specified by CML, and shall immediately upon receipt, notify CML in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by USRR or the Track to comply with any Applicable Laws and Regulations. Without in any way limiting the generality of the foregoing, USRR shall prior to conducting any activities or use of the Track, obtain at USRR's sole expense all use or occupancy permits and licenses required by Applicable Laws and Regulations for the Permitted Use.

Article 11. Default; Remedies

11.00 Event of Default. Any one or more of the following events or occurrences shall constitute a material break of the Agreement by USRR and after the expiration of any applicable grace period shall constitute an Event of Default:

a. **Failure to Provide Insurance or Fulfill Other Obligations.** Except as expressly otherwise provided in this Agreement: (i) the failure by USRR to provide CML with reasonable evidence of insurance required under this Agreement where such failure continues for three (3) days following written notice thereof by or on behalf of CML; or (ii) the failure of USRR to fulfill any obligations under this Agreement which endangers or threatens life or property, where such failure continues for a period of three (3) days following the written notice thereof by or on behalf of CML to USRR. Notwithstanding the foregoing grossly unsafe practices as determined by any applicable local, state, or federal governmental agency, or as reasonably determined by an insurance rating bureau or underwriter regularly used by CML to evaluate such matters shall be sufficient cause for CML to immediately terminate USRR's right to possession and eject USRR from the Track without waiving other rights and remedies CML may have against USRR.

b. **Failure to Provide Switching Services.** A default, breach or failure of USRR to perform or comply with USRR's obligation in Article 4 where such default, breach or failure continues for a period of three (3) days after written notice thereof by or on behalf of CML to USRR.

c. **Failure to Provide Certain Written Notices.** Except as expressly otherwise provided in this Agreement, the failure by USRR to provide CML with reasonable written evidence (in duly executed original form, if applicable) of: (i) compliance with Applicable Laws and Regulations pursuant to Section 10.00; or (ii) the execution of any document or other information which CML may reasonably require of USRR under the terms of this Agreement where any such failure continues for a period of three (3) days following written notice by or on behalf of CML to USRR.

d. **Default of Agreement or Rules and Regulations.** A default or breach by USRR as to the terms, covenants, conditions, or provisions of this Agreement except as otherwise provided for herein, or of the Rules and Regulations where such default or breach continues for a period of three (3) days after written notice thereof by or on behalf of CML to USRR.

Article 12. Right of Entry

12.00 Access and Entry. CML reserves the right at any and all times to access and enter the Track for inspection, showing to prospective tenants, or for other reasonable purposes.

Article 13. Alterations

13.00 No Alterations. USRR shall not make any alterations, improvements, or other changes whatsoever to the Track, without prior written consent of CML in CML's sole and

absolute discretion. CML reserves the right, at any time, to make improvements, additions, modifications or changes to any portion of the Track, including, but not limited to, track layout provided, however that any such changes shall not adversely affect USRR's rail operations.

Article 24. Miscellaneous Provisions

14.00 Severability. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

14.01 Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Agreement.

14.02 No prior or Other Agreements. This Agreement contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

14.03 Notices. All notices required by the terms of this Agreement and supporting documents, shall be deemed to have been properly given if such notice is in writing, addressed to the party at such address as the party may have last designated in writing (if different from the address listed herein), sent by facsimile transmission:

If to CML:

CML Metals Corporation
Attn: Dale Gilbert
6249 W Gilbert Industrial Court
Hurricane, UT 84737
Facsimile No. (435)627-1411

If to USRR:

Utah Southern Railroad Company, LLC
Attn: Michael Root
19014 East Tonto Verde Drive
Rio Verde, AZ 85263
Facsimile No. ()

Any change in addresses or numbers for notices shall be promptly forwarded to all PARTIES. Unless otherwise stipulated hereunder, all notices shall be effective as of the date and time on which faxed, if any notice is transmitted by facsimile transmission.

14.04 Waivers. No waiver by CML of any Event of Default or breach of any term, covenant or condition hereof by USRR, shall be deemed a waiver of any other term,

covenant, or condition hereof, or any subsequent Event of Default or breach by USRR of the same or of any other term, covenant, or condition hereof. CML's consent to, or approval of, any act shall be deemed to render unnecessary the obtaining of CML's consent to, or approval of, any subsequent or similar act by USRR, or be construed as the basis of an estoppel to enforce the provision or provisions of this Agreement requiring such consent. Regardless of CML's knowledge of an Event of Default or breach at the time of accepting user fees, the acceptance of user fees by CML shall not be waiver of any preceding Event of Default or breach by USRR of any provision hereof, other than the failure of USRR to pay the particular rent so accepted. Any payment given CML by USRR may be accepted by CML on account of moneys or damages due CML, notwithstanding any qualifying statements or conditions made by USRR in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by CML at or before the time of deposit of such payment.

14.05 No Right to Holdover. USRR has no right to retain possession of the Track or any part thereof beyond the expiration or earlier termination of this Agreement

14.06 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

14.07 Covenants and Conditions. All provisions of this Agreement to be observed or performed by USRR are both covenants and conditions

14.08 Binding Effect: Choice of Law. This Agreement shall be binding upon the parties, their personal representatives, successors, and assigns and be governed by the laws of the State of Utah. Any litigation between the Parties hereto concerning this Agreement shall be initiated in Iron County, Utah, provided, however, that federal law shall apply to matters affecting interstate commerce, and actions thereon shall be instituted in federal court in Utah.

14.09 Attorneys' Fees. If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees and court costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred. CML shall be entitled to attorney's fees, costs, and expense incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with an Event of Default.

14.10 Termination. Unless specifically stated otherwise in writing by CML, the voluntary or other surrender of this Agreement by USRR, the mutual termination or cancellation hereof, or the termination hereof by CML for breach or default by USRR, shall automatically terminate any subcontract on the Premises; provided, however, CML shall, in the event of any such surrender, termination, or cancellation, have the option to continue any one or all of the existing subcontractors. CML's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute CML's election to have such event constitute the termination of such interest.

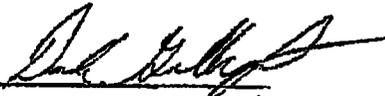
14.11 Reservations. CML reserves to itself the right, from time to time, to grant, without the consent or joinder of USRR, such easements, rights and dedications that CML deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps, and restrictions do not unreasonably interfere with the use of the Track by USRR. USRR agrees to sign any documents reasonably requested by CML to effectuate any easement rights, dedication, map, or restrictions.

14.12 Authority. If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Agreement on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on its behalf. If USRR is a corporation, trust, or partnership, USRR shall, within thirty (30) days after request by CML, deliver to CML evidence satisfactory to CML of such authority.

14.13 Assignment. USRR may not assign or transfer its obligations under this agreement. Assignment of this contract by USRR shall constitute a default.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

Lessee:
CML Metals Corporation

By: 

Title: President/CEO

Rail Operator:
Utah Southern Railroad Company, LLC

By: 

Title: President

EXHIBIT A

Lease Agreement Between Union Pacific Railroad Company and CML Metals Corporation:

To Be Inserted Once Signed.

EXHIBIT B

Map of Rail Short Line

EXHIBIT C

Rules and Regulations

To be established by CML as needed according to 1. h. & 3.03

- **USRR must meet all Federal, State and Local Laws.**
- **USRR will be under MSHA and CML's safety requirements while operating within the boundaries of the mine property (to be included).**
- **USRR must follow all Federal Rail Administration rules and regulations.**

EXHIBIT D

USRR will submit to CML a list of cars handled each month on an itemized invoice. CML will pay USRR the following per car rates:

- a. **Cars handled using Union Pacific Railroad locomotives: \$26.50 per car**
- b. **Cars handled using USRR locomotives: \$86.00 per car.**
- c. **Rates shall be adjusted annually on the anniversary date of this agreement by the application of the index in the Rail Cost Adjustment Factor, governed by the Surface Transportation Board (STB) and calculated by the Association of American Railroads (AAR).**
- d. **"Car Handled" shall be defined as movement of any "empty" car from the Interchange Track at Iron Springs, to the mine site and load-out facility at Iron Mountain, and delivered back to the Interchange Track as a "full" car, regardless of how often the car is moved by USRR in the interim**

CML will pay USRR month invoices within 30 days of receipt.

EXHIBIT E
Scope of Work

From: mike_root@hotmail.com
Subject: Crossings and trees
Date: July 15, 2008 8:26:41 PM MDT
To:

I offer CML the following quote for crossing repairs and tree removal:

CROSSING REPAIRS (2)

Install 133# rail as needed in crossing area
Replace all crossties in crossing area with new ties
Place correct ballast under ties
Surface track
Replace crossing surface with man mad crossing planks
Replace crossing signs to comply with regulations
Clean up

\$15,000 per crossing
\$30,000 for both crossings

TREE REMOVAL

Excavator w/ operator \$250 hr
24 hours
\$6,000

Signed: _____

Title: _____

Date: _____

EXHIBIT F

Saturday, December 17, 2011 1:42:51 PM MT

Subject: RE: Locomotive's

Date: Monday, September 12, 2011 6:20:41 PM MT

From: Mike Root

To: Penn

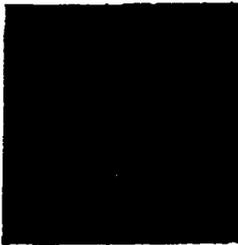
CC: Dale Gilbert, Sam, Keith Gilbert

In the process of leasing another SD40-2.

> Date: Mon, 12 Sep 2011 13:43:18 -0600
> Subject: Locomotive's
> From: penn@cmimetals.com
> To: mike.root@hotmail.com
> CC: dale@cmimetals.com; sam@cmimetals.com; keith@gilbertdevelopment.com
>
> Mike It has been brought to my attention that you are not going to be using
> the third locomotive any more , Mike I would like to bring it to your
> attention that we are trying to get another unit train out of the mine at
> this time ,for a total of six trains a week, I am concerned that with only
> two locomotives that we will not be able to move the ore out of the mine to
> Iron Springs in a timely manner, also with this extra train a week we will
> need to be loading the trains when they show up . We will get the light's up
> for the night loading that we will have to do to keep every thing moving ,
> we anticipate the Increase very soon. So at this time I would like to know
> what your game plan is for the third Locomotive and how you will load with
> two locomotives and keep us moving . Penn
>
>
>
>
>

EXHIBIT G





Durham Jones & Pinegar, P.C.
192 East 200 North, Third Floor
St. George, Utah 84770-2879
435.674.0400
435.628.1610 Fax
www.djplaw.com

Bryan J. Pattison
Attorney at Law
bpattison@djplaw.com
888.82.04

October 13, 2011

VIA CERTIFIED MAIL & EMAIL

Michael Root
UTAH SOUTHERN RAILROAD COMPANY, LLC
19014 East Tonto Verde Drive
Rio Verde, AZ 85263

Re: CML Metals Rail Track Operating Agreement

Dear Mr. Root:

This law firm represents CML Metals Corporation. I am writing with regard to the Rail Track Operating Agreement between CML and Utah Southern Railroad Company (USRR) dated January 20, 2011 (the "Agreement"). As you know from numerous discussions and correspondence with CML, USRR has been deficient in its performance of the Agreement. In particular, USRR has failed to comply with CML's requested pickup and delivery times and failed to communicate and coordinate with Union Pacific (UP) in delivering rail cars to and from UP's rail line for shipment in a timely manner.

As you know, the success of CML's business depends on the timeliness of product shipments. This fact was communicated to you at the inception of the Agreement; has been reiterated to you numerous times since then; and is, in fact, a part of the Agreement, which makes clear at Section 14.01: "Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Agreement."

You were advised at the inception of the Agreement that CML would increase its production volume and, consequently, the amount of product that needs to be shipped on the rail line. Yet, as CML's needs increase, USRR's performance has declined to the point of default. USRR's turnaround time has gone from under 10 hours to substantially more time. In an agreement where time is everything, this is not acceptable. To compound the problem, CML is now informed that USRR is failing to pay its fuel supplier, Gilbert Development, which could result in further disruption of shipments. This non-payment is inexplicable given that, despite USRR's failed performance, CML has made timely payments to USRR.

Michael Root
October 13, 2011
Page 2

As has been expressed to you on numerous occasions by CML, USRR's failures cause a chain reaction in the process by which CML mines its products and gets them to its customers overseas. Instead of having its product moved timely from the mine, to port, to the customer, CML's product unnecessarily sits at the mine waiting for USRR to show up; then it sits on railcars because of USRR's failure to be consistent and coordinate with UP for pickup; then it sits at the port because it misses the ship that will take it to its destination and fulfill CML's obligations.

What's more, USRR's failed performance is damaging CML's reputation. In fact, CML is the one left dealing with UP and potential increases in the prices charged by UP to CML because of perceived inefficiencies of CML's operations—all due to USRR's lack of performance. The costs to CML because of USRR's lack of performance will be staggering.

You are on notice that CML will not tolerate further delays and performance failures. In short, pursuant to Section 11.00(d) of the Agreement, USRR is on notice that it is in default and must immediately perform its obligations including:

- A less than 10 hour turnaround time on shipments;
- Prompt delivery of cars;
- Coordination with UP to ensure timely pickups and deliveries; and
- Prompt payment to third party suppliers to ensure no disruption in service.

Failure to perform will result in termination of the Agreement without further notice.

Sincerely,

DURHAM JONES & PINEGAR, P.C.



Bryan J. Pattison

BJP:jg

EXHIBIT H

Pattison, Bryan J.

From: Dale Gilbert [dale@cmlmetals.com]
Sent: Saturday, December 17, 2011 4:03 PM
To: Pattison, Bryan J.
Subject: FW: Fuel Payment

Dale Gilbert
President and CEO
CML Metals Corporation
+1.435.586.5360 office

From: Keith Gilbert <keithgilbert3@me.com>
Date: Sat, 17 Dec 2011 16:02:18 -0700
To: Dale Gilbert <dale@cmlmetals.com>
Subject: Fwd: Fuel Payment

Begin forwarded message:

From: Keith Gilbert <keith@gilbertdevelopment.com>
Date: October 7, 2011 12:29:14 PM MDT
To: Jessica Dalziel <utahsouthern@hotmail.com>
Cc: mike_root@hotmail.com
Subject: Fuel Payment

Jessica

I am requesting payment in full of all invoices of net 30days or over 30days. This is becoming a repetitive problem getting payed within 30days. As of today (10/6/11) we are past due \$34,399.20 on invoices 1327 and 1329, with an additional \$13,486.00 due on 10/9/11(invoice 1345), \$14030.06 due on 10/26/11(invoice 1347) and \$16005.00 due on 10/30/11(invoice 1351). I have received pressure from my board that if invoices 1327,1329and 1345 are not payed in full by 10/9/11 Gilbert Development corp. will no longer be able to supply fuel to Utah Southern. Invoices 1347 and 1351 are also expected to be payed on time as well. Gilbert Development understands that Utah Southern has been payed on a two week pay schedule. Therefore Lack of payment from Utah Southern is not due from lack of payment from the owner.

Keith Gilbert
Gilbert Development corp.
5249 West Gilbert Industrial Court
Hurricane, UT 84737
Phone: 435.627.1907
cell: 435.701.1903

EXHIBIT I



Durham Jones & Pinegar, P.C.
192 East 200 North, Third Floor
St. George, Utah 84770-2879
435.674.0400
435.628.1610 Fax
www.djplaw.com

Bryan J. Pattison
Attorney at Law
bpattison@djplaw.com
26882.04

December 15, 2011

VIA CERTIFIED MAIL

Michael Root
UTAH SOUTHERN RAILROAD COMPANY, LLC
19014 East Tonto Verde Drive
Rio Verde, AZ 85263

Re: CML Metals Rail Track Operating Agreement

Dear Mr. Root:

As you know, this law firm represents CML Metals Corporation. On October 13, 2011, you were provided with a letter from this office outlining numerous deficiencies and failures in Utah Southern Railroad Company's (USRR) performance of the Rail Track Operating Agreement ("Agreement"). As CML's production has increased, USRR has not responded as required by the Agreement. USRR has done nothing to cure the deficiencies in its performance of the Agreement. In fact, despite CML providing notice and giving USRR an opportunity to do so, USRR has made it clear, through correspondence from its legal counsel, that it does not intend to cure any deficiencies in its performance. Therefore, this letter provides notice that USRR continues to be in default the Agreement and therefore CML hereby provides notice that it is terminating that Agreement effective immediately.

In connection with this termination, please be advised that USRR, its employees, and agents are no longer allowed on CML's properties, including but not limited to, any and all rails as well as the mine itself. USRR must turn in any and all keys, gate openers, and other means of access to CML's properties. In addition, USRR must immediately remove its engines from CML's rails. In this regard, you may store your engines on the Bad Order track until you are able to make arrangements to remove them off-site. You may contact Penn Leavitt with CML to arrange for the turn in of these items and removal of USRR's engines.

Michael Root
December 15, 2011
Page 2

Sincerely,

DURHAM JONES & PINEGAR, P.C.

/s/

Bryan J. Pattison

BJP:jg
cc: Client
James W. Jensen

STB DOCKET NO. FD 35558

UTAH SOUTHERN RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
IRON BULL RAILROAD COMPANY, LLC

PETITION TO REJECT OR REVOKE

EXHIBIT G

FEDERAL COURT ORDER TERMINATING STATE COURT INJUNCTION

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UTAH SOUTHERN RAILROAD
COMPANY,

Plaintiff,

v.

CML METALS CORPORATION,

Defendant.

ORDER

Case No. 2:11-CV-1176

Judge Clark Waddoups

Before the court is Defendant's motion to suspend the state court's order granting Plaintiff a temporary restraining order. (Dkt. No. 3.) In order to merit a TRO, Plaintiff must establish: "(1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest." *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208 (10th Cir. 2009). For the reasons stated on the record and those articulated below, the court first finds that it has jurisdiction. The court also finds that Plaintiff has failed to carry its burden and show the TRO issued by the state judge was appropriate:

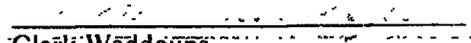
- (1) Plaintiff has failed to show a likelihood of success on the merits based on the record before the court. The complaint before the court is not verified, and the other attachments simply do not suffice to carry Plaintiff's burden.

- (2) As stated in the complaint, Plaintiff seeks monetary damages. Such damages are calculable and not irreparable. Furthermore, Plaintiff may still seek a declaratory judgment through litigation. (Compl. 9-10)(Dkt. No. 1-1, 12-13).
- (3) Due to the consequential harm Defendant will suffer based on its contracts with other domestic and international entities, which include disproportionately high liquidated damages in the case of a breach in comparison to Plaintiff's potential losses, the balance of equities weighs strongly against a TRO.
- (4) Due to the large number of third-party contracts and interests involved, including those of numerous domestic and international entities, the public has an interest in maintaining a railway and trade system clear of obstacles and delays. Because a TRO would adversely affect these other interests, the court finds that it would be against the public interest.

Accordingly, the state judge's TRO is hereby VACATED.

DATED this 19th day of December, 2011.

BY THE COURT:


Clark Waddoups
United States District Judge

STB DOCKET NO. FD 35558

**UTAH SOUTHERN RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
IRON BULL RAILROAD COMPANY, LLC**

PETITION TO REJECT OR REVOKE

EXHIBIT H

FEDERAL COURT CONSENT DECREE

J. Mark Gibb (5702)
mgibb@djplaw.com
Thomas J. Burns (8918)
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Attorneys for Defendant CML Metals Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>UTAH SOUTHERN RAILROAD COMPANY, LLC</p> <p>Plaintiff,</p> <p>v.</p> <p>CML METALS CORPORATION, and JOHN DOES 1 through-5;</p> <p>Defendants.</p>	<p>CONSENT DECREE</p> <p>Case No. 2:11-CV-1176 Judge Clark Waddoups</p>
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Pursuant to the stipulation of Plaintiff/Counterclaim Defendant Utah Southern Railroad Company, LLC ("USRC") and Defendant/Counterclaimant CML Metals Corporation ("CML"),

the Court sitting without a jury and without trial, hereby **ORDERS, ADJUDGES, and DECREES** as follows:

1. The Court has personal jurisdiction over the parties.
2. The Court has subject matter jurisdiction of this action.
3. On January 20, 2011, CML entered into an agreement with USRC titled "Rail Track Operating Agreement" ("Track Operating Agreement"). The Track Operating Agreement applied to operations on a rail line known as the Comstock Subdivision.
4. The Comstock Subdivision is located in Iron County, Utah, and extends between mile post 0.1 at or near Iron Springs and mile post 14.7 at or near Iron Mountain, a distance of approximately 14.6 miles.
5. Union Pacific Railroad ("UP") owns the Comstock Subdivision. PIC Railroad, Inc., a wholly owned subsidiary of CML, leased the Comstock Subdivision from UP in 2006.¹
6. On September 14, 2006, the United States Surface Transportation Board ("STB") issued a notice of exemption (STB Finance Docket No. 34896) pursuant to which PIC Railroad secured the requisite federal regulatory authority to lease the Comstock Subdivision from UP and to operate as a common carrier on the Comstock Subdivision.
7. Also on September 14, 2006, the STB published a notice of exemption in STB Finance Docket No. 34897, pursuant to which an entity known as Iron Bull Railroad Company ("Iron Bull Railroad") also secured the requisite federal regulatory authority to operate as a common carrier on the Comstock Subdivision, subject to Iron Bull Railroad entering into an operating agreement with PIC Railroad.

¹ PIC Railroad is presently doing business as Comstock Mountain Lion Railroad.

8. Footnote 1 of the notice of exemption issued in STB Finance Docket No. 34896 stated the following: “Although [PIC Railroad] will enter into an agreement whereby [Iron Bull Railroad] will operate the [Comstock Subdivision] line, [PIC Railroad] also seeks an exemption to operate to fulfill its common carrier obligation in the event [Iron Bull Railroad] were to cease operations.”

9. USRC purports that its authority to operate on the Comstock Subdivision was derived through Iron Bull Railroad and the STB operating authority that Iron Bull Railroad obtained in September 2006. However, USRC never obtained from the STB valid operational authority or a valid exemption under STB procedures to operate on the Comstock Subdivision in its own name; nor did it, or could it, derive such authority from Iron Bull Railroad without valid regulatory authority and the express contractual consent of PIC Railroad and CML, neither of which USRC obtained. Although Iron Bull Railroad and USRC have the same owner—an individual named Michael Root—Iron Bull Railroad and USRC are not the same company. Rather, Iron Bull Railroad was voluntarily dissolved by Mr. Root effective December 31, 2009, on the grounds that it was “no longer in business.” As a result, Iron Bull Railroad was dissolved; it could not and did not merge with USRC, nor is USRC the successor to Iron Bull Railroad in any legal sense. Therefore, USRC does not have valid STB authority to operate as a common carrier on the Comstock Subdivision because it is not the same entity as Iron Bull Railroad.

10. PIC Railroad has been vested with federal regulatory authority to operate as a common carrier on the Comstock Subdivision. The federal regulatory authority was granted through the aforementioned September 2006 notice of exemption in STB Finance Docket No. 34896, and to the extent necessary, that federal regulatory authority was otherwise triggered

when Iron Bull Railroad voluntarily dissolved in 2009 on the grounds that it was “no longer in business,” thus meeting any “triggering” requirement of footnote 1 of STB Finance Docket No. 34896.

11. Further, and to the extent that CML deems it necessary to take action before the STB to reject or revoke USRC’s claimed exemption to operate over the Comstock Subdivision, USRC and its officers, employees, or agents, including, but not limited to, Michael Root, will not and may not contest such rejection or revocation request and are hereby enjoined from doing so.

12. Further, USRC and its officers, employees, and agents, including, but not limited to, Michael Root will not transfer, and are enjoined from transferring, any such claimed STB operating authority to operate on the Comstock Subdivision to any other person or entity. Further, USRC and its officers, employees, and agents, including but not limited to Michael Root, are enjoined from taking any efforts to assert or claim that it had obtained valid STB operating authority through Iron Bull Railroad.

13. By no later than 14 days from the date of entry of this Consent Decree, USRC will have all of its engines, locomotives, and other items and equipment removed from the Comstock Subdivision and from any appurtenant property owned or leased by CML or PIC Railroad. CML may require that such removal be undertaken under the supervision of law enforcement authorities. Additionally, by no later than 14 days from the date of entry of this Consent Decree, USRC will turn over to CML’s counsel, Bryan Pattison, all keys through which USRC, its employees, officers, or agents, including Mike Root, can gain access to CML’s and/or PIC Railroad’s property, whether owned or leased, as well as turning over any other means that USRC possesses through which its employees, officers, or agents, including Mike Root, can gain

access to CML's and/or PIC Railroad's property, whether owned or leased, and USRC shall certify by affidavit or declaration that this provision has been fully complied with. Such certification shall be filed with this Court no later than ten days after completion of such compliance.

14. USRC and all of its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them are hereby permanently enjoined and restrained from interfering with or in any way impeding PIC Railroad's provision of rail carrier service to CML, or taking any other actions to interfere or impede with CML's mining or shipping operations, including entering onto CML's premises for any purpose except those required to perform this Consent Decree.

15. The Track Operating Agreement is hereby terminated for cause, effective December 15, 2011.

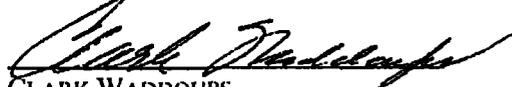
16. With the exception of the relief expressly granted herein, all claims asserted by USRC against CML are hereby dismissed with prejudice. Further, all counterclaims asserted by CML against USRC are hereby dismissed without prejudice.

17. Each party shall bear its own attorney fees and costs in connection with this action, except as may be necessary to enforce the terms of this Consent Decree.

18. This Court shall retain jurisdiction to enforce the terms of this Consent Decree.

DATED THIS 20th day of June, 2012.

BY THE COURT:



CLARK WADDOUPS
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Robert A. Wimbish, hereby certify that on this 27th day of June, 2012, copies of the foregoing Petition to Reject or Revoke have been served by first class mail, postage prepaid, or by more expeditious means of delivery upon all parties of record to this proceeding identified on the Surface Transportation Board's website.

R. A. Wimbish

Robert A. Wimbish

Attorney for PIC Railroad, Inc. d/b/a

Comstock Mountain Lion Railroad