

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

235912

Financial Docket No. 35813

ENTERED
Office of Proceedings
April 17, 2014
Part of
Public Record

FILLMORE & WESTERN FREIGHT SERVICE, LLC d/b/a
FILLMORE & WESTERN RAILWAY, INC.,
a California Corporation

v.

VENTURA COUNTY TRANSPORTATION COMMISSION,
THE CITY OF SANTA PAULA, THE SANTA PAULA BRANCH LINE
ADVISORY COMMITTEE

**SUPPLEMENT ADDING EXHIBITS 6, 7, 8, 9, 10, 11 & 12
AND A LIST OF PENDING ACTIONS
TO EMERGENCY PETITION FOR
DECLARATORY ORDER**

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Dated: April 14th 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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FILLMORE & WESTERN RAILWAY, INC.,
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THE CITY OF SANTA PAULA, THE SANTA PAULA BRANCH LINE
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**SUPPLEMENT ADDING EXHIBITS 6, 7, 8, 9, 10, 11 & 12
AND A LIST OF PENDING ACTIONS
TO EMERGENCY PETITION FOR
DECLARATORY ORDER**

The Fillmore & Western Freight Service, Inc., (“F&W”), a rail carrier under the Interstate Commerce Commission Termination Act (49 U.S.C. §§ 10101-16106), hereby files this Supplement to its EMERGENCY PETITION FOR DECLARATORY ORDER, filed March 28th 2014, adding Exhibits 6, 7, 8, 9, 10, 11 and 12 and a list of pending actions which were omitted from the original filing.

Attached are true and correct copies of the following exhibits which were omitted from the original petition filed herein.

1. June 25, 2001, Lease Agreement for Rail Services on the Santa Paula Branch (Exhibit 6).
2. July 1, 2001, Sub-Lease Agreement between the FRDA and FWRR for the Santa Paula Branch (Exhibit 7).
3. August 18, 2014, Lease with Option to Purchase between FRDA and FWRR (Exhibit 8).
4. October 14, 2010 Letter from Darren Kettle unilaterally adjusting the monthly maintenance allowance (Exhibit 9).
5. May 14, 2013 Letter from Darren Kettle terminating the Direct Lease without cause.
6. April 9th 2013 Letter from Darren Kettle embargoing the carrying of freight.
7. *Ventura County Transportation Commission, Plaintiff, v. Fillmore & Western Railroad, Inc.*, Case No. 56-2014-00449769-CL-UD-VTA.

The following is the listing of pending matters omitted from the original filing of the petition herein.

1. *Alfred Beserra, et al. v. Griffin Industries, et al.*, Case No. 56-2010-00373718, filed May 13, 2010, pending before the Honorable Rebecca S. Riley (“Beserra”);
2. *Fillmore & Western Railroad, Inc. v. Ventura County Transportation Commission*, Case No. 56-2013-00444877, filed November 18, 2013, before the Honorable Tari L. Cody, dismissed March 17, 2014;
3. *Ventura County Transportation Commission v. Fillmore & Western Railway, Inc.* (hereinafter, the “Unlawful Detainer Action”), Case No. 56-2014-00449769, filed March 6, 2014, pending before the Honorable F. Dino Inumerable; and
4. *Fillmore & Western Railroad, Inc. v. Commissioners of the Ventura County Transportation Commission, et al.*, Case No. 56-2014-00450239, filed March 17, 2014, pending before the Honorable Rebecca S. Riley.

Respectfully submitted,



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*Counsel for Petitioner Fillmore
& Western Freight Service, LLC*

Dated: April 14th 2014

Verification

I, David Wilkinson, declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Further, I state that I am the Chief Executive Officer of Fillmore & Western Freight Service, LLC and I certify that I am qualified and authorized to file this pleading.

Executed at Fillmore, California on April 14th 2014.


David Wilkinson

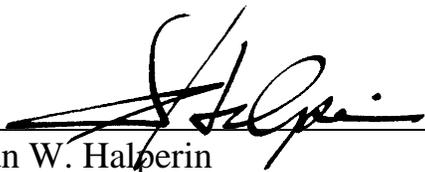
STATEMENT REGARDING SERVICE

I hereby certify that on this, the 14th day of April, 2014 I have served the Defendants in this proceeding with this document by United States Mail as follows:

Charles A. Spitulnik and W. Eric Pilsk, Esqs.
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, NW, Suite 800
Washington, D.C. 20036

City of Santa Paula
Judy Rice, City Clerk
970 Ventura St.
Santa Paula, CA. 93060

Santa Paula Branch Line Advisory Committee
Ventura County Transportation Commission
Donna Cole, Clerk of the Board
950 County Square Drive, Suite
Ventura, CA. 93009


Ivan W. Halperin

*Counsel for Petitioner Fillmore &
Western Freight Service, LLC*

Exhibit 6

LEASE AGREEMENT

FOR RAIL SERVICES ON THE SANTA PAULA BRANCH

Agreement made this 25th day of June, 2001, by and between the FILLMORE & WESTERN RAILWAY COMPANY ("Fillmore & Western"), a California corporation, and the VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC").

WHEREAS, VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

WHEREAS, Fillmore & Western desires to lease the segment of the line between milepost 405.31 at or near Montgomery Avenue in the City of San Buenaventura and 435.07 at Rancho Camulos, for still and motion picture production purposes, television filming, commercials and other still and motion television promotional activities, video-productions and any other still or motion related media event, freight service, mail and express service, and for public/tourist excursions, charter and dinner train operations; and

WHEREAS, Fillmore & Western does not desire to be obligated to provide common carrier freight service on the Fillmore & Western Segment;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein and other good and valuable consideration, receipt of which is acknowledged by the parties, the parties hereby agree:

1. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties hereto

"Freight Service" shall mean the movement of bulk commodities (such as coal and chemicals), automobiles or raw materials traditionally hauled by rail carriers.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California, all as shown on Exhibit A hereto.

"Lease Property" shall mean the Track, Track support Structures, buildings and the real property which comprises land lying within 15 feet of the centerline of any Track existing on the Santa Paula Branch Line between milepost 405.31 and milepost 435.07, on the Effective Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future recreational trails, fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore & Western or of Fillmore & Western's sublessee and subject to the rights of existing tenants in possession.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Mail and Express Service" shall mean premium rail transportation service at premium rates – expedited, regularly scheduled train service at prices which are generally higher than freight service – that is provided as an adjunct to Amtrak's passenger service.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment for Fillmore & Western's uses and in accordance with applicable regulations. "Track work" under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, spot replacement of worn rails and weed abatement. "Signal work" under this item includes periodic inspections and tests per FRA/PUC requirements and repair/ replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture

production, television filming, commercials and other still and motion television promotional activities, video production and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions, recreational and dinner train operations and any promotional activities relate thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs, complete bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavement, and drainage facilities.

"Gross Revenue" shall mean the total revenue collected by Fillmore & Western or its sublessees in the form of fees, rents or any other basis of charges derived from projects using any part of the Lease Property for Still and Motion Picture Production and for Public/Tourist Excursions and shall not be reduced by any expenses incurred by Fillmore & Western or any of its sublessees except for contract fees paid by Fillmore & Western or any of its sublessees to a third party and reimbursement revenues received by Fillmore & Western or its sublessees.

2. Purpose and Scope of Lease:

The purpose of the Lease is to permit Fillmore & Western and/or its sublessees to use the Lease Property and Santa Paula Branch for Still and Motion Picture Production purposes (including television and video productions), Public/Tourist Excursion purposes (including charter and dinner train operations), freight services, and mail and express service, subject to reservations described in Section 9c, as part of its efforts to further develop the local economy. The purposes outlined in this article shall be limited to specific segments of track as follows:

- Still and Motion Picture Productions – milepost 405.31 to milepost 435.07
- Public/Tourist Excursions – milepost 403.35 to milepost 414.45

- Freight Services – milepost 414.95 to milepost 435.07
- Mail and Express Service – milepost 403.35 to milepost 435.07

VCTC, for consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore & Western, does lease and demise the Lease Property (as herein defined) to Fillmore & Western, subject to all matters of record and the rights of existing tenants in possession, and Fillmore & Western does rent and accept the Lease Property from VCTC.

3. Rental Payments:

a. Fillmore & Western shall pay to VCTC as initial rental hereunder the sum of Six Hundred Dollars (\$600.00) monthly. Fillmore & Western shall also pay as Movie Rental to VCTC a five percent (5%) fee for each day of Still and Motion Picture Production use of the Lease Property. Fillmore & Western shall pay Base Rental and Movie Rental to VCTC within fifteen (15) days of the end of each month including with payment a statement detailing the number of days of Still and Motion Picture Production during the period. Timely payment of Base Rental and Movie Rental is of the essence; VCTC may levee a one and one-half percent (1 1/2%) late fee on Fillmore & Western for each thirty (30) days that rental payments and production statements are past due.

This initial rental rate shall be adjusted annually thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles – Long Beach – Anaheim, California, published by the United States Department of Labor, Bureau of Labor Statistics ("index"), which is published for the month of July, 2001 ("Beginning Index").

If the Index published for the month of July prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statics. If the Index is discontinued or revised during the term, such other government index computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. VCTC and Fillmore & Western agree that the rental rate shown in Section 3a be reviewed , and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipt, fee per rider, or other appropriate measures. In the event VCTC and Fillmore & Western are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provisions of Section 24. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 15(b). ←

c. Fillmore & Western acknowledges and agrees that its obligation to pay rent hereunder and the rights of VCTC in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim or recoupment ("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore & Western against VCTC under this Agreement or otherwise.

4. Use of Premises:

a. Fillmore & Western shall have the right to use the Lease Property for any lawful Still and Motion Picture Purposes (including television and video productions), any lawful Public/Tourist Train Excursion use defined herein, freight services, and mail and express services, but not to remove "Track or Track Support Structures."

b. Fillmore & Western shall maintain the Track and Track Support

Structures from milepost 405.31 to milepost 435.07 to such standards as required for its uses and in accordance with applicable regulations.

(1.) Fillmore & Western shall be entitled to receive, as part of its maintenance allowance as defined below, any State or Federal Funds designated for highway grade crossing signal maintenance on the Lease Property.

(2.) Fillmore & Western shall receive a maintenance allowance in the lesser amount of One Hundred Seventy Thousand Dollars (\$170,000) or the total of its grade crossing signal maintenance funds and the annual income derived by VCTC from its property leases at the time of the Effective Date of this Agreement, excepting the revenues derived by VCTC from Fillmore & Western through this Agreement

c. In the event that specific Track and Track Support Structures are determined to need extensive replacement, beyond maintenance as defined in Section 1, VCTC shall be responsible for said replacement. Any and all replacement activities shall be undertaken at the sole discretion of VCTC as funds may become available. It is understood by the parties that VCTC shall seek state and/or federal funds to the greatest extent possible for such work.

5. Construction:

a. Permanent Improvements

Fillmore & Western shall not have the right to construct any additions or improvements of a permanent nature on the Lease Property without prior specific written approval in advance by VCTC. At such time VCTC has authorized construction of any additions or improvements, such construction shall be done in a good and workmanlike fashion. As such additions or improvements are constructed, Fillmore & Western shall be responsible for maintaining them at a level adequate to support their reasonable use for their expected useful life.

b. Temporary Improvements.

Fillmore & Western shall have the right to construct any temporary improvements necessary to use the premises for the uses permitted herein, provided, however, said temporary improvements shall be timely removed upon cessation of their use. In the event

that such improvements are not timely removed, VCTC shall have the right, in its discretion, after written notice to Fillmore & Western, to remove such improvements and Fillmore & Western shall be obligated to reimburse VCTC for all costs incurred by VCTC in such removal. In any event, temporary improvements shall not impede vehicular or pedestrian crossings at any public street or other legal public or private crossing without written authorization from VCTC and any applicable permitting authority.

c. Easements and Dedications.

The parties recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easement and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. VCTC will give Fillmore & Western timely written notice of all such requests, provided, however, that VCTC shall have the sole discretion to consider such requests, to approve or reject proposals and execute and deliver such documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting such easements and dedications. No such easement or dedications, nor any construction in connection therewith, shall unreasonably interfere with the operations of Fillmore & Western or its sub-lessees hereunder.

d. Title

Any parts installed, replacements made or additions, improvements or alterations to the Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without cost or expense to VCTC.

However, Fillmore & Western's fixtures, machinery and equipment placed or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore & Western. If the removal of same causes material damage to property of VCTC, Fillmore & Western shall pay the reasonable cost of repair.

Fillmore & Western shall, within one hundred and eighty (180) days following expiration of the Lease Term, remove all of its property from the Leased Property.

6. Indemnification:

Fillmore & Western agrees to investigate, release, defend, indemnify and hold VCTC harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC may incur, sustain or to which VCTC may be subjected on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

7. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore & Western

This Agreement may not be assigned by Fillmore & Western without the prior written consent of VCTC. In any event, no such assignment shall be valid unless there shall be delivered to VCTC in due form for recording within ten (10) days after the date of the assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument executed by the assignee expressly assuming all of Fillmore & Western's duties, obligations and defaults under this Agreement. Upon any assignment of this agreement conforming to the terms hereof, but not otherwise, the Fillmore & Western shall be released from the performance of obligations thereafter to be performed by it pursuant to this Agreement, except any obligation to hold and apply monies held by the Fillmore & Western at the date of the assignment, the disposition whereof is governed by the terms of this Agreement, and except further any unperformed obligation which shall have matured prior to such assignment. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is

void, and VCTC shall have available to it all remedies set forth in this Agreement as well as any other remedy at law or in equity.

b. **Mortgage of Leasehold Interest.**

Fillmore & Western shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent on VCTC.

c. **Subletting by Fillmore & Western**

Fillmore & Western shall not have the right to sublet all or any part of the Lease Property for any permitted use under the terms of this Agreement without the prior written consent of VCTC.

8. **Limits on Use**

a. During the Lease Term, the Lease Property shall be used by Fillmore & Western for the use specified in Section 4 above and for no other use or purpose. Fillmore & Western shall not use nor permit any other person to use the Lease Property, or any part thereof, in contravention of the terms of this Agreement or for any unlawful purposes. Fillmore & Western shall at all times during the Lease Term conform to, and cause all persons using or occupying any part of the Lease Property by invitation of, under or by right of Fillmore & Western to comply with all public laws, ordinances, rules, orders and regulations from time to time applicable thereto and regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, air and water quality, and shall furnish satisfactory evidence of such compliance upon request of VCTC. Fillmore & Western shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. **Indemnity for Violation of Law**

(1) Fillmore & Western covenants and agrees to release, defend, indemnify and save VCTC harmless from any liability, cost, expense, fines, penalties, damages, or surcharges imposed for any violation of any and all laws, ordinances, rules, orders and

regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore & Western or any person upon the Lease Property by license or invitation of Fillmore & Western or holding or occupying the same or any part thereof under or by right of Fillmore & Western, regardless of whether such liability, cost, expense, fine, penalty, damages, or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, VCTC shall release, defend, indemnify, and save Fillmore & Western harmless from all such matters regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed before, during or after the expiration of this Agreement, provided the act giving rise to same is caused or occasioned by the neglect, omission or willful act of VCTC or any person (excepting Fillmore & Western and persons upon the Lease Property by license or invitation of Fillmore & Western) upon the Lease Property by license or invitation of VCTC.

(3) Fillmore & Western shall have the right to contest by appropriate legal proceedings, without cost or expense to VCTC, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting VCTC to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore & Western, upon commencing such contest shall furnish to VCTC a document guaranteeing that VCTC and VCTC's interest in the Lease Property shall be released, defended and held harmless from any penalty, damage, charge or claim resulting from such contest.

9. Conditions and Covenants:

All the provisions of this Agreement and any Riders or Amendments which

are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

a. Qualifications on Use

This Agreement is subject to the rights of existing tenants in possession. Fillmore & Western accepts the Lease Property (including VCTC-owned Improvements) in their present condition without any representation or warranty by VCTC as to the condition of such Lease Property or Improvements, and VCTC shall not be responsible for any defect or change of conditions in the Lease Property or such Improvements, any damage occurring thereto or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. WARRANTIES AND REPRESENTATIONS.

FILLMORE & WESTERN UNDERSTANDS AND AGREES THAT VCTC MAKES NO WARRANTY NOR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES. FILLMORE & WESTERN SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF VCTC HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST VCTC.

c. VCTC Reservations

VCTC reserves for itself and those to whom it grants such right, the right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such rights under this Agreement does not interfere with the reasonable use of the

Lease Property by Fillmore & Western as permitted herein; 2) construct, maintain and operate any existing and new additional recreational trail facilities; and 3) operate freight and regular passenger rail services.

d. **Right of Entry**

VCTC or VCTC's agents, representatives or employees shall have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions in this Agreement are being complied with, maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. **Liens**

Fillmore & Western agrees and covenants to defend, indemnify and hold VCTC and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore & Western or Fillmore & Western's subtenants. In the event of the filing of any such lien, Fillmore & Western shall cause such lien to be released within five (5) days after VCTC's written notice to do so. Fillmore & Western shall indemnify and defend VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC as a result of any such lien.

10. **Insurance:**

While this Agreement is in effect, Fillmore & Western shall furnish evidence satisfactory to VCTC that VCTC is named as an additional insured, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western shall furnish VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. **Liability:**

Comprehensive general and automobile liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore & Western as additional insureds with respect to the operations of Fillmore & Western's sublessees;
- (3) cover the contractual liability assumed by Fillmore & Western's sublessees under this Lease;
- (4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC; and
- (5) provide for at least ten (10) days' notice to VCTC prior to any other cancellation or modification of coverage.

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore & Western or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against VCTC to the extent permitted by law.

11. Condemnation:

a. Total Taking

In the event of a Taking, this Agreement shall terminate on the earlier of vesting, of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC. Under no circumstances shall Fillmore & Western be entitled to any "bonus value" for any remaining unexpired Term of this Agreement.

If the values of the respective interests of VCTC and Fillmore & Western have been separately determined in the proceeding for the Taking in accordance with this Section 11a., then the values so determined shall be conclusive upon VCTC and Fillmore & Western. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Agreement.

b. Temporary Taking:

If all or part of the Lease Property or of Fillmore & Western's Interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore & Western shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore & Western is not prevented from doing so by taking authority. In the event of a Temporary Taking, Fillmore & Western shall receive the entire award and shall, at its sole expense, restore the Lease Property as nearly as may be reasonably possible to their condition before taking; provided, however, that if the Temporary Taking extends beyond the expiration of the Agreement Term, the award shall be apportioned between VCTC and Fillmore & Western as of the date of expiration, after VCTC shall have received the entire portion of the award necessary to repair and restore physical damage to the Lease Property and return it to its condition before the Temporary Taking.

12. Late Payments:

Fillmore & Western shall pay VCTC an administrative charge of one and One-half percent (1-1/2%) per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

13. Default:

Fillmore & Western shall be in default under this Agreement (1) if Fillmore & Western fails to pay the Base Rent and Movie Rent when due and such failure continues for a period of more than fifteen (15) days, (2) if Fillmore & Western fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from VCTC or to commence and diligently pursue the cure of such breach if the breach cannot be cured within thirty (30) days; (3) if Fillmore & Western is adjudged bankrupt or becomes insolvent or seeks general debtor

relief by extrajudicial means or if any action or proceeding for debtor relief of Fillmore & Western is commenced by Fillmore & Western.

If Fillmore & Western fails to cure a default within thirty (30) days notice from VCTC to do so and Fillmore & Western does not present a restoration plan within forty-five (45) days of such notice, VCTC shall have the right, without further notice and in addition to any other remedies VCTC may have in law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property and Fillmore & Western shall be obligated to reimburse VCTC for all expenses incurred by VCTC in retaking possession, including without limitation, repairs and restoration of the Lease Property to the condition it was at the execution of this Agreement and attorneys fees and costs.

14. Nonwaiver:

VCTC's failure to enforce or exercise its rights under any term, condition or covenant of this Agreement shall not be construed as a waiver of the breach of any other or further rights or term, covenant or condition of the same or other nature. Acceptance of rent shall be deemed a waiver of VCTC's rights to terminate this Agreement as provided herein, regardless of when accepted.

15. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from its obligations regarding an event which occurred prior to such termination or expiration. If Fillmore & Western fails to surrender possession of the Lease Property upon termination of this Agreement, VCTC shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore & Western and any person or entity claiming through Fillmore & Western from the Lease Property.

b. Notice of Termination

Either party may terminate this Agreement, with cause, upon a six (6) month written notice of termination given to the other party per Section 21 below.

c. Surrender of Premises

Upon the expiration or termination of the Lease Term, Fillmore & Western, without further notice, shall deliver up to VCTC the possession of the Lease Property. Upon the failure or refusal of Fillmore & Western to remove from the Lease Property, as provided in Section 5d., all personal property owned by Fillmore & Western, (a) said personal property shall thereupon, at the option of VCTC become the sole property of VCTC, or (b) if VCTC so elects it may remove from the Lease Property personal property owned by Fillmore & Western, and VCTC may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western took possession, all at the expense of Fillmore & Western, which expense Fillmore & Western agrees to pay upon demand, or (c) VCTC at its sole option may elect that this Agreement with all terms contained herein, including payment of Base Rental for failure to vacate on time may remain in effect until Fillmore & Western's personal property is removed and the Lease Property is restored to VCTC. In the event of such failure or refusal of Fillmore & Western to surrender possession of the Lease Property, VCTC shall have the right to re-enter upon the Lease Property and remove Fillmore & Western, or any person, firm or corporation claiming by, through or under Fillmore & Western, therefrom.

16. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, including without limitation mediation or arbitration, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of any judgment and all costs.

17. Entire Agreement:

The contents of this Agreement are the entire agreement between the

parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 7 and 8, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

18. Warranties of Fillmore & Western:

Fillmore & Western warrants, at the Effective Date that:

a. It is a California Corporation validly existing and organized under the laws of the State of California;

b. This Agreement will not be rendered voidable nor unenforceable by reason of any provision of, or lack of consent under, any indenture, agreement or instrument to which Fillmore & Western is bound as a party or bound by any ordinance.

c. The signatory hereof on behalf of Fillmore & Western has been duly and fully authorized to execute this Agreement on behalf of Fillmore & Western.

19. Warranties of VCTC:

VCTC warrants at the Effective Date it has full power to lease the Lease Property to Fillmore & Western

20. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director
Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura , CA 93003

Fillmore & Western:

David Wilkinson, President
Fillmore & Western
351 Santa Clara Avenue
Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party. Notices given pursuant to this Agreement shall be deemed received at the time of delivery if delivered and on the fifth (5th) day after the date postmarked if sent by the United States mail.

22. Severability

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

23. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

24. Dispute Resolution:

a. **Good Faith Resolution Prerequisite to Mediation**

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to non-binding mediation. VCTC and Fillmore & Western agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in subsection c.

b. **Mediation Prerequisite to Litigation**

No party may undertake litigation with reference to any such dispute until after the earlier of (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the mediator (as hereinafter defined).

c. **Methods and Procedures for Mediation**

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the mediator, with each party bearing it's own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take

Exhibit 7

SUB-LEASE AGREEMENT FOR THE SANTA PAULA BRANCH

This Agreement is made this 27 day of November, 1996, by and between the CITY OF FILLMORE REDEVELOPMENT AGENCY ("Fillmore"), a local government agency of the State of California, and FILLMORE & WESTERN RAILWAY COMPANY, a California corporation, in contemplation of the following facts:

A. The Ventura County Transportation Commission ("VCTC") owns a line of railroad subject to the Interstate Commerce Act, from milepost 403.20 at or near Montalvo, California, to milepost 431.59 at or near Piru, California ("Santa Paula Branch");

B. Fillmore has, concurrently with or shortly before entering into this Agreement, executed a certain "Lease Agreement for the Fillmore Segment of the Santa Paula Branch" with the Ventura County Transportation Commission ("VCTC") for the use of a portion of a line of railroad owned by VCTC and subject to the Interstate Commerce Act, from milepost 414.45 at or near 8th Street in Santa Paula, California, to milepost 431.59 at or near Piru, California ("Fillmore Segment");

C. Fillmore has leased the Fillmore Segment from VCTC for any lawful Still and Motion Picture Purpose, and for any lawful Public/Tourist Train Excursions;

D. Fillmore desires to afford the use of the Fillmore Segment to Fillmore & Western Railway Co. for the same purposes and upon substantially the same terms and conditions as oblige Fillmore under the said Lease Agreement;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into, the parties hereby agree:

1. General Provisions:

Excepting as otherwise specifically provided in this Agreement, Fillmore & Western Railway Co. shall during the term of this Agreement warrant, agree to, perform,

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observe and refrain from doing all those promises and acts to be performed by and matters prohibited to Fillmore under the terms of the said Lease Agreement dated November 13, 1996 between VCTC and Fillmore, the intent of the parties hereto being that Fillmore shall be fully and completely relieved by Fillmore & Western Railway Co. of all of the obligations of Fillmore according to that Lease Agreement. To that end, Fillmore & Western Railway Co. shall, with or without demand from Fillmore, defend and hold Fillmore harmless from and against any and all claims, liabilities, actions, and causes of action, whether or not well founded, which shall be brought or threatened against Fillmore or any of its officers, agents or employees by VCTC or any other person or entity to enforce or interpret or construe the terms of the said Lease Agreement or in any way pursuant to its provisions. A copy of said Lease Agreement is attached to this Agreement and by this reference incorporated herein in all its particulars.

2. Definitions:

"Execution Date" shall mean the date this Agreement is executed by the parties hereto.

"Fillmore Segment" shall mean that portion of the Santa Paula Branch between milepost 414.45 at or near 8th Street in Santa Paula and milepost 431.59 at or near Piru.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 431.59 at or near Piru, California.

"Lease Property" shall mean the Track, Track Support Structures, buildings and real property which comprises land lying within 15 feet of the centerline of any Track existing on the Fillmore Segment on the Execution Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore or of Fillmore's sublessee and subject to the rights of existing tenants in possession.

"Lease Term" shall mean the twenty (20) year period beginning on July 1, 1996,

subject to the biennial review of rents and rates described in Section 3b.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment. Track work under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, and spot replacement of worn rails. Signal work under this item includes periodic inspections and tests per FRA/PUC requirements and repair/replacement of defective components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video productions and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions, recreational and dinner train operations and any promotional activities related thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete, bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, or other structures, tunnels, grading, embankments, dikes, pavements, and drainage facilities.

3. Purpose and Scope of Lease:

The purpose of this lease is to permit Fillmore & Western Railway Co. to use the Lease Property for Still and Motion Picture Production purposes and for Public/ Tourist Excursion purposes, subject to reservations described in Section 11c, as part of the efforts of Fillmore to further develop the local economy. For purposes of promoting the local economy, for the term of this Lease Agreement, Fillmore & Western Railway Co. agrees to headquarter its operations and equipment in the City of Fillmore and to promote and support the City of

Fillmore and its business establishments in its business activities.

4. Demise and License:

Fillmore, for and in consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore & Western Railway Co., does lease and demise to Fillmore & Western Railway Co. for the Lease Term, subject to all matters of record and the reservations of VCTC under its Lease Agreement with Fillmore, and Fillmore & Western Railway Co. does rent and accept from Fillmore the Lease Property.

5. Rental Payments:

a. Effective November 1, 1996, Fillmore & Western Railway Co. shall pay as initial rental hereunder Six Hundred Dollars (\$600.00) monthly, plus Twenty-Five Cents (\$0.25) per each paid adult passenger and Fifteen Cents (\$0.15) per each paid juvenile passenger (under age sixteen [16]) ("Base Rental"). Fillmore & Western Railway Co. shall also pay as Movie Rental to Fillmore the sum of \$500 per day for each day of Still and Motion Picture Production use of the Lease Property. Fillmore & Western Railway Co. shall pay Base Rental and Movie Rental to Fillmore within fifteen (15) days of the end of each month including with payment a statement detailing the number of passengers (paid and unpaid) and the number of days of Still and Motion Picture Production during the period.

This initial rental rate shall be adjusted annually on July 1, thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles-Long Beach-Anaheim, California, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the month of May, 1996 ("Beginning Index").

If the Index published for the month of May prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index.

However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. Fillmore and Fillmore & Western Railway Co. agree that the rental rate shown in Section 5a shall be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipts, fee per rider, or other appropriate measures. In the event Fillmore and Fillmore & Western Railway Co. are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provision of Section 26. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 19(b).

c. Fillmore & Western Railway Co. acknowledges and agrees that its obligation to pay Base Rental and Movie Rental hereunder and the rights of Fillmore in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment ("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore & Western Railway Co. against Fillmore under this Agreement or otherwise..

d. Fillmore & Western Railway Co. recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Fillmore & Western Railway Co. may be subject to the payment of property taxes levied on such interest. Fillmore & Western Railway Co. shall pay all real and personal property taxes and assessments applicable to the Lease Property and to the personal property thereon.

e. It is the intention of the parties that Fillmore shall receive the Base Rental and Movie Rental free from all taxes, charges, expenses, costs, and deductions of every description, which are specified in this Agreement as being the obligation of Fillmore & Western Railway Co..

f. Fillmore shall have the right to inspect and audit the records of Fillmore & Western Railway Co. relating to the calculation of Base Rental and Movie Rental Payments.

g. Fillmore & Western Railway Co. agrees to use forms reviewed and approved by Fillmore for purposes of Calculation of Base Rental and Movie Rental.

h. With respect to the PURCHASE AND SALE AGREEMENT, SANTA PAULA AND VENTURA BRANCHES, between Southern Pacific Transportation Company as Seller and Ventura County Transportation Commission as Purchaser, Article 6: Reservations Paragraph 6.2 Income from Certain Leases and Other Agreements, the parties agree that the conditions set forth in the above referenced paragraph do not apply to this Agreement.

6. Use of Premises:

a. Fillmore & Western Railway Co. shall have the right to use the Lease Property for any lawful Still and Motion Picture Purpose and for any lawful Public/Tourist Train Excursion use defined herein, but not to remove the Track or Track Support Structures, as itemized on Exhibit "A" attached hereto, entitled "Inventory of Track and Track Support Structures" unless specifically authorized to do so in writing by Fillmore.

b. Fillmore & Western Railway Co. shall maintain at its sole expense the Track and Track Structures to such standards as required for its uses and in accordance with applicable regulations including, but not limited to, applicable regulations of the California Public Utilities Commission and Federal Regulations. Any materials used to replace defective components of the Track or the Track Support Structures shall be of the same or superior type and quality as that being replaced.

c. In the event that specific Track and Track Support Structures are determined to need extensive refurbishment or replacement, beyond Maintenance as defined in

Section 2, VCTC shall be responsible for said refurbishment or replacement. Fillmore & Western Railway Co. acknowledges that any and all refurbishment or replacement activities beyond Maintenance shall be undertaken at the sole discretion of VCTC as funds may become available and Fillmore shall not be responsible whatsoever to undertake any refurbishment, replacement or Maintenance activities.

7. Construction:

a. Permanent Improvements.

Fillmore & Western Railway Co. shall not have the right to construct any additions or betterments of a permanent nature on the Lease Property without specific written approval in advance by Fillmore.

b. Temporary Improvements.

Fillmore & Western Railway Co. shall have the right to construct any temporary improvements necessary for the use of the Leased Property as permitted herein, provided, however, said temporary improvements shall be promptly removed upon cessation of their use.

c. Easements and Dedications.

The parties each recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easements and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. Fillmore will give Fillmore & Western Railway Co. timely written notice of all such requests, but VCTC under the terms of its Lease Agreement with Fillmore, may continue to consider such requests, have sole authority to approve or reject proposals and execute and deliver documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting easements and dedications. No such easement or dedication, nor any construction in connection therewith

shall unreasonably interfere with the operations of Fillmore & Western Railway Co..

d. Title.

Any parts installed, replacements made or additions, improvements or alterations to the existing Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without further cost or expense to VCTC or Fillmore. Any supplemental trackage (i.e. new sidings, yard or shop trackage) added to the original Track and Track Support Structures by Fillmore & Western Railway Co. shall remain the property of Fillmore & Western Railway Co. and shall not be considered accessions to the Track and Track Support Structures and title shall not be vested in VCTC unless Fillmore & Western Railway Co. receive due compensation.

However, Fillmore & Western Railway Co.'s fixtures, machinery and equipment placed on or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore & Western Railway Co. unless the removal of same causes material damage to property of VCTC or of Fillmore, in which event Fillmore & Western Railway Co. shall pay the reasonable cost of repair.

At the termination of the Lease Term, Fillmore & Western Railway Co. shall, within One Hundred Eighty (180) days following, remove at Fillmore & Western Railway Co.'s sole expense, all of its property from the Lease Property.

8. Indemnification:

a. Fillmore & Western Railway Co. shall investigate, release, defend, indemnify and hold VCTC and Fillmore harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC or Fillmore, or both, may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of VCTC and of each party hereto) arising out of or in any

way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC or Fillmore.

9. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore & Western Railway Co..

This Agreement may not be assigned by Fillmore & Western Railway Co. without the prior written consent of Fillmore. The assignment shall not be valid unless there shall be delivered to Fillmore in due form for recording within ten (10) business days after the date of assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument by the transferee expressly assuming all of Fillmore & Western Railway Co.'s obligations and defaults under this Agreement. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, but this shall not impair any remedy of Fillmore because of Fillmore & Western Railway Co.'s having engaged in an act prohibited by the terms hereof.

b. Mortgage of Leasehold Interest.

Fillmore & Western Railway Co. shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of Fillmore, and any attempt by Fillmore & Western Railway Co. to do so without such consent shall be absolutely void and without effect.

c. Subletting by Fillmore & Western Railway Co..

Fillmore & Western Railway Co. shall not have the right, without prior written consent of Fillmore, to sublet a part of the Lease Property.

10. Limits on Use:

a. During the term of this Agreement the Lease Property shall be used by Fillmore & Western Railway Co. for the use specified in Section 6 above and for no other use or purpose. Fillmore & Western Railway Co. shall not use nor permit any other person to use the

Lease Property, or any part thereof, for any unlawful purposes. Fillmore & Western Railway Co. shall at all times during said term conform to, and cause all persons using or occupying any part of the Lease Property and Improvements by invitation of, under or by right of Fillmore & Western Railway Co. to comply with, all public laws, ordinances, rules, orders and regulations from time to time applicable thereto regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and air and water quality, and shall furnish satisfactory evidence of such compliance upon request of Fillmore. Fillmore & Western Railway Co. shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law.

(1) Fillmore & Western Railway Co. covenants and agrees to release, defend, indemnify and save Fillmore and VCTC harmless from any liability, cost, expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore & Western Railway Co. or any person upon the Lease Property by license or invitation of Fillmore & Western Railway Co. or holding or occupying the same or any part thereof or by right of Fillmore & Western Railway Co., regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, Fillmore covenants and agrees to release, defend, indemnify and save Fillmore & Western Railway Co. harmless from any liability, cost, expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of any predecessor entity or any person upon the Lease Property

by license or invitation of predecessor entity or holding or occupying the same or any part thereof or by right of predecessor entity, regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurred prior to October 31, 1996.

(3) Fillmore & Western Railway Co. shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore & Western Railway Co., upon commencing such contest shall furnish to Fillmore a document guaranteeing that Fillmore and Fillmore's interest and VCTC and VCTC's interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

(4) Fillmore and VCTC shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore & Western Railway Co., the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore & Western Railway Co. to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore and VCTC, upon commencing such contest shall furnish to Fillmore & Western Railway Co. a document guaranteeing that Fillmore & Western Railway Co. and Fillmore & Western Railway Co.'s interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

11. Conditions and Covenants:

All of the provisions of this Agreement and any Riders which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the

words specifically expressing or imparting covenants and conditions were used in each separate provisions.

a. Qualifications on Use.

This Agreement is subject to the right of existing tenants in possession. Fillmore & Western Railway Co. accepts the Lease Property (including VCTC owned and other existing improvements) in its present condition without any representation or warranty by Fillmore as to the condition of such Lease Property or Improvements, and Fillmore shall not be responsible for any defect or change of condition in the Lease Property or such Improvements, any damage occurring thereto, or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. Fillmore & Western Railway Co. UNDERSTANDS AND AGREES THAT FILLMORE MAKES NO WARRANTY OR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE UNDER THE REQUIREMENTS OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES, INCLUDING THE CITY OF FILLMORE AND ITS ASSOCIATED AGENCIES AND DEPARTMENTS. Fillmore & Western Railway Co. SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF FILLMORE HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST FILLMORE OR THE CITY OF FILLMORE.

c. VCTC Reservations.

Fillmore & Western Railway Co. acknowledges that VCTC has reserved for itself and those to whom it grants such right, the right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath

the Lease Property, so long as the exercise of such right does not unreasonably interfere with Fillmore's rights under its Lease Agreement with VCTC: 2) construct, maintain and operate any existing and new and additional recreational trail facilities; an 3) operate freight and regular passenger rail services on the Fillmore segment.

d. Right of Entry.

Agents, representatives or employees of Fillmore and VCTC shall have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions of this Agreement and other Agreements applicable to the Lease Property are being complied with, and for maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens.

Fillmore & Western Railway Co. agrees and covenants to hold Fillmore and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore & Western Railway Co.. In the event of the filing of any such lien, Fillmore & Western Railway Co. shall cause such lien to be released within five (5) business days after Fillmore's written notice to do so. Fillmore & Western Railway Co. shall indemnify and defend Fillmore and VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC or Fillmore as a result of any such lien.

12. Insurance:

While this Agreement is in effect, Fillmore & Western Railway Co. shall furnish evidence satisfactory to Fillmore that both VCTC and Fillmore are named as additional insureds for third party liability claims, meeting the requirements stated below, in a form satisfactory to Fillmore. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western Railway Co. shall furnish Fillmore with evidence satisfactory to Fillmore that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automotive liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore as additional insureds with respect to the operations of Fillmore & Western Railway Co.;
- (3) cover the contractual liability assumed by Fillmore & Western Railway Co. under this Lease;
- (4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC or Fillmore; and
- (5) provide for at least ten (10) days' notice to VCTC and Fillmore prior to any other cancellation or modification of coverage.

The insurance coverage shall also comply with the following requirements:

- (a) A "Deductible" clause is permitted subject to Fillmore & Western Railway Co. being solely responsible to be Self Insured for the amount of the deductible and to assume full responsibility for payment of any claims which fall below the deductible amount of the insurance coverage.
- (b) Provides coverage for "all operations of the insured conducted on the Lease Property" and contains a description of the work performed by the insured.
- (c) All signatures must be handwritten in ink on any policy, certificate or endorsement; rubber stamp signatures are not acceptable.
- (d) Said policy shall contain a cancellation clause reading in substance as the following approved notice:

"It is agreed that this policy shall not be canceled nor the

amounts of coverage provided herein reduced until thirty (30) days after Fillmore's City Attorney shall have received written notice of such cancellation or reduction, as evidence by return receipt of registered mail."

- (e) No policy shall be acceptable unless first approved as to form by the City Attorney of Fillmore.
- (f) If Fillmore & Western Railway Co. is involved with the preparation and/or sale of food and/or drink on the concession premises, then products liability coverage shall also be required.
- (g) Insurance Binders shall not be accepted by Fillmore as proof of insurance coverage.

b. **Worker's Compensation:**

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore & Western Railway Co. or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against Fillmore and/or VCTC to the extent permitted by law.

13. **Condemnation:**

a. **Total Taking.**

The term "Taking" means the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Lease is in effect. In the event of a Taking, this Agreement shall terminate on the earlier of vesting of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC and/or Fillmore. Under no circumstances shall Fillmore & Western Railway Co. be entitled to any "bonus value" for any remaining unexpired Term of this Lease.

If the values of the respective interests of VCTC, Fillmore and Fillmore

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& Western Railway Co. have been separately determined in the proceeding for the Taking in accordance with this Section 13a., then the values so determined shall be conclusive upon VCTC, Fillmore and Fillmore & Western Railway Co.. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Lease.

b. Temporary Taking:

(1) If all or part of the Lease Property or of Fillmore & Western Railway Co.'s interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore & Western Railway Co. shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore & Western Railway Co. is not prevented from doing so by the taking authority. In the event of a Temporary Taking, Fillmore & Western Railway Co. shall be entitled to receive from the award, up to one hundred (100%) percent reimbursement of its total forecast revenue for the period of the Taking as compensatory damages for any lost revenue resulting from the Temporary Taking.

(2) In the event all or part of Fillmore & Western Railway Co.'s interest under this lease is taken by any competent authority for its temporary use or occupancy for the full term of this lease, Short line shall receive the entire award for such interest.

14. Late Payments:

Fillmore & Western Railway Co. shall pay Fillmore an administrative charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

15. Default:

Fillmore & Western Railway Co. shall be in default under this Agreement (1) if Fillmore & Western Railway Co. fails to pay the Base Rental and Movie Rental when due and such failure continues for a period of more than ten (10) business days, (2) if Fillmore & Western Railway Co. fails to cure the breach of any provision of this Agreement within thirty



(30) days after notice from Fillmore or to commence and diligently pursue the cure of such a breach if the breach can be cured within thirty (30) days; (3) if Short line is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extrajudicial means or if any action or proceeding for debt relief of Fillmore & Western Railway Co. is commenced by Fillmore & Western Railway Co..

If Fillmore & Western Railway Co. fails to cure a default within thirty (30) days of notice from Fillmore to do so, or Fillmore & Western Railway Co. does not present a restoration plan within thirty (30) days, Fillmore shall have the right, without further notice and in addition to any other remedies Fillmore may have by law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property.

16. ANTI-DISCRIMINATION CLAUSE:

Fillmore & Western Railway Co. herein covenants by and for itself and its assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall Fillmore & Western Railway Co. itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

17. Relocation:

Fillmore & Western Railway Co. acknowledges that it is a post acquisition tenant having entered into this Agreement and taken occupancy of the premises from Fillmore after Fillmore's acquisition of the premises. By entering into this Agreement, Fillmore & Western Railway Co. and any subtenant or successor in interest to Fillmore & Western Railway

Co. under this Agreement hereby expressly waives any claim for compensation for fixtures and equipment installed on the premises at such time as the Agreement is terminated or the term expires. Fillmore & Western Railway Co., any subtenant, and any successor in interest to Fillmore & Western Railway Co. also waive any claim against Fillmore for moving expenses, relocation assistance, and any claim for loss or damage to goodwill, as a result of being required to vacate the premises if this Agreement is terminated for any reason or due to expiration of the term of this Agreement. Fillmore & Western Railway Co. shall not be considered a "displaced person" as such term is defined in Section 7260 (b) (c) or (d) of the California Government Code as it relates to Fillmore. Fillmore & Western Railway Co. disclaims such status and hereby acknowledges its ineligibility for relocation assistance as provided in California Government Code Sections 7260 through 7277, as it now exists or may be amended.

18. Nonwaiver:

Fillmore's failure to enforce or exercise its rights under any term, condition or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. Acceptance of rent shall not be deemed a waiver of Fillmore's rights to terminate this agreement as provided herein, regardless of when rent is accepted.

19. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event which occurred prior to such termination or expiration. If Fillmore & Western Railway Co. fails to surrender possession of the Lease Property upon termination of this Agreement, Fillmore shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore & Western Railway Co. and any person or entity claiming through Fillmore & Western Railway Co. from the Lease Property.

b. Notice of termination.

Either party may terminate this Agreement, without cause, upon six (6) month written notice of termination given to the other party per Section 25 below.

c. Surrender of Premises.

Upon the expiration or termination of the Lease Term, Fillmore & Western Railway Co., without further notice, shall deliver up to Fillmore the possession of the Lease Property. Fillmore & Western Railway Co. shall restore the Lease Property to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, normal wear and tear, erosive affects of time, and improvements or alterations made with specific written approval excepted. Upon the failure or refusal of Fillmore & Western Railway Co. to remove from the Lease Property, as provided in Section 7d., all personal property owned by Fillmore & Western Railway Co., (a) said personal property shall thereupon, at the option of Fillmore, become the sole property of Fillmore, or (b) if Fillmore so elects it may remove from the Lease Property personal property owned by Fillmore & Western Railway Co., and Fillmore may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, all at the expense of Fillmore & Western Railway Co., which expense Fillmore & Western Railway Co. agrees to pay upon demand, or (c) Fillmore at its sole option may elect that this Agreement with all terms contained herein, including the payment of Rent for failure to vacate on time may remain in effect until Fillmore & Western Railway Co.'s personal property is removed and the Lease Property is restored by Fillmore. In the event of such failure or refusal of Fillmore & Western Railway Co. to surrender possession of the Lease Property, Fillmore shall have the right to re-enter upon the Lease Property and remove Fillmore & Western Railway Co., or any person, firm or corporation claiming by, through or under Fillmore & Western Railway Co., therefrom.

d. Highway Grade Separation Projects.

The parties acknowledge that in the event that any highway/railroad grade separation projects involving the Lease Property are approved by government agencies having jurisdiction, Fillmore may terminate this Agreement in order to eliminate any obligation upon Fillmore to participate in such project.

20. Fillmore Loan to Fillmore & Western Railway Co.

Fillmore shall lend to Fillmore & Western Railway Co. the sum of One Hundred Three Thousand and Eight Hundred Dollars (\$103,800.00) (the "Loan") which shall be subject to the following terms related to its use, security, and repayment:

a. The Loan shall be evidenced by a promissory note (the "Note") in substantially the form attached hereto as Exhibit "B" and incorporated herein by reference. Fillmore's Executive Director is authorized to disburse \$84,000.00 of such funds in monthly increments of \$3,500.00 over a period of twenty-four (24) months made payable jointly to Fillmore & Western Railway Company and Citizens State Bank of Santa Paula. The first such disbursement shall commence with the date of the first payment due to Citizens State Bank of Santa Paula in accordance with the Citizens State Bank of Santa Paula Credit Memorandum/Loan Proposal of October 24, 1996 and the loan documents to be executed by and between Fillmore & Western Railway Co. and Citizens State Bank of Santa Paula relating to the above referenced credit memorandum. The remaining \$19,800.00 of the funds shall be used by Fillmore as a credit against all delinquent rent owing to Fillmore by Fillmore & Western Railway Co. and shall bring rent payments owing under this Lease Agreement current to October 31, 1996.

21. Discharge of July 18, 1990 Promissory Note

Fillmore agrees to fully discharge the promissory note dated July 18, 1990, that is in the face amount of Fifty Thousand Dollars (\$50,000.00) and to fully release Fillmore & Western Railway Co. and the Borrowers on said promissory note from the indebtedness to Fillmore on the note. The full discharge of this note by Fillmore is not to be construed as a pledge of any revenues of Fillmore or the City of Fillmore.

22. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, the non-prevailing party agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the prevailing party in the enforcement of this Agreement.

23. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 8 and 9, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

24. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

25. Notices:

All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by first class mail, postage prepaid, to the parties at their last known address.

26. Severability:

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

27. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

28. Dispute Resolution

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may

submit the matter to mediation. VCTC and Fillmore agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in Subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the Mediator (as hereinafter defined), whichever is earlier.

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the Mediator, with each party bearing its own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of any or all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator shall render his decision, in writing, to all parties within forty-five (45) days of the conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may

arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

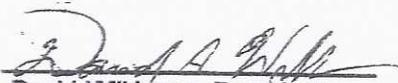
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"FILLMORE & WESTERN RAILWAY CO.:"

Fillmore & Western Railway Co. ,
a California corporation

"FILLMORE:"

City of Fillmore
Redevelopment Agency

by: 
David Wilkinson, President

by: 
Roy Payne, Executive Director

by: _____
Tresa Wilkinson, Secretary



Exhibit 8

SUPP Exh 8

EXHIBIT "#10"

REAL PROPERTY
LOCATED APPROXIMATELY 400 FEET EAST
OF THE NORTHEAST CORNER OF
SANTA CLARA STREET AND MOUNTAIN VIEW
IN THE CITY OF FILLMORE, CALIFORNIA
LEASE WITH OPTION TO PURCHASE

between

CITY OF FILLMORE, CALIFORNIA
REDEVELOPMENT AGENCY
a public body, corporate and politic
"Landlord"

and

FILLMORE & WESTERN RAILWAY COMPANY
a California corporation
"Tenant"

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LEASE WITH OPTION TO PURCHASE

THIS LEASE WITH OPTION TO PURCHASE (this "Lease") is made effective _____ 2004, between *CITY OF FILLMORE, CALIFORNIA REDEVELOPMENT AGENCY*, a public body, corporate and politic ("Landlord"), and the *FILLMORE & WESTERN RAILWAY COMPANY*, a California corporation ("Tenant"), who agree as follows:

This Lease is made with reference to the following facts and objectives:

- A. Landlord is the owner of certain property located in the City of Fillmore, California.
- B. Tenant is willing to lease the property from Landlord pursuant to the provisions stated in this Lease.
- C. Tenant wishes to lease the property for purposes of storing, moving, and repair of railway rolling stock, including remodeling services, sandblasting, painting, welding, use of large cranes, exterior renovation work, wash racks, train wheel service, outdoor storage of spare train parts and movie equipment and for uses normally incident to those purposes.
- D. Tenant has examined the property and is fully informed of its condition.

*ARTICLE I
PREMISES*

Landlord leases to Tenant and Tenant leases from Landlord the real property and other improvements located approximately four-hundred feet (400') east of the southwest corner of Santa Clara Street and Mountain View Street in the City of Fillmore, County of Ventura, State of California, as shown on Exhibit "A" attached hereto and incorporated by reference (the "Premises").

*ARTICLE II
TERM*

SECTION 2.01. Term. The term shall commence on _____, 2004 and shall expire on December 31, 2024 (the "Term").

SECTION 2.02. Option to Extend. Landlord hereby grants to Tenant the option to extend the term of this Lease for a ten (10) year period commencing when the initial term expires upon each and all of the following terms and conditions:

- (a) Tenant is not in default under this Lease.

(b) Tenant gives to Landlord and Landlord receives written notice of the exercise of the option to extend this Lease for said additional term no earlier than two hundred seventy (270) days and no later than one hundred eighty (180) days prior to the time that the option period would commence if the option were exercised, time being of the essence. If said notification of the exercise of option is not given and received, this option shall automatically expire.

(c) All of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(d) The monthly rent for each month of the option period shall be determined by agreement or by appraisal if the parties do not agree, but shall not be less than the monthly rental in effect during the last year of the initial term. The parties' written agreement before the commencement of the option period term shall be conclusive determination by the parties of the fair rental value for the additional term. If the parties have not agreed by the commencement date of the additional term, the monthly rental value of the Premises shall be determined by appraisal as hereinafter described. The fair rental value of the Premises shall be based upon the assumption that the Premises are leased for a ten-year term under the terms of this Lease.

(e) If the parties are unable to agree on the new monthly rent for the term of the option period by the commencement of the term of the option period, then within ten (10) days thereafter, each party, at its cost and by giving notice to the other party, shall appoint a real estate appraiser doing business in Ventura County who is a member of The American Institute of Real Estate Appraisers to appraise and set the monthly rent for the term of the option period. If a party does not appoint an appraiser within ten (10) days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the monthly rent for purposes of rental adjustment. If the parties as stated in this paragraph appoint the two appraisers, they shall meet promptly and attempt to set the monthly rent for purposes of rental adjustment. If they are unable to agree within thirty (30) days after the second appraiser has been appointed, they shall attempt to select a third appraiser meeting the qualifications stated in this paragraph within ten (10) days after the last day the two appraisers are given to set the monthly rent. If they are unable to agree on the third appraiser, either of the parties to this lease by giving ten (10) days notice to the other party can apply to the chairman of the American Institute of Real Estate Appraisers, or to the presiding judge of the superior court of Ventura County, for the selection of a third appraiser who meets the qualifications stated in this paragraph. Each of the parties shall bear one-half of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either party.

Within thirty (30) days after the selection of the third appraiser, a majority of the appraisers shall set the monthly rent for purposes of rental adjustment. If a majority of the appraisers are unable to set the monthly rent within the stipulated period of time, the three appraisals shall be added together and their total divided by three; the resulting quotient shall be the appraised value for the premises for purposes of rental adjustment; provided, however, if the low appraisal and/or the high appraisal are/is more than fifteen percent (15%) lower and/or higher

the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two; the resulting quotient shall be the appraised value of the Premises for purposes of rental adjustment. If both the low appraisal and the high appraisal are disregarded as stated in this paragraph, the middle appraisal shall be the appraised value of the Premises for purposes of rental adjustment. After the monthly rent for the period to which the adjustment applies has been set, the appraisers shall immediately notify the parties.

(f) The rent so established by agreement pursuant to subparagraph (d) or appraisal pursuant to subparagraph (e) shall become the new monthly rent subject to increases pursuant to Article IV during each of the following years of the period to which the adjustment applies.

SECTION 2.02.1 Further Option to Extend. Landlord hereby grants to Tenant the option to extend the term of this Lease for a second ten- (10) year term if Tenant has exercised the option provided in Section 2.02. The option shall be exercised on the same terms as set forth in 2.02 (a) through (e) inclusive.

SECTION 2.03. Early Termination -- Exercise of Option to Purchase. Should Tenant exercise the Option to purchase described in Article XXII, this Lease shall terminate upon the close of the Escrow established to consummate the sale of the Premises to Tenant.

ARTICLE III ACCEPTANCE OF PREMISES

Tenant taking possession of the Premises on commencement of the Term shall constitute Tenant's acknowledgment that the Premises are in good condition.

ARTICLE IV RENT

Tenant shall pay to Landlord as monthly rent, without deduction, setoff, prior notice or demand as follows:

- 1) Commencing July 1, 2004 the sum of Nine Hundred Dollars (\$900.00) per month on the first day of each month.
- 2) Commencing January 1, 2006 and each January 1, thereafter, the monthly rent payable under Article IV of this Lease shall be adjusted by the annual increase, if any, in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers, "All Items," for the Los Angeles area, as measured for the month of September immediately preceding the January 1 payment. The sum so calculated shall constitute the new monthly rent, but, in no event, shall such new monthly rent be less than the monthly rent for payable for the month immediately preceding the date for the rent adjustment.

*ARTICLE V
TAXES; ASSESSMENTS*

SECTION 5.01. Personal Property. Tenant shall pay before delinquency all taxes, assessments, license fees and other charges ("taxes") that are levied and assessed against Tenant's personal property installed or located in or on the Premises and that become payable during the Term. On demand by Landlord, Tenant shall furnish Landlord satisfactory evidence of these payments.

SECTION 5.02. Real Property. Tenant shall pay all real property taxes and general and special assessments ("real property taxes") levied and assessed against the Premises.

*ARTICLE VI
USE; LIMITATIONS ON USE*

Tenant shall use the Premises in conformance with the goals, policies and guidelines of the City of Fillmore Downtown Specific Plan adopted March 1994, and any amendments thereto. Further, tenant shall use the Premises solely for purposes of storing, moving, and repair of railway rolling stock, including remodeling services, sandblasting, painting, welding, use of large cranes, exterior renovation work, wash racks, train wheel service, outdoor storage of spare train parts and movie equipment and for uses normally incident to those purposes and for no other use without Landlord's consent which consent shall, however, not be unreasonably withheld. Tenant shall not do, bring or keep anything in or about the Premises that will cause a cancellation or increase premiums or risk classification of any insurance covering the Premises.

*ARTICLE VII
QUIET ENJOYMENT*

Landlord covenants and agrees with Tenant that upon Tenant paying rent and other monetary sums due under this Lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Term, subject, however, to the provisions of this Lease.

*ARTICLE VIII
MAINTENANCE*

SECTION 8.01. By Tenant. Except as provided elsewhere in this Lease, Tenant, at its cost, shall maintain, in good condition, the Premises and the Improvements.

SECTION 8.02. By Landlord. Landlord shall not have any responsibility to maintain the Premises or the Improvements.

ARTICLE IX

ALTERATIONS

Except as provided in Article XII, Tenant shall not make any alterations to the Premises without Landlord's written consent. Except for specific installation of railroad items such as track, switches, signals, etc., any alterations made shall remain on and be surrendered with the Premises on expiration or termination of the Term, except that Landlord can elect, within thirty (30) days before expiration of the Term, or within five (5) days after the expiration of the Term, to require Tenant to remove any alterations that Tenant has made to the Premises. If Landlord so elects, Tenant, at its cost, shall restore the Premises to the condition designated by Landlord in its election, before the last day of the Term or within thirty (30) days after the notice of election is given, whichever is later. If Tenant makes any alterations to the Premises as provided in this Article, the alteration shall not be commenced until seven (7) days after Landlord has received notice from Tenant stating the date the installation of the alteration is to commence so that Landlord can post and record an appropriate notice of non-responsibility.

ARTICLE X MECHANIC'S LIEN

Tenant shall pay all cost for construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant shall keep the Premises free and clear of all mechanic's liens resulting from construction done by or for Tenant. Tenant shall have the right to contest the correctness or validity of any such lien if, immediately on demand by Landlord, Tenant procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half (1-½) times the amount of the claim of the lien. The bond shall meet the requirements of *Civil Code* Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim (together with cost of suit, if it recovers in the action).

ARTICLE XI UTILITIES AND SERVICES

Tenant shall make all arrangements for and pay for all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, telephone service, sewer charge and trash collection and for all connection charges.

ARTICLE XII CONSTRUCTION BY TENANT

SECTION 12.01. Duty to Construct. Tenant shall, at Tenant's sole cost and expense, construct or cause to be constructed any Improvements to the property.

SECTION 12.02. Requirement of Landlord's Written Approval. Notwithstanding the provisions of Section 12.01, the Improvements shall not be constructed on the Premises unless and until the plans, specifications and proposed location thereof shall have been approved

in writing by Landlord. Furthermore, no structure or other improvement shall be constructed on the Premises that does not comply with the plans, specifications and locations approved, in writing, by Landlord.

ARTICLE XIII INDEMNITY AND EXCULPATION; INSURANCE

SECTION 13.01. Damage to Tenant's Property. Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause not arising from Landlord's negligence or intentional act. Tenant shall hold Landlord harmless from all damages arising out of any damage to any person or property occurring in, on or about the Premises except that Landlord shall be liable to Tenant for damage resulting from the acts or omissions of Landlord or its authorized representatives. Landlord shall hold Tenant harmless from all damages arising out of any such damage. A party's obligation under this Section to indemnify and hold the other party harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by the party being indemnified.

SECTION 13.02. Public Liability, Property Damage and Products Liability Insurance. Tenant, at its cost, shall maintain public liability, property damage and products liability insurance with a single combined limit of One Million Dollars (\$1,000,000.00) and property damage limits of not less than Five Hundred Thousand Dollars (\$500,000.00) (or its equivalent if Tenant determines to self-insure through a joint powers insurance agency or otherwise), insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All public liability and property damage insurance shall insure performance by Tenant of the indemnity provisions contained in this Lease. Both parties shall be named as additional insureds and the policy shall contain cross-liability endorsements.

SECTION 13.03. Standard Fire and Extended Coverage Insurance. Tenant, at its cost, shall maintain on all its personal property, the Improvements and alterations in, on or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of at least one hundred percent (100%) of their full replacement value (or its equivalent if Tenant determines to self-insure through a joint powers insurance agency or otherwise).

ARTICLE XIV
HAZARDOUS MATERIALS

SECTION 14.01. Use of Hazardous Materials. Tenant and its agents and contractors agree that Tenant and its employees, agents and contractors, licensees or invitees shall not handle, use, manufacture, store or dispose of any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials or other similar substances, petroleum products or derivatives (collectively "Hazardous Materials") on, under or about the Premises except for paints, fuels and petrochemicals and except for such Hazardous Materials for which Landlord has given its prior written consent (which consent may be given or withheld, in Landlord's sole discretion), provided that Tenant may store, use or dispose of products containing small quantities of Hazardous Materials which products are the type customarily found in offices and households (such as aerosol cans containing insecticides, paints, paint remover and the like) and provided further that Tenant shall handle, store, use and dispose of any of the Hazardous Materials permitted in this Section, in a safe and lawful manner and shall not allow any Hazardous Materials to contaminate the Premises or the environment.

SECTION 14.02. Indemnity. Without limiting the above, whether or not Landlord has given consent, Tenant shall reimburse, defend and indemnify and hold Landlord harmless from and against any and all claims, losses, liabilities, damages, costs and expenses, including, without limitation, loss of rental income, loss due to business interruption and attorney's fees and costs arising out of or in any way connected with the use, manufacture, storage or disposal of Hazardous Materials by Tenant or its agents or contractors on, under or about the Premises, including, without limitation, the costs of any required or necessary investigation, repair, clean up or detoxification and the preparation of any closure or other required plans in connection therewith, whether voluntary or compelled by governmental authority and all sanctions, fines and penalties incurred in connection therewith. The indemnity obligations of Tenant under this Section shall survive any termination of this Lease.

SECTION 14.03. Existing Conditions. In no event shall Tenant be responsible to reimburse, defend, indemnify and hold Landlord harmless from and against any and all claims or losses arising out of any claim that any Hazardous Materials have contaminated the Premises or the environment prior to Tenant's first occupancy of the Premises. Landlord shall reimburse, defend, indemnify and hold Tenant harmless from all claims and losses arising out of or connected with the environmental condition of the Premises prior to Tenant's first occupancy of the Premises.

SECTION 14.04. Definition of "Hazardous Materials". The term "Hazardous Materials", as used in this Lease, shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises as regulated or monitored from time to time as a Hazardous Material by any governmental authority.

SECTION 14.05. Landlord's Consent. Tenant shall not, without Landlord's prior written consent:

- (a) Install or use any above or below ground storage tank, or
- (b) Generate, possess, store, use, transport or dispose of a Hazardous Material 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.

SECTION 14.06. Duty to Inform Landlord. If Tenant knows, or has reasonable cause to believe, that Hazardous Materials, or a condition involving or resulting from same, has come to be located in, on, under or about the Premises, other than as previously consented to by Landlord, Tenant shall immediately give written notice of such fact to Landlord. Tenant shall also immediately give Landlord a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party, or persons entering or occupying the Premises, concerning the presence, spill, release or discharge of or exposure to any Hazardous Materials or contamination in, on or about the Premises.

SECTION 14.07. Tenant's Compliance with Law. Except as otherwise provided in this Lease, Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Law", which term is used in this Lease to include all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants, relating in any manner to Tenant's business (including, but not limited to, matters pertaining to (a) industrial hygiene, (b) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions and (c) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Material or storage tank), now in effect or which may hereafter come into effect and whether or not reflecting a change in policy from any previously existing policy. Tenant shall, within five (5) days after receipt of Landlord's written request, provide Landlord with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Tenant's compliance with any Applicable Law specified by Landlord, and shall, immediately upon receipt, notify Landlord in writing (with copies of documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or Tenant's use of the Premises to comply with any Applicable Law.

SECTION 14.08. Inspection; Compliance. Landlord and Landlord's lender(s) shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Laws, and to employ experts and/or consultants in connection therewith and/or to advise Landlord with respect to Tenant's activities, including, but not limited to, the installation, operation, use, monitoring, maintenance or removal

of any Hazardous Material or storage tank on or from the Premises. The costs and expenses of any such inspection shall be paid by the party requesting same, unless a default or breach of this Lease, violation of Applicable Law, or a contamination, caused or materially contributed to by Tenant, is found to exist or be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination caused or materially contributed to by Tenant. In any such case, Tenant shall, upon request, reimburse Landlord or Landlord's lender, as the case may be, for the costs and expenses of such inspections.

ARTICLE XV DESTRUCTION

SECTION 15.01. Restoration. If, during the Term, the Premises or the Improvements are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, Tenant shall restore the Premises and/or the Improvements to substantially the same condition as they were in immediately before destruction, if the restoration can be made under the existing laws and can be completed within ninety (90) working days after the date of destruction. Such destruction shall not terminate this Lease. If the restoration cannot be made in the time stated, within fifteen (15) days after the parties determine that the restoration cannot be made in the time stated in this Article, Tenant can terminate this Lease immediately by giving notice to Landlord. If existing laws do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

SECTION 15.02. Abatement or Reduction of Rent. In the case of destruction, there shall be an abatement or reduction of monthly rent between the date of destruction and the date of completion of restoration, based on the extent to which the destruction interferes with Tenant's use of the Premises.

ARTICLE XVI CONDEMNATION: DEFINITIONS

SECTION 16.01. "Condemnation". "Condemnation" shall mean (a) the exercise of any governmental power, whether by legal proceeding or otherwise, by a condemnor and (b) a voluntary sale or transfer by Landlord to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

SECTION 16.02. "Date of Taking". "Date of Taking" shall mean the date the condemnor has a right to possession of the property being condemned.

SECTION 16.03. "Award". "Award" shall mean all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

SECTION 16.04. “Condemnor”. “Condemnor” shall mean any public or quasi-public authority or private corporation or individual, having the power of condemnation other than Tenant or any subsidiary or related agency of Tenant.

SECTION 16.05. *Rights and Obligations upon Taking or Partial Taking of the Premises or the Improvements.* If, during the Term or during the period of time between the execution of this Lease and the date the Term commences, there is any taking of all or any part of the Premises or the Improvements or any interest in this Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the following provisions:

(a) If the Premises or the Improvements are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

(b) If any portion of the Premises or the Improvements is taken by Condemnation, this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if the remaining portion of the Improvements that are a part of the Premises is rendered unsuitable for Tenant’s continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate pursuant to this Section by giving notice to Landlord within thirty (30) days after the nature and extent of the taking have been finally determined. If Tenant elects to terminate this Lease as provided in this Section, Tenant shall notify Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate; except this Lease shall terminate on the Date of Taking if the Date of Taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the thirty (30)-day period, this Lease shall continue in full force and effect, except that the monthly rent shall be reduced as provided herein.

(c) If any portion of the Premises or the Improvements is taken by Condemnation and this Lease remains in full force and effect, on the Date of Taking the monthly rent shall be reduced by an amount that is in the same ratio to monthly rent as the total number of square feet in the Premises taken bears to the total number of square feet in the Premises immediately before the Date of Taking.

(d) Each party waives the provisions of *Code of Civil Procedure* Section 1265.130 allowing either party to petition to the Superior Court to terminate this Lease in the event of a partial taking of the Premises.

(e) Any Award shall belong to and be paid to Landlord, except that Tenant shall receive from the Award the following:

(i) A sum attributable to Improvements or other alterations made to the Premises by Tenant in accordance with this Lease, which such Improvements

or other alterations Tenant has the right to remove from the Premises pursuant to the provisions of this Lease but elects not to remove.

(ii) A sum attributable to that portion of the Award constituting severance damages for the restoration of the Premises or the Improvements.

SECTION 16.06. *Exercise of Power of Condemnation by Landlord.* If Landlord or a subsidiary or related agency of Landlord shall exercise its power of condemnation with respect to the Premises or the Improvements, this Lease shall terminate as of the Date of Taking and the provisions of Section 16.05(e)(ii) shall not apply.

ARTICLE XVII ASSIGNMENT

SECTION 17.01. *Consent to Assignment.* Tenant shall not voluntarily assign or encumber its interest in this Lease, the Premises or the Improvements, or sublease all or any part of the Premises or the Improvements or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises or the Improvements without first obtaining Landlord's consent. Any assignment, encumbrance or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance or sublease shall constitute a further waiver of the provisions of this Section. Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Premises as permitted by this Lease and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it towards Tenant's obligations under this Lease; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to collect such rent. All rent received by Tenant from its subtenants in excess of the rent payable by Tenant to Landlord under this Lease shall be paid to Landlord, or any sums to be paid by an assignee to Tenant in consideration of the assignment of this Lease shall be paid to Landlord. If Tenant requests Landlord to consent to a proposed assignment or subletting, Tenant shall pay to Landlord, whether or not consent is ultimately given, Landlord's reasonable attorney's fees incurred in connection with such request.

SECTION 17.02. *Involuntary Assignment.* No interest of Tenant in this Lease shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment:

- (a) If Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors or institutes a proceeding under the Bankruptcy Act;
- (b) If a writ of attachment or execution is levied on this Lease; or
- (c) If, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises.

SECTION 17.03. Involuntary Assignment a Default. An involuntary assignment shall constitute a default by Tenant and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant.

*ARTICLE XVIII
DEFAULT*

SECTION 18.01. Event Constituting Default. The occurrence of any of the following shall constitute a default by Tenant:

(a) Failure to pay rent when due, if the failure continues for three (3) days after notice has been given to Tenant; or

(b) Failure to perform any other provisions of this Lease if the failure to perform is not cured within thirty (30) days after notice has been given to Tenant. If the default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty (30)-day period and diligently and in good faith continues to cure the default.

SECTION 18.02. Notice of Default. Notices given under this Article shall specify the alleged default and the applicable Lease provisions and shall demand that Tenant perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time or quit the Premises. No such notice shall be deemed a forfeiture or termination of this Lease unless Landlord so elects in the notice.

SECTION 18.03. Purpose of Notice. The purpose of the notice requirement set forth in this Article is to extend the notice requirements of the unlawful detainer statutes of California.

SECTION 18.04. Remedies. Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative and in addition to the remedies now or later allowed by law:

(a) Landlord can continue this Lease in full force and effect and this Lease will continue in effect as long as Landlord does not terminate Tenant's right to possession and Landlord shall have the right to collect rent when due. During the period Tenant is in default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, broker's commissions and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this subsection shall terminate this Lease unless Landlord notifies Tenant

that Landlord elects to terminate this Lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability. Landlord's consent to a proposed assignment or subletting shall not be unreasonably withheld.

If Landlord elects to relet the Premises as provided in this Article, rent that Landlord receives from reletting shall be applied to the payment of:

- (i) First, any indebtedness from Tenant to Landlord other than rent due from Tenant;
- (ii) Second, all costs, including for maintenance, incurred by Landlord in reletting; and
- (iii) Third, rent due and unpaid under this Lease.

After deducting the payments referred to in this Section, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied in payment of future rent as rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this Lease, the rent received from the reletting is less than the rent due on that date, Tenant shall pay to Landlord, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this Section.

(b) Landlord can terminate Tenant's right to possession of the Premises. No act by Landlord, other than giving notice to Tenant, shall terminate this Lease. Acts of maintenance, efforts to relet the Premises or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

- (i) The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;
- (ii) The net worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;
- (iii) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

(iv) Any other amount and court costs necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth, at the time of the award", as used in Sections 18.04(b)(i) and 18.04(b)(ii) above, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of the award", as referred to in Section 18.04(b)(iii) above, is to be computed by discounting the amount of the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(c) Notwithstanding any provision to the contrary herein, Landlord shall not, under any circumstances, have the right to accelerate the rental payments that become due in future rental periods or otherwise declare any rental payments not then in default to be immediately due and payable.

SECTION 18.05. Appointment of Receiver. If Tenant is in default of this Lease, Landlord shall have the right to have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this Lease.

SECTION 18.06. Curing of Default. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid and, if paid at a later date, shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

SECTION 18.07. Interest. Rent not paid when due shall bear interest from the date due until paid at the maximum rate an individual is permitted by law to charge.

SECTION 18.08. Late Fee. Tenant acknowledges that late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges and late charges that may be imposed on Landlord by the terms of any encumbrances and note secured by any encumbrance covering the Premises. Therefore, if any installment of rent due from Tenant is not received by Landlord within ten (10) days of when due, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

SECTION 18.09. Default by Landlord. Landlord shall be in default of this Lease if it fails or refuses to perform any provision of this Lease that it is obligated to perform if the failure to perform is not cured within thirty (30) days after notice of the default has been given by Tenant to Landlord.

If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default of this Lease if Landlord commences to cure the default within the thirty (30)-day period and diligently and in good faith continues to cure the default.

Tenant, at any time after Landlord commits a default, can cure the default at Landlord's cost. If Tenant at any time, by reason of Landlord's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Tenant at the time the sum is paid and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Tenant until Tenant is reimbursed by Landlord.

ARTICLE XIX SIGNS; ADVERTISING

Tenant, at its cost, shall have the right to place, construct and maintain on the Premises one or more signs advertising its use of the Premises and no other signs. Any sign that Tenant has the right to place, construct and maintain shall comply with all laws and Tenant shall obtain any approval required by such laws. Landlord makes no representation with respect to Tenant's ability to obtain such approval.

ARTICLE XX LANDLORD'S ENTRY ON PREMISES

Landlord and its authorized representative shall have the right to enter the Premises at all reasonable times, upon at least twenty-four (24) hours' prior notice to Tenant, for any of the following purposes:

- (a) To determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease;
- (b) To do any necessary maintenance and to make any restoration to the Premises that Landlord has the right or obligation to perform;
- (c) To serve, post or keep posted any notices required or allowed under the provisions of this Lease;
- (d) To post "for sale" signs at any time during the term, to post "for rent" or "for lease" signs during the last three (3) months of the Term, or any extension of the Term, or during any period while Tenant is in default; or

(e) To show the Premises to prospective brokers, agents, buyers, tenants or persons interested in an exchange at any time during the Term.

Landlord shall conduct its activities on the Premises as allowed by this Article in a manner that will cause the least possible inconvenience, annoyance or disturbance to Tenant.

ARTICLE XXI
SUBORDINATION; ESTOPPEL

SECTION 21.01. Subordination. This Lease is and shall be subordinate to any encumbrance now of record or recorded after the date of this Lease affecting the Premises. Such subordination is effective without any further act of Tenant. Tenant shall from time to time on request from Landlord execute and deliver any documents or instruments that may be required by a lender to effectuate any subordination. If Tenant fails to execute and deliver any such documents or instruments, Tenant irrevocably constitutes and appoints Landlord as Tenant's special attorney-in-fact to execute and deliver any such documents or instruments. Notwithstanding anything to the contrary contained herein, so long as Tenant performs its obligations under this Lease, in the event of any default under any deed of trust or other encumbrance to which this Lease is subordinate, Tenant shall be allowed the opportunity to cure any such default and, to the extent that such cure requires the payment of money, the Appraised Value for the Property shall be reduced by the amount of money so paid.

SECTION 21.02. Estoppel. Each party, within ten (10) days after notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate shall also state the amount of rent and the dates to which the rent has been paid in advance. Failure to deliver this certificate within ten (10) days shall be conclusive upon the party failing to deliver the certificate for the benefit of the party requesting the certificate, and any successor to the party requesting the certificate, that this Lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate. If a party fails to deliver the certificate within ten (10) days, the party failing to deliver the certificate irrevocably constitutes and appoints the other party as its special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE XXII
OPTION TO PURCHASE

SECTION 22.01. Option. Provided that Tenant has fully complied with the provisions of this Lease, Landlord hereby grants to Tenant the right (the "Option") to purchase the Premises and the Improvements in accordance with the terms and conditions of this Article XXII. The Option must be exercised at least six (6) months prior to the end of the term. Unless exercised on or before 12:00 Midnight on June 30, 2024 (the "Expiration Date"), the Option shall expire and be of no further force or effect.

SECTION 22.02. Escrow. The sale contemplated hereby shall be consummated through escrow (the "Escrow") at Chicago Title Insurance Company, Ventura, California or any other mutually agreed upon escrow company ("Escrow Holder").

SECTION 22.03. Exercise of Option .

(a) In order to exercise the Option, Tenant shall give to Landlord written notice of intention so to do. Such notice shall be accompanied by a copy of the Escrow Instructions in compliance with all of the terms and conditions herein set forth and a receipt from Escrow Holder evidencing the deposit by Buyer into Escrow in cash or immediately available funds of the sum of not less than Five Thousand Dollars (\$5,000.00). The Escrow Instructions shall be duly executed by Tenant and shall be dated on the same date that the same are executed by Tenant.

(b) The Option may be exercised only as to all of the Premises and not to a portion thereof.

(c) Provided that the Option is timely exercised as hereinabove provided, Landlord shall, within not more than ten (10) business days after receipt of the exercise notice and Escrow Instructions, execute and return to Escrow Holder a copy of the Escrow Instructions. Thereafter, each of the parties shall promptly execute any and all further instructions or other documents that may be reasonably required to permit the close of Escrow within the period therein provided.

SECTION 22.04. Commissions .

(a) Landlord hereby indemnifies and agrees to hold Tenant harmless from any claim by any person or entity for a sales or brokerage commission or finder's fee by reason of any listing or other agreement with Landlord with respect to the transaction that is the subject of the Option.

(b) Tenant hereby indemnifies and agrees to hold Landlord harmless from any claim by any person or entity for a sales or brokerage commission or finder's fee by reason of any listing or other agreement with Tenant with respect to the transaction that is the subject of the Option.

SECTION 22.05. Determination of Purchase Price . The purchase price for the Premises and the Improvements (the "Purchase Price") shall be determined as follows:

(a) The parties shall initially determine the Premises' appraised value (the "Appraised Value") which shall be determined by an appraiser selected jointly by the par-

ties; provided, however, that, if the parties are unable to agree on the selection of an appraiser, each shall select an appraiser. The two (2) appraisers so selected shall each independently appraise the Premises and the Improvements. If the two (2) appraisers so appointed shall be unable to agree on the value of the Premises within sixty (60) days, they shall appoint a third (3rd) appraiser who shall also appraise the Premises. The decision in writing of the three (3) appraisers so appointed shall be averaged and the resulting figure shall constitute the Premises' value and be binding and conclusive on the parties hereto. The appraisers, in determining the Appraised Value, shall not consider the economic terms of this Lease. All fees and expenses of each such appraiser shall be borne by the party on whose behalf such appraiser was appointed, the fees of the third (3rd) appraiser to be paid equally by the parties. The appraisal or appraisals provided for herein shall be placed on file at Landlord's office and available for review.

(b) The cost of on-site improvements shall be deducted from the appraised value.

The amount which results from the deduction of the costs of on-site improvements from the Appraised Value shall be the Purchase Price.

SECTION 22.06. Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that:

(a) To the best of Landlord's knowledge, no violation exists with respect to the Premises of any building code, ordinance, statute, regulation or administrative or judicial order or holding, whether or not disclosed by the public record. Landlord covenants and warrants to Tenant to immediately advise Tenant in writing of any exceptions to the covenants and warranties in the preceding sentence or of which Landlord becomes aware prior to close of Escrow.

(b) To Landlord's best knowledge, there is no lawsuit or dispute currently pending or threatened that may affect the Premises or the Option and that has not been specifically disclosed by Landlord to Tenant in writing.

(c) Landlord is unaware of any material adverse fact or condition relating to the Premises or any portion thereof that has not been specifically disclosed in writing by Landlord to Tenant.

(d) Each of the foregoing is true as of the date hereof and shall be true as of the date of close of Escrow.

SECTION 22.07. Memorandum--Quitclaim. In the event that Tenant fails to timely exercise the Option or if the Option is timely exercised, the Escrow fails to close within the time therein provided, Tenant shall execute, acknowledge and deliver to Landlord a quitclaim of the

Premises to Landlord (the "Quitclaim"). Upon receipt of the Quitclaim, Landlord is hereby authorized and directed to cause the same to be recorded.

ARTICLE XXIII
NOTICE

Unless otherwise specifically provided in this Agreement, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon delivery by courier service or by personal delivery or upon the second business day after mailing (by United States registered or certified mail, return receipt requested, unless notice, demand or communication is given by Escrow Holder, in which case regular mail may be used), postage prepaid and addressed as follows or to any other address as the parties may later designate in writing:

- (a) If to Landlord: 250 Central Avenue, Fillmore, California 93015-1907.
- (b) If to Tenant: Post Office Box 960, Fillmore, California 93016-0960

ARTICLE XXIV
WAIVER

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such right or remedy or be construed as a waiver.

The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved.

No act or conduct of Landlord shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

*ARTICLE XXV
ATTORNEY'S FEES*

If either party becomes a party to any litigation concerning this Lease, the Premises or the Improvements by reason of any act or omission of the other party or its authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to that party for reasonable attorney's fees and court costs incurred by it in the litigation, if that party prevails in such litigation.

If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

*ARTICLE XXVI
SURRENDER OF PREMISES*

On expiration of five (5) days after termination of the Term, Tenant shall surrender to Landlord the Premises and the Improvements and other alterations in good condition (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant), except for alterations that Tenant has the right to remove or is obligated to remove under the provisions of this Lease. Tenant shall remove all of its personal property within the above-stated time. Tenant shall perform all restoration made necessary for the removal of any alterations or Tenant's personal property within the time period stated in this Article.

Landlord can elect to retain or dispose of in any manner any alterations or Tenant's personal property that Tenant does not remove from the Premises on expiration or termination of the term as allowed or required by this Lease by giving at least ten (10) days' notice to Tenant. Title to any such alterations or Tenant's personal property that Landlord elects to retain or dispose of on expiration of the ten (10)-day period shall vest in Landlord. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of any such alterations or Tenant's personal property. Tenant shall be liable to Landlord for Landlord's cost for storing, removing and disposing of any alterations of Tenant's personal property.

If Tenant fails to surrender the Premises to Landlord on expiration or ten (10) days after termination of this Lease as required by this Article, Tenant shall hold Landlord harmless from all damages resulting from Tenant's failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

*ARTICLE XXVII
HOLDING OVER*

If Tenant, without Landlord's consent, remains in possession of the Premises after expiration or termination of the Term, or after the date in any notice given by Landlord to Tenant terminating this Lease, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. All provisions of this Lease, except those pertaining to term and options to extend, shall apply to the month-to-month tenancy.

*ARTICLE XXVIII
TERMINATION*

Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event which occurred prior to such termination or expiration. If Fillmore & Western Railway Co. fails to surrender possession of the Lease Property upon termination of this Agreement, Fillmore shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore & Western Railway Co. and any person or entity claiming through Fillmore & Western Railway Co. from the Lease Property.

b. Notice of termination.

By mutual written consent of the parties, this Agreement may be terminated without cause, upon three (3) month written notice of termination given to the other party per Article XXIII above. Such written consent shall be provided within thirty (30) days of receipt of the written notice of termination and shall not be unreasonably withheld.

c. Surrender of Premises.

Upon the expiration or termination of the Lease Term, Fillmore & Western Railway Co., without further notice, shall deliver up to Fillmore the possession of the Lease Property. Fillmore & Western Railway Co. shall restore the Lease Property to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, normal wear and tear, erosive affects of time, and improvements or alterations made with specific written approval excepted. Upon the failure or refusal of Fillmore & Western Railway Co. to remove from the Lease Property all personal property owned by Fillmore & Western Railway Co., (a) said personal property shall thereupon, at the option of Fillmore, become the sole property of Fillmore, or (b) if Fillmore so elects it may remove from the Lease Property personal property owned by Fillmore & Western Railway Co., and Fillmore may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, all at the expense of Fillmore & Western Railway Co., which

expense Fillmore & Western Railway Co. agrees to pay upon demand, or (c) Fillmore at its sole option may elect that this Agreement with all terms contained herein, including the payment of Rent for failure to vacate on time may remain in effect until Fillmore & Western Railway Co.'s personal property is removed and the Lease Property is restored by Fillmore. In the event of such failure or refusal of Fillmore & Western Railway Co. to surrender possession of the Lease Property, Fillmore shall have the right to re-enter upon the Lease Property and remove Fillmore & Western Railway Co., or any person, firm or corporation claiming by, through or under Fillmore & Western Railway Co., therefrom.

ARTICLE XXIX MISCELLANEOUS

SECTION 29.01. Time of the Essence. Time is of the essence of each provision of this Lease.

SECTION 29.02. Consent; Approval. Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

SECTION 29.03. Successors. This Lease shall be binding on and inure to the benefit of the parties and their successors, except as provided in Article XVII.

SECTION 29.04. Sums Payable. Rent and all other sums payable under this Lease must be paid in lawful money of the United States of America.

SECTION 29.05. Finder's Fees. Each party represents that it has not had dealings with any real estate broker, finder or other person with respect to this Lease in any manner. Each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder or other person with whom the other party has or purportedly has dealt.

SECTION 29.06. Governing Law. This Lease shall be construed and interpreted in accordance with the laws of the State of California.

SECTION 29.07. Amendment; Modification. This Lease contains all the agreements of the parties and cannot be amended or modified except by a written agreement.

SECTION 29.08. Covenants and Conditions. All provisions, whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions.

SECTION 29.09. Definitions. As used in this Lease, the following words and phrases shall have all of the following meanings:

(a) "Alteration" shall mean any addition or change to, or modification of, the Premises made by Tenant, including, without limitation, fixtures, but excluding trade fixtures as defined herein, and the Improvements.

(b) "Authorized representative" shall mean any officer, agent, employee or independent contractor retained or employed by either party, acting within authority given him by that party.

(c) "Damage" shall mean injury, deterioration or loss to a person or property caused by another person's acts or omissions and shall include death.

(d) "Damages" shall mean a monetary compensation or indemnity that can be recovered in the courts by any person who has suffered damage to his person, property or rights through another's act or omission.

(e) "Destruction" shall mean any damage, as defined herein, to or disfigurement of the Premises or the Improvements.

(f) "Encumbrance" shall mean any deed of trust, mortgage or other written security device or agreement affecting the Premises and the note or other obligation secured by it that constitutes security for the payment of a debt or performance of an obligation.

(g) "Expiration" shall mean the coming to an end of the time specified in this Lease as its duration.

(h) "Good condition" shall mean the good physical condition of the Premises and each portion of the Premises, including, without limitation, signs, appurtenances and Tenant's personal property as defined herein. "In good condition" shall mean first-class, neat, clean and broom-clean and is equivalent to similar phrases referring to physical adequacy in appearance and for use.

(i) "Hold harmless" shall mean to defend and indemnify from all liability, losses, penalties, damages, as defined herein, costs, expenses (including, without limitation, attorney's fees), causes of action, claims or judgments arising out of or related to any damage, as defined herein, to any person or property.

(j) "Law" shall mean any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order or other requirement of any municipal, county, state, federal or other governmental agency or authority having jurisdiction over the parties or the Premises, or both, in effect either at the time of execution of this Lease or at any time during the Term, including, without limitation, any regulation or order of a quasi-official entity or body (e.g., Board of Fire Examiners or public utilities).

(k) "Lender" shall mean the beneficiary, mortgagee, secured party or other holder of an encumbrance, as defined herein.

(l) "Lien" shall mean a charge imposed on the Premises by someone other than Landlord, by which the Premises are made security for the performance of an act. Most of the liens referred to in this Lease are mechanic's liens.

(m) "Maintenance" shall mean repairs, replacement, repainting and cleaning.

(n) "Party" shall mean Landlord or Tenant; and if more than one person or entity is Landlord or Tenant, the obligations imposed on that party shall be joint and several.

(o) "Person" shall mean one or more human beings, or legal entities or other artificial persons, including, without limitation, partnerships, corporations, trusts, estates, associations and any combination of human beings and legal entities.

(p) "Provision" shall mean any term, agreement, covenant, condition, clause, qualification, restriction, reservation or other stipulation in this Lease that defines or otherwise controls, establishes or limits the performance required or permitted by either party.

(q) "Rent" shall mean monthly rent, real property taxes and assessments, insurance, utilities and other similar charges payable by Tenant to Landlord.

(r) "Restoration" shall mean the reconstruction, rebuilding, rehabilitation and repairs that are necessary to return destroyed portions of the Premises or the Improvements and other property to substantially the same physical condition as they were in immediately before the destruction.

(s) "Successor" shall mean an assignee, transferee, personal representative, heir or other person or entity succeeding lawfully and pursuant to the provisions of this Lease to the rights or obligations of either party.

(t) "Tenant's use" or "Tenant's activities" shall mean Tenant's operation of a parking lot.

(u) "Tenant's personal property" shall mean Tenant's equipment and movable property placed on the Premises by Tenant, including Tenant's trade fixtures, as defined herein.

(w) "Tenant's trade fixtures" shall mean any property installed in or on the Premises by Tenant for purposes of trade, manufacture, ornament or related use.

(x) "Termination" shall mean the ending of the Term for any reason before expiration, as defined herein.

SECTION 29.10. Captions. The captions of this Lease shall have no effect on its interpretation.

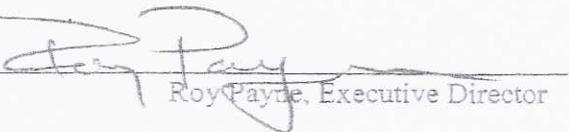
SECTION 29.11. Number. When required by the context of this Lease, the singular shall include the plural.

SECTION 29.12. Invalidity. The unenforceability, invalidity or illegality of any provision of this Lease shall not render the other provisions unenforceable, invalid or illegal.

IN WITNESS WHEREOF, the parties hereto execute this Lease on the date set forth opposite their signatures.

Dated: 8/18, 2004

CITY OF FILLMORE, CALIFORNIA
REDEVELOPMENT AGENCY

By 
Roy Payne, Executive Director

"Landlord"

Dated: 8-18-04, 2004

FILLMORE & WESTERN RAILWAY
COMPANY

By 
David A. Wilkinson, President

By 
Tresa Wilkinson, Secretary

"Tenant"

POR. LOT 38, TRACT NO.2 RANCHO SESPE
Cook Drive Tax Rate Area 01001

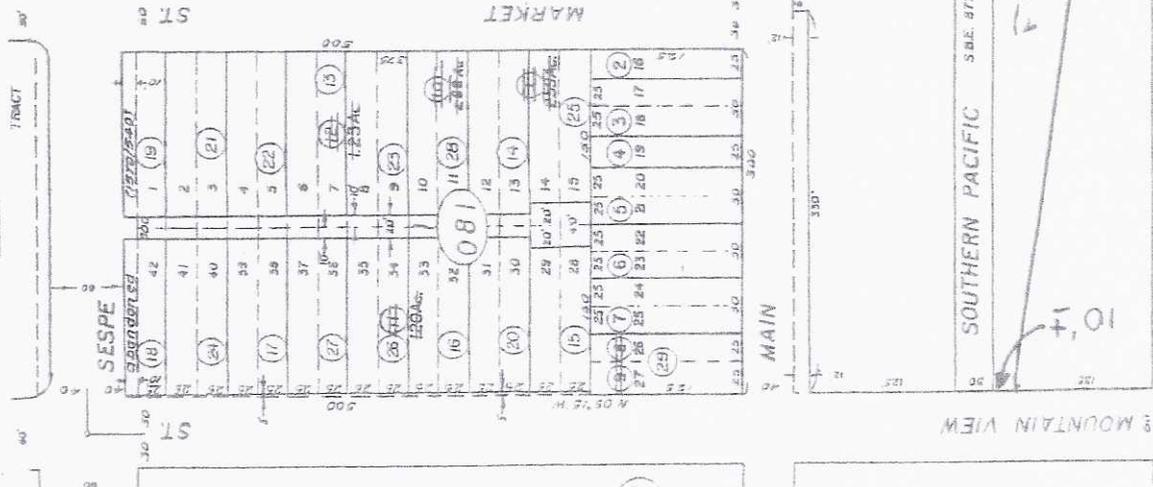


Exhibit "A"

CITY OF FILLMORE
Assessor's Map Bk.53-Pg.08
County of Ventura, Calif.

NOTE: ASSASSOR'S BLOCK NUMBERS SHOWN IN ELLIPSES
DO NOT NECESSARILY CORRESPOND TO THE LOTS
CHECK WITH COUNTY CLERK'S OFFICE OR
ASSASSOR'S OFFICE FOR MORE INFORMATION

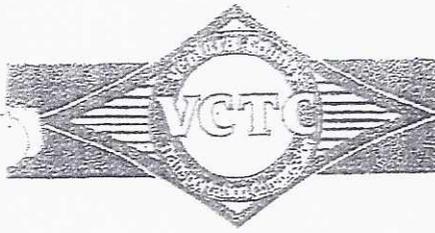
NOTE - Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles

Tract 1482 (Taylor Tract Sub. No.3), R.M. Bk. 34, Pg.9
Tract 1176 (Taylor Tract Sub. No.2), R.M. Bk. 27, Pg.77
Fillmore, City of, R.M. Bk. 3, Pg.10
Fillmore Sub. of Rancho Sespe, R.M. Bk. 3, Pg.5
Taylor Tract Sub. No.1, R.M. Bk. 8, Pg.89

Exhibit 9

SUPP Exh 9

EXHIBIT "#13"



Ventura County Transportation Commission

October 14, 2010

Mr. David Wilkinson, President
Fillmore & Western Railroad
361 Santa Clara Street
Fillmore, CA 93015

Subject: Adjustment to FY 10/11 Santa Paula Branch Line Maintenance Contract Payments

Dear Mr. Wilkinson:

As we discussed and as approved by the Commission at its October 1, 2010 meeting, we will be making an adjustment to the monthly payments made to Fillmore & Western Railroad (F&W) beginning with the October payment. The change is being made in accordance with the terms in Section 4.B.2 of the adopted agreement between VCTC and F&W for operation of the Santa Paula Branch Line (SPBL).

Specifically, a final review of the SPBL lease and signal revenues estimated available in FY 10/11 indicates lease revenues of \$258,000 and signal revenues of \$29,062 for a total of \$284,062. This total is available as the "lesser" amount under the VCTC/F&W maintenance contract agreement to support monthly payments to F&W for maintenance of the track between Montalvo and Santa Paula. After subtracting the payments already made to F&W from July through September, 2010 (\$78,000) there remains a total \$206,062 for payout to F&W for the balance of the year, in monthly payments from October 2010 through June 2011.

Thank you for working with us to sort out the payment schedule. We appreciate your cooperation and assistance in maintaining the SPBL and look forward to continuing to work with you in the future.

Please give Mary Travis a call at 805-642-1591 ext. 102 or email: mtravis@coventura.org if you have any questions.

Sincerely,

Darren Kettle
Executive Director

cc: Sally DeGeorge, Director of Finance

Exhibit 10

SUPP Exh 10

EXHIBIT "#15"



Ventura County Transportation Commission

May 14, 2013

Mr. David Wilkinson, President
Fillmore and Western Railroad
351 Santa Clara Street
Fillmore CA 93015

Dear Dave:

Thank you for your team's presentation at the Commission meeting on May 10, 2013. I was encouraged to see and hear that we were offering similar visions for the future of the Santa Paula Branch Line. As you heard in the open session, the Commission members expressed a series of concerns that they would like to see addressed. High among those concerns is, at a minimum, the need to make every effort to bring the line to a cost neutral status, and preferably "profitable", as soon as reasonably possible.

In the closed session, I was provided further direction. A key take-away from the May 10, 2012 Commission meeting is the need to update and simplify the agreements between VCTC and multiple other entities, including Fillmore and Western Railroad Company (FWRR).

As result of the concerns expressed and directions provided by the Commission, below is an outline for the course of action on which we are prepared to embark with FWRR in order to move to put the Santa Paula Branch Line on solid financial footing as prescribed by the Commission.

1. The Commission remains in need of an appropriate response to the request for financial information. Please advise me by return mail of specifically what information FWRR will be in a position to provide the VCTC and the timeline in which this material will be delivered.
2. Upon receipt of that financial information, the Commission is prepared to enter into negotiations with FWRR on the new agreement(s) needed to establish the ongoing relationship that we all hope to enjoy. VCTC is prepared to provide the initial deal points that will outline the proposed commercial and operating relationship between VCTC and FWRR.
3. VCTC will make itself available to meet with Union Pacific and FWRR to ensure that current or potential rail customers are not disadvantaged during this interim period. As a number of the public who spoke during the Commission meeting stressed, there is a public benefit derived from having rail service available on the line. We want to make sure that we give every opportunity to companies within the County to have a viable, cost efficient rail provider, within the parameters set by the Commission.

To that end, please consider this letter as notice, under section 19 b. of the agreement dated 6/27/01 that VCTC intends to terminate that agreement effective December 1, 2013. Please note that the VCTC team will be opening up current agreements with multiple entities in addition to FWRR in order to update the entire suite of agreements relating to this line. This is and will remain a high priority.

Again thank you for your input into Friday's VCTC meeting. The Commission looks forward to working toward a new contractual relationship between VCTC and FWRR.

Sincerely,

Darren Kettie
Executive Director

cc Commissioners

Exhibit 11

April 9, 2013

Mr. Dave Wilkinson
Fillmore & Western Railway Company
P.O. Box 960
Fillmore, CA 93016

Dear Mr. Wilkinson:

At the meeting of the Ventura County Transportation Commission Santa Paula Branch Line Advisory Committee ("SPBLAC") on April 8, 2013, several facts came to light that require immediate action to address previously unidentified liability issues for VCTC.

It was reported that for more than one year, the Fillmore & Western Railway (FMRW) has been, and currently does, work with the operations staff at Union Pacific Railroad (UPRR) Company to transfer freight cars in or near Montalvo from UP to FMRW for delivery to sites in Santa Paula, and from FMRW to UPRR for freight car deliveries from Santa Paula over VCTC-owned railroad tracks. There is no formal agreement between the two companies and there is no California Public Utilities Code or federal Certificate of Common Utility and Public Necessity approvals for such a transfer. Although both companies are common carriers, those regulatory authorizations are still required for FMRW to conduct freight business over the Santa Paula Branch Line.

In addition, VCTC, as owner of the Santa Paula Branch Line, has lease with the FMWR that permits FMWR to perform freight service from milepost 414.95 to 435.07. UPRR is approved and certified to operate freight service from milepost 403.35 to milepost 414.95, pursuant to its usage agreement with VCTC dated October 31, 1995 until VCTC provides notice of its intent to assume those operations and complies with applicable regulations, both state and federal.

By FMWR assuming UPRR responsibilities without meeting any state or federal requirements for the transfer of the freight delivery operations and without any agreement with UPRR naming FMRW as a UPRR contractor, VCTC, as owner of the railroad right of way and track system, runs a tremendous risk of liability should any incident occur while FMWR is operating the freight service on that portion of the line. If an accident, hazardous spill or any damage occurs to anyone or anything, UPRR may disavow any responsibility and FMWR has provided VCTC with no insurance or indemnification for that portion of its operation. Additionally, while UPRR local operations may permit the transfer, it is a breach of the usage agreement. Furthermore, I understand from communications with UPRR representatives based in UPRR headquarters in Omaha that UPRR local operations should not be making such transfers without an interchange agreement in place between the FMWR and UPRR.

Given these facts and circumstances please discontinue immediately all freight related activities outside the limits of milepost 414.95 to 435.07 on the Santa Paula Branch Line. VCTC will continue to work with FMWR and UPRR to formalize arrangements for the transfer of freight operations from the UPRR to the FMRW on the Santa Paula Branch Line but must make this request now and until such time as the appropriate state and federal approvals are obtained, an interchange agreement with UPRR is in place, and an appropriate lease amendment or operating agreement is entered into by FMWR with VCTC that provides suitable protections for VCTC as owner of the Santa Paula Branch Line.

Please feel free to contact me at (805) 642-1591 ext. 123 if you have any questions.

Sincerely,


Darren M. Kettle
Executive Director

cc: VCTC Commissioners
Melissa Grosz, Union Pacific Railroad

950 County Square Dr., Suite 207 • Ventura, California 93003 • (805) 642-1591 • fax (805) 642-4860 • www.goventura.org

Exhibit 12

**SUMMONS
(CITACION JUDICIAL)**

UNLAWFUL DETAINER—EVICTION

(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Fillmore & Western Railway, Inc., a California Corporation

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Ventura County Transportation Commission

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
SUPERIOR COURT
FILED
MAR 06 2014
MICHAEL D. PLANET
Executive Officer and Clerk
BY: Malia A. Acosta, Deputy

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

1. The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER:
(Número de caso)
56-2014-00449769-CL-UD-VTA

Ventura - Hall of Justice - 800 S. Victoria Ave., Ventura, CA 93309

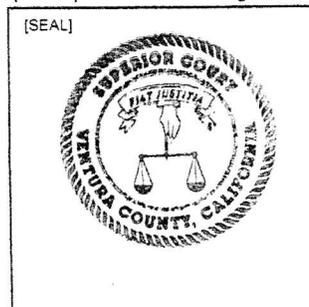
2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Steven T. Mattas, Jenny L. Riggs, Meyers Nave, 633 W. 5th St., Ste. 1700, Los Angeles, CA 90071

3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400–6415) did not did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date: MAR 06 2014 Clerk, by MICHAEL D. PLANET (Secretario) Malia A. Acosta, Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



4. **NOTICE TO THE PERSON SERVED:** You are served
- a. as an individual defendant.
 - b. as the person sued under the fictitious name of (specify):
 - c. as an occupant
 - d. on behalf of (specify): Fillmore & Western Railway, Inc
- under:
- CCP 416.10 (corporation)
 - CCP 416.20 (defunct corporation)
 - CCP 416.40 (association or partnership)
 - CCP 415.46 (occupant)
 - CCP 416.60 (minor)
 - CCP 416.70 (conservatee)
 - CCP 416.90 (authorized person)
 - other (specify):
5. by personal delivery on (date):

| | |
|--|--------------|
| PLAINTIFF (Name): Fillmore & Western Railway, Inc. | CASE NUMBER: |
| DEFENDANT (Name): Ventura County Transportation Commission | |

6. **Unlawful detainer assistant** (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):
- a. Assistant's name:
 - b. Telephone no.:
 - c. Street address, city, and zip:

 - d. County of registration:
 - e. Registration no.:
 - f. Registration expires on (date):

1 Steven T. Mattas (SBN: 154247)
smattas@meyersnave.com
2 Jenny L. Riggs (SBN: 204417)
jriggs@meyersnave.com
3 MEYERS, NAVE, RIBACK, SILVER & WILSON
4 633 West Fifth Street, Suite 1700
Los Angeles, California 90071
5 Telephone: (213) 626-2906
Facsimile: (213) 626-0215

VENTURA
SUPERIOR COURT
FILED

MAR 06 2014

MICHAEL D. PLANET
EXEMPT FROM FILING FEES
GOV'T CODE § 6103 Deputy

Maria A. Acosta

6 Attorneys for Plaintiff
7 VENTURA COUNTY TRANSPORTATION COMMISSION

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF VENTURA**

10 VENTURA COUNTY TRANSPORTATION
11 COMMISSION,

12 Plaintiff,

13 v.

14 FILLMORE & WESTERN RAILWAY, INC.,
a California Corporation; and DOES 1-10,
15 Inclusive,

16 Defendants.

Case No. 56-2014-00449769-CL-UD-VTA

**COMPLAINT FOR UNLAWFUL
DETAINER**
[Code of Civil Procedure § 1161(1)]

1 COMES NOW Plaintiff Ventura County Transportation Commission (hereinafter,
2 “VCTC”), and hereby alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff VCTC owns a rail line, the Santa Paula Branch Line, that begins in the
5 west in the Montalvo section of Ventura, running east through the City of Santa Paula, continuing
6 on to the City of Fillmore, and terminating in Rancho Camulos. Defendant Fillmore & Western
7 Railway runs tourist and excursion trains on the eastern part of the rail line, between Fillmore and
8 Santa Paula. Defendant Fillmore & Western Railway’s tourist and excursion trains do not run on
9 the western section of the rail line between Ventura and Santa Paula.

10 2. With regard to that rail line, VCTC has entered into various leases, each permitting
11 specific uses on specific portions of the line. At issue here, VCTC entered into a lease that
12 permitted tourist and excursion trains to run on the eastern portion of the rail line. Now that lease
13 has terminated, but Defendant Fillmore & Western Railway – the sublessee – has refused to
14 vacate, and instead continues to run tourist and excursion trains in violation of VCTC’s rights. .
15 VCTC therefore seeks to regain its possessory rights with regard to the right to operate tourist and
16 excursion trains on the eastern segment of the Santa Paula Branch Line.

17 **THE PARTIES**

18 3. Plaintiff Ventura County Transportation Commission (hereinafter, “VCTC”) is a
19 County Transportation Commission established pursuant to the California Public Utilities Code
20 § 130050.1, with its principal place of business in Ventura, California.

21 4. Plaintiff is informed and believes and thereupon alleges that Defendant Fillmore &
22 Western Railway, Inc., is a California corporation with its principal place of business in Fillmore,
23 California.

24 **GENERAL ALLEGATIONS**

25 5. On June 6, 2001, VCTC and the City of Fillmore Redevelopment Agency entered
26 into a lease for the eastern “Fillmore Segment” of the rail line, running “between milepost 414.45
27 at or near Santa Paula to milepost 435.07 at Rancho Camulos.” [Kettle Decl., Ex. 1 (Fillmore
28 Lease), § 1, p. 2.] Among other things, the lease “permit[ted] Fillmore and/or its sublessees to use

1 the Lease Property for Public/Tourist Excursion purposes.” [*Id.*, Ex. 1, § 2, p. 3.] This Fillmore
2 Lease could be terminated by either party, *without cause*, effective upon six months’ notice to the
3 other party. [*Id.*, Ex. 1, § 15(b), p. 14.]

4 6. On June 25, 2001, VCTC and Defendant Fillmore & Western Railway entered into
5 a direct lease for the entire rail line, but with limitations on the uses of the eastern Fillmore
6 Segment. [*Id.*, Ex. 2 (Direct Lease) at p. 1.] For example, while the Direct Lease permitted
7 Defendant Fillmore & Western Railway to use nearly the entire line for still and motion picture
8 productions or for mail and express service, it permitted freight services only on the Fillmore
9 Segment of the line (from milepost 414.95 to 435.07), and, critical here, permitted public and
10 tourist excursions only on that western part of the line running from Ventura to Santa Paula, from
11 milepost 403.35 to milepost 414.45. [*Id.*, Ex. 2, § 2, p. 3-4.] Thus, this Direct Lease did not
12 permit Defendant Fillmore & Western Railway to operate tourist and excursion trains between
13 Fillmore and Santa Paula. That right was instead given to the City of Fillmore Redevelopment
14 Agency alone pursuant to the June 6, 2001 Fillmore Lease.

15 7. On July 1, 2001, Defendant Fillmore & Western Railway entered into a sublease
16 agreement with the City of Fillmore Redevelopment Agency. That Sublease addressed “the use of
17 a portion of a line of railroad owned by VCTC ... from milepost 414.45 at or near 8th Street in
18 Santa Paula, California, to milepost 435.07 at or near Rancho Camulos (“Fillmore Segment).”
19 [*Id.*, Ex. 3 (Fillmore Sublease) at B, p. 1.] The use of the Fillmore Segment was limited to
20 “Public/Tourist Train Excursion purposes.” [*Id.*, Ex. 3, § 3, 6(a), 10(a).] Important here, the
21 Sublease provided that it could be terminated “without cause, upon six (6) month written notice of
22 termination.” [*Id.*, Ex. 3, § 19(b).]

23 8. Pursuant to the sublease, Defendant Fillmore & Western Railway ran tourist and
24 excursion trains between Santa Paula and Fillmore. The direct lease between VCTC and
25 Defendant Fillmore & Western Railway (not at issue here) did not grant Defendant Fillmore &
26 Western Railway any right to operate tourist and excursion trains on that segment of the rail line.
27
28

1 could be terminated without cause upon six months' notice. The Sublease is attached hereto as
2 Exhibit 3 to the concurrently filed Declaration of Darren Kettle, and is incorporated by reference
3 herein.

4 16. The City of Fillmore, as successor agency to the City of Fillmore Redevelopment
5 Agency, gave notice of termination without cause of the Sublease on May 31, 2013, providing for
6 termination of the Sublease as of December 1, 2013. Notice of termination is attached hereto as
7 Exhibit 5 to the concurrently filed Declaration of Darren Kettle, and is incorporated by reference
8 herein.

9 17. As a result, the Fillmore Lease and the Sublease were terminated as of December 1,
10 2013.

11 18. The June 25, 2001 Direct Lease between VCTC and Defendant Fillmore &
12 Western Railway does not permit Defendant Fillmore & Western Railway to operate tourist and
13 excursion trains between Fillmore and Santa Paula. The Direct Lease is attached hereto as Exhibit
14 2 to the concurrently filed Declaration of Darren Kettle, and is incorporated by reference herein.

15 19. Despite the December 1, 2013 termination, on information and belief, Defendant
16 Fillmore & Western Railway continues to operate tourist and excursion trains on the eastern
17 segment of the Santa Paula Branch Line, between Fillmore and Santa Paula. As of March 5, 2014,
18 Defendant Fillmore & Western Railway advertised ticket sales for a variety of tourist and
19 excursion train trips to take place on VCTC's rail line throughout 2014. Defendant Fillmore &
20 Western Railway's website, www.frwy-blog.com, advertises that tickets may be purchased for
21 tourist and excursion trains through December 31, 2014.

22 20. As the owner of the line, VCTC has the right to lease out portions of the line for
23 specific purposes. Following the termination of the Fillmore Lease and Sublease, the right to
24 permit or deny permission to operate tourist and excursion trains on the eastern segment of the line
25 reverted to VCTC. Defendant Fillmore & Western Railway's unauthorized operation of tourist
26 and excursion trains on that segment of the line interferes with VCTC's rights as owner, and
27 VCTC therefore requests that its possessory rights be returned to it.

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PRAYER FOR RELIEF

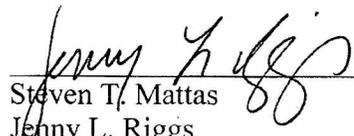
WHEREFORE, Plaintiff prays judgment against Defendants individually and collectively as follows:

1. For possession of the Santa Paula Branch Line eastern segment, from milepost 414.45 at or near Santa Paula to milepost 435.07 at Rancho Camulos, for Ventura County Transportation Commission's exclusive use to permit or refuse to permit the operation of tourist and excursion trains;
2. For an order precluding Defendant Fillmore & Western Railway, Inc. from operating tourist and excursion trains on the Santa Paula Branch Line eastern segment, from milepost 414.45 at or near Santa Paula to milepost 435.07 at Rancho Camulos;
3. For costs of suit, including reasonable attorney's fees pursuant to contract; and
4. For such further relief this Court may deem just and proper.

DATED: March 6, 2014

MEYERS, NAVE, RIBACK, SILVER & WILSON

By:



Steven T. Mattas
Jenny L. Riggs
Attorneys for Plaintiff
VENTURA COUNTY TRANSPORTATION
COMMISSION

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF VENTURA

I have read the foregoing Complaint for Unlawful Detainer and know its contents.

I am the Executive Director of the Ventura County Transportation Commission, the plaintiff in this action, and am authorized to make this verification on its behalf. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on March 6, 2014, at Ventura, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Darren Kettle
Print Name of Signatory


Signature

2246213.1

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

800 South Victoria Avenue
Ventura , CA 93009
(805) 654-2609

NOTICE OF CASE ASSIGNMENT

Case Number: 56-2014-00449769-CL-UD-VTA

Your case has been assigned for all purposes to the judicial officer indicated below. A copy of this Notice of Case Assignment must be served on all named defendants/respondents with the complaint or petition, and with any cross-complaint that names a new party to the underlying action.

| ASSIGNED JUDICIAL OFFICER | COURT LOCATION | DEPT/ROOM |
|---------------------------|----------------|-----------------|
| Hon. Dino Inumerable | Ventura | 48 |
| EVENT TYPE | | |
| | | |
| EVENT DATE | EVENT TIME | EVENT DEPT/ROOM |
| | | |

SCHEDULING INFORMATION

| |
|---|
| Judicial Scheduling Calendar Information Court calendars vary from courtroom to courtroom. You may contact the clerk's office for more information when you need to schedule a hearing before the judicial officer. |
| Ex Parte Matters To set an ex parte hearing, contact the judicial secretary in the assigned department. Per Local Rule 15.03, all ex parte documents must be filed in the courthouse where the ex parte application shall be heard. |
| Noticed Motions Contact the clerk's office to reserve a date for a law and motion matter. Per Local Rule 3.19, all law and motion documents must be filed in the courthouse where the motion shall be heard. |
| Other Information You can visit the court's website at www.ventura.courts.ca.gov for public access to non-confidential case information, local rules and forms, and other court information. |

Clerk of the Court,

Date: 03/06/2014

By: Malia A. Acosta
Malia Acosta, Clerk

VEN-FNR063

NOTICE OF CASE ASSIGNMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Steven T. Mattas (154247); Jenny L. Riggs (204117)
Meyers Nave Riback Silver Wilson
633 W. Fifth St., Ste. 1700
Los Angeles, CA 90071
TELEPHONE NO.: (213) 626-2906 FAX NO.: (213) 626-0215
ATTORNEY FOR (Name): Ventura County Transportation Commission

FOR COURT USE ONLY
VENTURA
SUPERIOR COURT
FILED
MAR 06 2014
MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____, Deputy
Malia A. Acosta

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Ventura
STREET ADDRESS: 800 S. Victoria Ave.
MAILING ADDRESS:
CITY AND ZIP CODE: Ventura, CA 93309
BRANCH NAME: Ventura - Hall of Justice

CASE NAME:
Ventura County Transportation Commission v. Fillmore & Western, et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

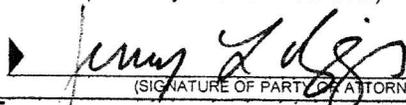
CASE NUMBER:
56-2014-00449769-CL-UD-VTA
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) | Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) | Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) |
| Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) | Unlawful Detainer <input checked="" type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) | Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) |
| Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 1 (unlawful detainer)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 6, 2014
Jenny L. Riggs
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

| | |
|---|--------------|
| PLAINTIFF/PETITIONER: Ventura County Transportation Commission DEFENDANT/RESPONDENT: Fillmore & Western Railroad, Inc. | CASE NUMBER: |
|---|--------------|

2. (continued)

- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 2h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment

3. a. Title:

- b. Case number:
- c. Court: same as above
 other state or federal court (name and address):
- d. Department:
- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 3h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment

4. Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: March 6, 2014

Jenny L. Riggs
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)


(SIGNATURE OF PARTY OR ATTORNEY)

| | |
|---|--|
| <p>A. TORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Steven T. Mattas (SBN: 154247); Jenny L. Riggs (SBN: 204417) MEYERS, NAVE, RIBACK, SILVER & WILSON 633 West Fifth Street, Suite 1700 Los Angeles, CA 90071 TELEPHONE NO.: (213) 626-2906 FAX NO. (Optional): (213) 626-0215 E-MAIL ADDRESS (Optional): smattas@meyersnave.com; jriggs@meyersnave.com ATTORNEY FOR (Name): Plaintiff Ventura County Transportation Commission</p> | <p>FOR COURT USE ONLY</p> <p>VENTURA SUPERIOR COURT FILED</p> <p>MAR 06 2014</p> <p>MICHAEL D. PLANET Executive Officer and Clerk</p> <p>BY: _____, Deputy</p> <p>Maria A. Acosta</p> <p>CASE NUMBER: 56-2014-00449769-CL-UD-VTA</p> <p>JUDICIAL OFFICER:</p> <p>DEPT.:</p> |
| <p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Ventura STREET ADDRESS: 800 S. Victoria Ave. MAILING ADDRESS: CITY AND ZIP CODE: Ventura, CA 93309 BRANCH NAME: Ventura - Hall of Justice</p> | |
| <p>PLAINTIFF/PETITIONER: Ventura County Transportation Commission</p> <p>DEFENDANT/RESPONDENT: Fillmore & Western Railway, Inc., a California Corporation; and DOES 1-10 inclusive</p> | |
| <p>NOTICE OF RELATED CASE</p> | |

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Fillmore & Western Railroad, Inc. vs. Ventura County Transportation Commission
- b. Case number: 56-2013-00444877-CU-BC-VTA
- c. Court: same as above
 other state or federal court (name and address):
- d. Department: 22B
- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date: November 19, 2013
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 1h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment
2. a. Title:
- b. Case number:
- c. Court: same as above
 other state or federal court (name and address):
- d. Department:

MAR 06 2014

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____, Deputy

Maria A. Acosta

1 Steven T. Mattas (SBN: 154247)
smattas@meyersnave.com
2 Jenny L. Riggs (SBN: 204417)
jriggs@meyersnave.com
3 MEYERS, NAVE, RIBACK, SILVER & WILSON
4 633 West Fifth Street, Suite 1700
Los Angeles, California 90071
5 Telephone: (213) 626-2906
Facsimile: (213) 626-0215

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

6 Attorneys for Plaintiff
7 VENTURA COUNTY TRANSPORTATION COMMISSION

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF VENTURA**

10
11 VENTURA COUNTY TRANSPORTATION
12 COMMISSION,

13 Plaintiff,

14 v.

15 FILLMORE & WESTERN RAILWAY, INC.,
a California Corporation; and DOES 1-10,
16 Inclusive,

17 Defendants.

56-2014-00449769-CL-UD-VTA

Case No.

**DECLARATION OF JENNY L. RIGGS IN
SUPPORT OF VENTURA COUNTY
TRANSPORTATION COMMISSION'S
COMPLAINT FOR UNLAWFUL
DETAINER**

Action Filed:

Trial Date:

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DECLARATION OF JENNY L. RIGGS IN SUPPORT OF VENTURA COUNTY TRANSPORTATION
COMMISSION'S COMPLAINT FOR UNLAWFUL DETAINER

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DECLARATION OF JENNY L. RIGGS

I, Jenny L. Riggs, declare as follows:

1. I am an associate with the law firm of Meyers, Nave, Riback, Silver & Wilson, which firm serves as attorneys of record for Plaintiff VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC") in the above referenced matter. As one of the attorneys with primary responsibility for representing VCTC with regard to its disputes with Defendant Fillmore & Western Railway, Inc., I have personal knowledge of the facts set forth in this declaration, and if called to testify as a witness, I would and could testify competently thereto.

2. On March 5, 2014, I directed a member of my staff to print pages from Defendant Fillmore & Western Railway's website, located at www.frwy-blog.com. Attached hereto as Exhibit 1 is a true and correct copy of those pages, including advertisements for Murder Mystery Dinner Trains in February, April, May, June, July, August, September, October and December 2014; and a Firecracker Train on July 4, 2014; New Year's Eve 2014 train trip.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th day of March 2014, at Los Angeles, California.



Jenny L. Riggs

2246244.1



2014 Weekend Scenic Excursion

JAN-APR—Saturdays only

MAY-SEPT & NOV—Saturdays and selected Sundays

Board : 11:30 am Depart: 12:00 pm Return approx: 4:00 pm

Let us transport you back in time on board 1930's vintage passenger or dining cars as the train travels through century old citrus and avocado groves in the beautiful Heritage Valley.

The first stop of the day is in downtown Santa Paula, where passengers can visit the historic Southern Pacific Depot, the St. Francis Dam Memorial sculpture, the amazing rotating water ball in Railroad Plaza Park, the Santa Paula Art Museum, the California Oil Museum or the Ventura County Agriculture Museum or take a self-guided walking tour of world-class murals, all these historic sites are within walking distance of the train depot. The train will layover in Santa Paula for approximately one hour and 15 minutes. The second stop of the day will be at Loose Caboose Garden Center and Gift Emporium where you will find garden art, fountains, koi ponds and supplies, local honey and produce and a wide variety of one-of-a-kind gift items, year-round Christmas decorations and plants.

ALL ABOARD FOR FUN!

RATES

Train Ride Only

| | |
|---------------|---------|
| Adults: | \$25.00 |
| Seniors (60+) | \$23.00 |
| Youth 4-12 | \$15.00 |
| Child 2-3 | \$10.00 |



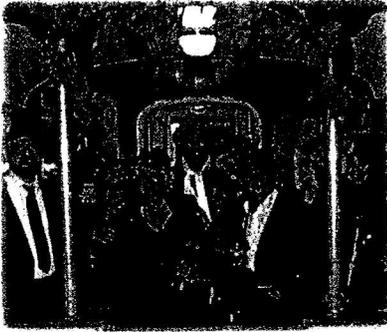
Enjoy a moving lunch experience in the 1928 Powhatan Parlor Car. (Reserve your table at ticket purchase or see dining steward upon boarding. Dining is an additional charge.) A snack bar and gift shop, "The Dark Territory", is located in a 1940's baggage car. Beer, wine and soft drinks are also available. Meal prices are separate from train ride. On Sundays, when a meal is purchased in the Powhatan, wine tasting is complimentary, (adults only). Come ride with the Fillmore & Western and step back in time onboard the Movie Trains! Diner service is subject to availability on weekend scenic excursion rides.

Information/Reservations

805-524-2546
www.fwry.com

Come Ride the Movie Trains!

Please Note: No outside food or drink is allowed onboard. Our trains consist of vintage and antique pieces of rolling stock, most of which were built before the modern amenities. We suggest "weather-friendly" clothing as the warm summer days can be anchored by cool evenings and made more comfortable with a light coat or sweater. State law prohibits smoking on the train. Strollers and ice chests cannot be allowed onboard, as the aisles must be kept clear. Children must be accompanied by an adult when walking through the train. No alcohol may be brought onboard. We reserve the right to substitute equipment or destinations.



MURDER MYSTERY

DINNER THEATER

Select Saturday Nights - Year Round
 Board: 6:15pm Depart: 6:30pm Return: 9:30pm

NOTE: Valentines Day and October Departures are 7:00pm Returning at 10:00pm

All Aboard For Fun!
 Embark on an evening train ride with an excellent dinner, hearty laughs and some less-than-serious sleuthing. Enjoy a first-class, three-course dinner, served while actors commit mirth and murder. Jump right in and help solve the murder, or simply sit back, be waited on, and entertained on board the only Murder Mystery Dinner Train in Southern California.

Our 3-course dinner includes a Garden Salad, Seasonal Vegetables, Bread & butter. East guest chooses one entree from the following: Prime Rib with Baked Potato OR Chicken Cordon Bleu with Mushroom Sauce and Rice Pilaf, Blackened Pork Chop with Rice Pilaf OR Vegetarian Pasta.

Coffee or Tea and Dessert included with each meal.

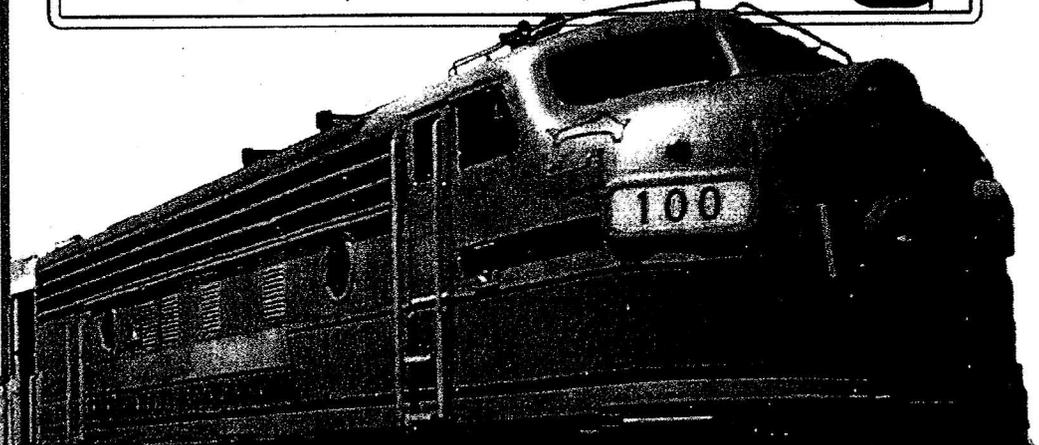
Price
 \$89.00 per person
 (includes tax)

Reservations required
 Full bar service on board.

Adults Only over 18\or older

Murder Mystery Themes:

- WHEN THE WEST WAS WILD
- NIGHT TRAIN... TO MURDER
 - The Love Train
 - Fright Night
- Cirque De Foul Play
- Bugle Boy Murders of Company C
- VIVA LOST VEGAS
- The Holiday
- FROM TWILIGHT TO TRANSYLVANIA



revised 08/17/11

THE ONLY PLACE WHERE MURDER IS A LAUGHING MATTER!

A Family Affair Murder Mystery
"For A Few \$Dollars\$ Less"
 Adult \$61 12 & Under \$32
 See Reverse For Details

MURDER EXPRESS LUNCH TRAIN

Mar 15, Apr 19, May 17, Jun 28, Sept 6, Sept 27, Nov 8, 2014

All aboard for a hilarious, outrageous afternoon murder mystery comedy performed by P. Maxwell Production troupe while enjoying our signature "Orange Blossom Chicken" 3-course lunch. Join in the fun and guess "who-done-it?". Shop and browse at the Loose Caboose Garden Center & Gift Emporium during the intermission.

2014 THEMES AND DATES

"FOR A FEW DOLLARS LESS"

Mar 15, June 28, Sept 27

"NIGHT TRAIN TO MURDER"

Apr 19, Nov 8

"THE LOVE TRAIN"

May 17, Sept 6

ITINERARY

11:15 AM Check in at ticket office, 364 Main Street, downtown Fillmore, CA 93015

11:30 AM Board train in Central Park, salads and beverages are served

12:00 PM Depart Fillmore, lunch is served, Murder Mystery play begins

1:00 PM Train makes brief stop in Santa Paula for departing ride only passengers

2:15 PM Train returns to Santa Paula depot to pick up ride only passengers

2:20 PM Train departs Santa Paula for 10 minute ride to Loose Caboose

2:30 PM Intermission-Arrive Loose Caboose Garden Center & Gift Emporium

3:15 PM Depart Loose Caboose/Murder Mystery winds down and concludes during the return trip to Fillmore. Dessert and Coffee served

4:00 PM Train arrives back at Central Park, downtown Fillmore

Murder Express passengers remain on the train when general passengers depart the train in Santa Paula, murder mystery play continues and is in progress while the train continues its journey west, before returning to Santa Paula and Fillmore.

Lunch Menu

Green salad, Orange-glazed Chicken Breast
Rice Pilaf, Seasonal Vegetables,
Coffee or Iced Tea and Dessert

Sodas, Beer and Wine available for extra charge

Group Rate

(25 people or more)

Adults/Seniors \$60

Youth (7-12) \$33

Individual Rate

Adults/Seniors \$63

Youth (7-12) \$34



Reservations/Information

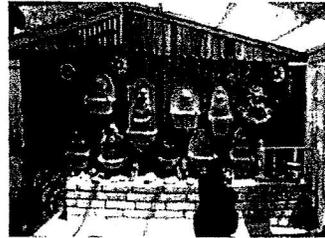
805-524-2546

www.fwry.com



Heritage Valley Tour Train 2014

- 11:00 am Arrive for check-in at Ticket Office
- 11:15 am Board Train in Central Park
- 11:30 pm Depart Fillmore Station
- 12:30 pm Arrive Santa Paula
- 12:35 pm Docent-led tours Oil, Art, Agri Museums
- 1:55 pm Board Train at Santa Paula depot
- 2:10 pm Arrive Loose Caboose Garden Center
- 2:45 pm Depart Loose Caboose
- 3:30 pm Arrive downtown Fillmore



Tours in 2014: Feb 26, Mar 27, May 7, June 4, Sept 18, Oct. 1, Oct 23, Nov 19, Dec 10
Advanced reservations required for all docent-guided group trips.

Step back in time in the historic Heritage Valley.

Arrive a little early and tour Sandi Ward's Heritage Valley Gift Shop in an historic caboose and baggage car next to Fillmore City Hall. All aboard your vintage dining car at 11:15am where, once underway you will enjoy a full 3-course "Heritage Valley" lunch during the trip to downtown Santa Paula. Our special luncheon consists of a garden salad, orange glazed chicken breast, rice pilaf, vegetable, roll & butter and coffee, tea or soda. Docents will meet the train at the Santa Paula depot and guide your group on a walking tour to the California Oil Museum, then the Santa Paula Art Museum, and to the Ventura County Agriculture Museum, situated right next to the tracks in Railroad Plaza. Reboard the train and travel 10 minutes to the Loose Caboose Garden Center and Gift Emporium, where you will browse the variety of unique offerings. Visit the Gift Shop, a large selection of locally produced honey products from Bennett's Honey Farm, Garden art, koi ponds & supplies, fountains, pottery, fresh produce section, the UpsideDown Gardens, an aviary and a huge variety of plants. During the return trip to Fillmore relax as we serve you dessert. A minimum group of 40 people is required to book a date. If a smaller group or individuals would like to reserve seats on this train, dates already booked by larger groups are available upon request. Weekday minimum of 70 people required to run the train. **All Aboard for Fun!**

Adults and Seniors: \$49.00 per person/group rate, (25+ people) or \$54.00 per person/individuals.

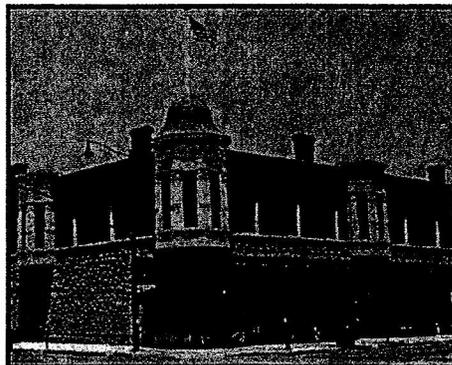
Options: Add a tour of the Fillmore Historical Museum before or after the train trip: \$5.00 per person

Add a tour of the Rancho Camulos Museum after the train trip: \$5.00 per person

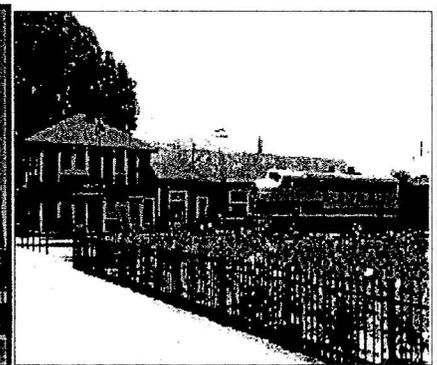
Santa Paula Art Museum



California Oil Museum



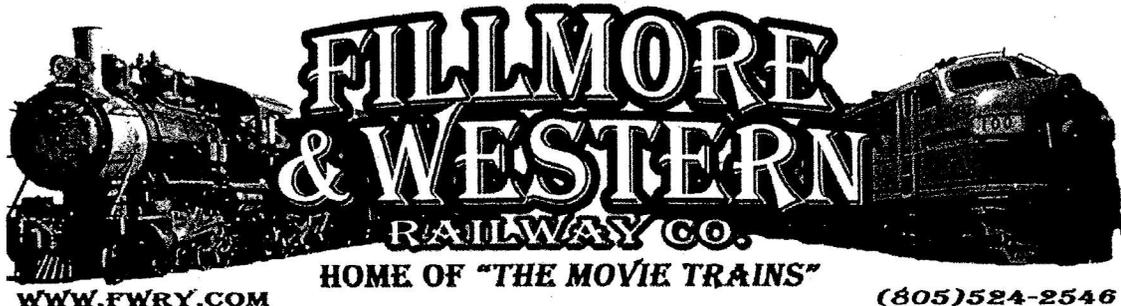
Santa Paula Depot



Reservations & Information

www.fwry.com

805-524-2546



Greetings from Fillmore & Western Railway To Valued Elementary School Teachers

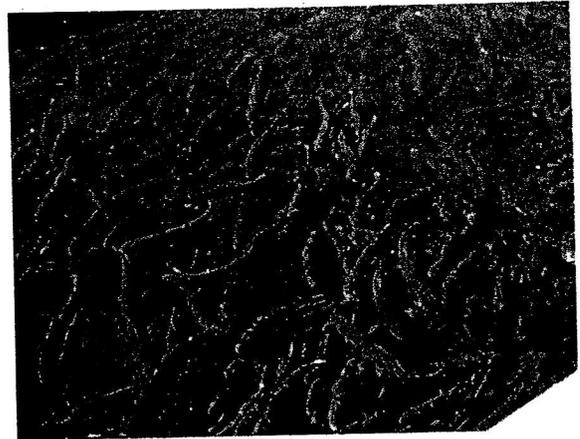
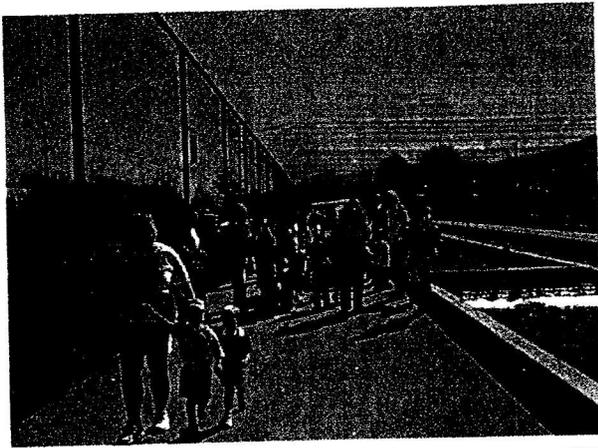
We would like to invite you, your students and their parents to consider a school field trip onboard the Fillmore & Western Railway . We are located in east Ventura County in the lush agricultural-rich Heritage Valley. We're only 20 miles west of Santa Clarita and 20 miles east of Ventura. Our school field trip trains provide an exciting and educational trip for students, teachers and parents. Teachers can choose between a vintage train ride to the Fillmore Fish Hatchery or just spend the one-hour train ride viewing the countryside. The Fish Hatchery trip includes a 15 minute train ride to the hatchery, staying for about 45 minutes, then a 15 minute train ride back to town. The visit to the fish hatchery is a self guided tour. After returning, have a picnic lunch in Fillmore's downtown Central Park, adjacent to the railroad tracks. Students are encouraged to bring dimes to purchase fish food. Teachers, please inform parents if they are not part of the final count, they must call the reservation line and make their own individual reservations. Each person on the train must purchase a ticket from 0-99 years of age.

Ticket Price: \$8.00 per person
For reservations please call 805-524-2546
www.fwry.com



**SUGGESTED TEACHER LESSON PLAN PRIOR TO
SCHOOL FIELD TRIP ON FILLMORE & WESTERN**
Railroad Facts

1. Teach students about the Transcontinental Railroad. The east coast was directly linked to the west coast at Promontory Summit, Utah on May 10, 1869 by the Union Pacific Railroad and the Central Pacific Railroad.
2. Completing the Transcontinental Railroad created a nation-wide mechanized transportation network that revolutionized the population and economy of the American West. This network caused the wagon trains of previous decades to become obsolete, exchanging it for a modern transportation system.
3. Teach students about the first era of railroading in the United States when only Steam Locomotives were used. In the 1950's diesel locomotives became the norm. There are still some steam locomotives in use today, but primarily only at historical railroads and in museums.
4. Locomotives are the engine that pulls the rest of the train.
5. The cars with seating only are called coach cars.
6. The cars with tables and chairs or booths are called dining cars.
7. Enclosed cars with no windows and no passengers are called freight cars.
8. Playing around railroad cars or tracks is NEVER SAFE and not allowed.
9. Always stop when railroad crossing arms are down across the road and lights are flashing.
10. LOOK, LISTEN AND LIVE is the railroad motto.
11. If a train is traveling at 60 miles per hour, like a car, it takes a train over 1 mile to come to a stop.
12. The person in charge on a moving train is THE CONDUCTOR.
13. The person driving the train in the locomotive is THE ENGINEER.



* Home of *"The Movie Trains"* 



Fillmore & Western Railway Co.

Bring your Valentine...aboard the
"Rails to Romance" Train....

that's just a little different, It's a Murder Mystery

Friday, February 14th

Boards: 6:30 pm Departs: 7:00 pm Returns: 10:00 pm

Menu

Green Salad,
Choice of:

- ♥ Fresh Roasted
- Prime Rib, Chicken
- Cordon Bleu,
- Blackened Pork Chop
- or Vegetarian Pasta.

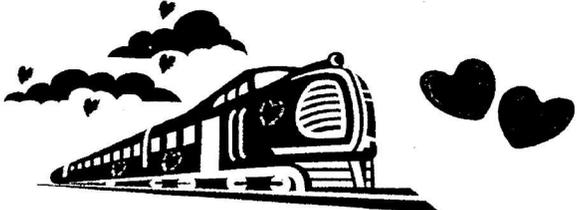
Served with

Seasonal Vegetables,
Bread & butter,
coffee or tea and
chef's choice
of
dessert

Invite the one you love and share a passionate adventure through the Heritage Valley, some of the world's most beautiful countryside. Join in the fun of one of our most popular Murder Mystery's, "The Love Train". Be on the lookout for Cupid as his arrow goes airborne...watch out or you could be next. Join in with the hilarity or relax and watch romance soar like Cupid's arrow. Singing, love, comedy and great food all add up to a wonderfully unforgettable evening.

\$89
per person
Includes tax

Reservations/
Information
805-524-2546 or
www.fwry.com



Train Rides



EASTER LUNCH TRAIN 2014

Sunday, April 27
Departs: 12:00 pm Returns: 3:00 pm
Adults: \$47* Youth 4-12: \$26* Child 2-3: \$22
Child under 2—Free on lap
*Includes Tax

Enjoy a scenic ride through the Heritage Valley where the fragrance of orange and lemon blossoms are delightful. Bring the family for lunch as we rail through some of the most beautiful countryside you'll ever see. The Easter Bunny will be visiting with treats for all.

| | |
|---|---|
| <i>Adult Lunch Menu</i> Black Forest Ham, Rice Pilaf, Vegetable Garden Salad, Bread & Butter, Dessert, Coffee or Tea | <i>Youth & Child Menu</i> Sliders (mini Hamburgers), Mac & Cheese, Fresh Fruit and Dessert, Tea or Water |
|---|---|



FILLMORE & WESTERN RAILWAY CO.

HOME OF "THE MOVIE TRAINS"

www.fwry.com (408) 633-1340

Mother's Day

Sunday, May 11, 2014

10:00 am to 5:00 pm

Throw Mama On the Train

No cooking, no dishes, no fuss!

Relax on a 2 1/2 hour scenic train ride through the beautiful Heritage Valley as you enjoy a wonderful Mother's Day Lunch. Let us do all the cooking and cleaning while you sit back and enjoy a wonderful meal.

Ticket Prices:

Adults: \$47

Youth (4-12): \$26

Child (2-3): \$22*

Infants under 2: Free on lap

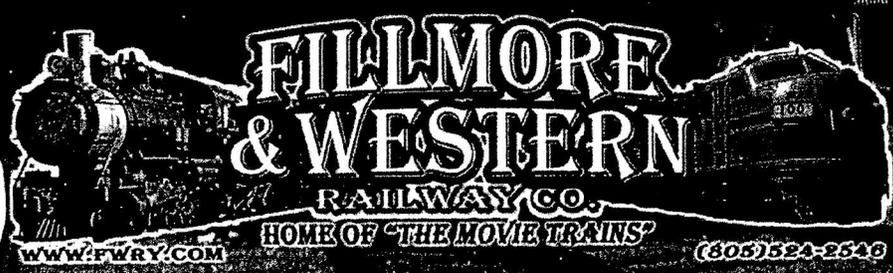
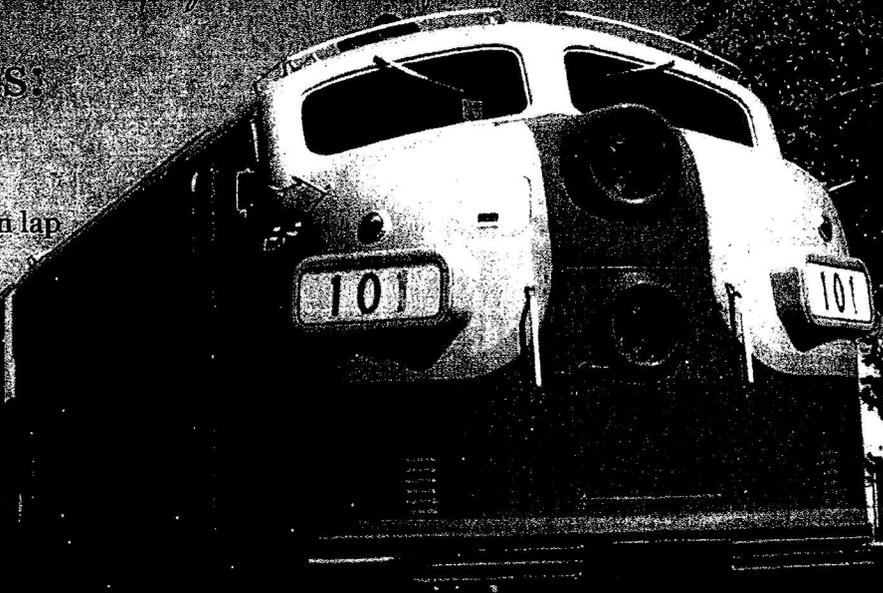
*Tax Included
Reservations Required

Lunch Menu:

Chicken Cordon Bleu,
Garden Salad, Rice Pilaf,
Seasonal Vegetable,
Bread & Butter,
Chef's Special Dessert,
Coffee or Tea.

Childs' menu:

Sliders (mini hamburgers)
Mac & Cheese, Fruit, juice
& dessert



WWW.FWRY.COM

(605)524-2510

California Honey Harvest Festival

June 14 & 15, 2014 9:00am-5:00pm
Central Park, downtown Fillmore

The 3rd annual California Honey Festival will be a fun filled learning experience. Travel by train to Bennett's Honey Farm between Fillmore and Piru. Take an up-close and personal, one-of-a-kind tour to learn about bees and witness how honey is processed.

See demonstrations by bee keepers along the train route as well as browsing the many craft, food and commercial vendors at the event. A variety of live musical entertainers all weekend. There will be a sanctioned Kansas City BBQ cooking contest both days



An Educational and tasty
experience for all ages.

TRAIN RIDE DEPARTURES:

10:00am 12:30pm & 3:00pm

Adults: \$20 Seniors & Youth 4-12: \$15 Child 2-3: \$10
Under 2 years free on lap



EXHIBIT 1

FILLMORE & WESTERN LUNCHEON TRAINS

Sunday, June 15, 2014

11:00am or 3:00pm

Treat Dad to a relaxing vintage train ride
while traveling through the scenic
"Heritage Valley". Feast on a
country-cooked BBQ, lunch the whole
family will enjoy.

Dad's King of the Day!

Adults \$49

Youth 4-12: \$26 Child 2-3: \$22

Child Under 2 Free on lap
(Does Not Occupy A Seat)

FILLMORE & WESTERN

RAILWAY CO.

HOME OF THE MOVIE TRAINS

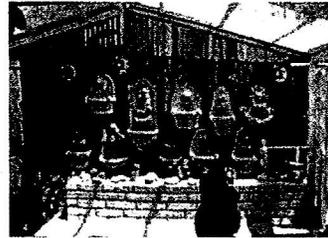
WWW.FWRY.COM

(805) 524-2546



Heritage Valley Tour Train 2014

- 11:00 am Arrive for check-in at Ticket Office
- 11:15 am Board Train in Central Park
- 11:30 pm Depart Fillmore Station
- 12:30 pm Arrive Santa Paula
- 12:35 pm Docent-led tours Oil, Art, Agri Museums
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- 2:45 pm Depart Loose Caboose
- 3:30 pm Arrive downtown Fillmore



Tours in 2014: Feb 26, Mar 27, May 7, June 4, Sept 18, Oct. 1, Oct 23, Nov 19, Dec 10
Advanced reservations required for all docent-guided group trips.

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Arrive a little early and tour Sandi Ward's Heritage Valley Gift Shop in an historic caboose and baggage car next to Fillmore City Hall. All aboard your vintage dining car at 11:15am where, once underway you will enjoy a full 3-course "Heritage Valley" lunch during the trip to downtown Santa Paula. Our special luncheon consists of a garden salad, orange glazed chicken breast, rice pilaf, vegetable, roll & butter and coffee, tea or soda. Docents will meet the train at the Santa Paula depot and guide your group on a walking tour to the California Oil Museum, then the Santa Paula Art Museum, and to the Ventura County Agriculture Museum, situated right next to the tracks in Railroad Plaza. Reboard the train and travel 10 minutes to the Loose Caboose Garden Center and Gift Emporium, where you will browse the variety of unique offerings. Visit the Gift Shop, a large selection of locally produced honey products from Bennett's Honey Farm, Garden art, koi ponds & supplies, fountains, pottery, fresh produce section, the UpsideDown Gardens, an aviary and a huge variety of plants. During the return trip to Fillmore relax as we serve you dessert. A minimum group of 40 people is required to book a date. If a smaller group or individuals would like to reserve seats on this train, dates already booked by larger groups are available upon request. Weekday minimum of 70 people required to run the train. **All Aboard for Fun!**

Adults and Seniors: \$49.00 per person/group rate, (25+ people) or \$54.00 per person/individuals.

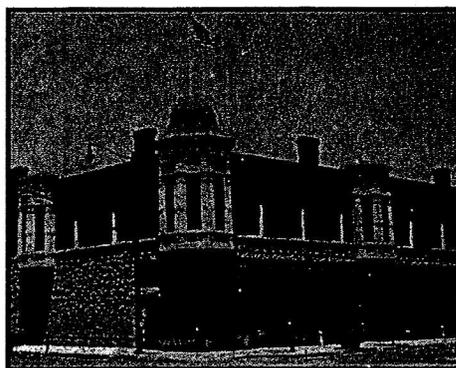
Options: Add a tour of the Fillmore Historical Museum before or after the train trip: \$5.00 per person

Add a tour of the Rancho Camulos Museum after the train trip: \$5.00 per person

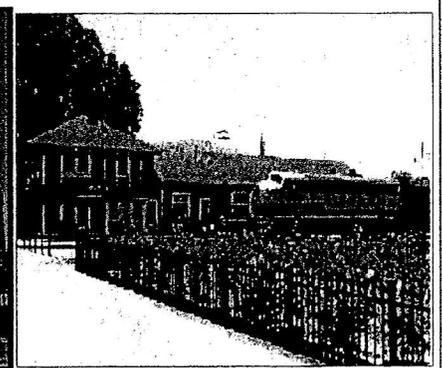
Santa Paula Art Museum



California Oil Museum



Santa Paula Depot



Reservations & Information

www.fwry.com

805-524-2546

Firecracker Train Friday, 4th of July

Boards: 6:00 pm Departs: 6:30 pm
Returns: After Fireworks (Approx 9:45 pm)

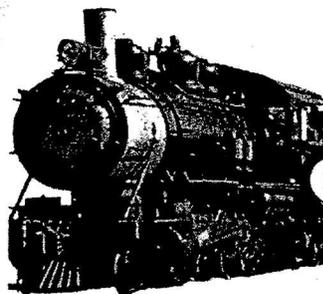
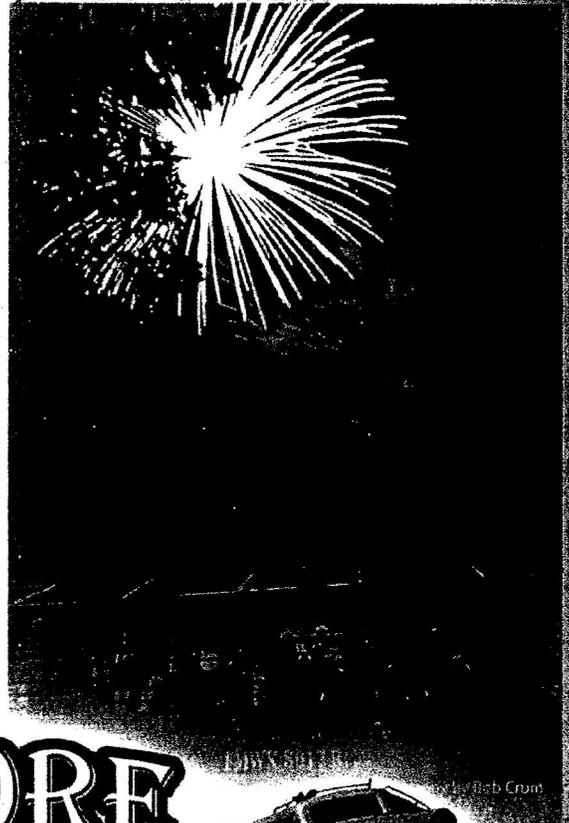
After a BBQ dinner and train ride through the beautiful Heritage Valley, enjoy the spectacular fireworks show produced by the City of Fillmore!

Dinner Menu

BBQ Tri-Tip & Chicken, Potato Salad, Chili Beans, Garlic Bread, Chef's Special Dessert Coffee or Tea

Adults: \$72 Youth 4-12: \$41 Child 2-3: \$22
Under 2— FREE on lap

Group Rate for 25+ people includes tax & gratuity:
Adults: \$69 Youth 4-12: \$40 Child 2-3: \$21



FILLMORE & WESTERN RAILWAY CO.



WWW.FWRY.COM

HOME OF "THE MOVIE TRAINS"

(805)524-2546

4th of July
One-Hour Daytime
Train Rides

Departures:
11:00am 1:00 pm & 3:00pm

Adults/Seniors: \$20

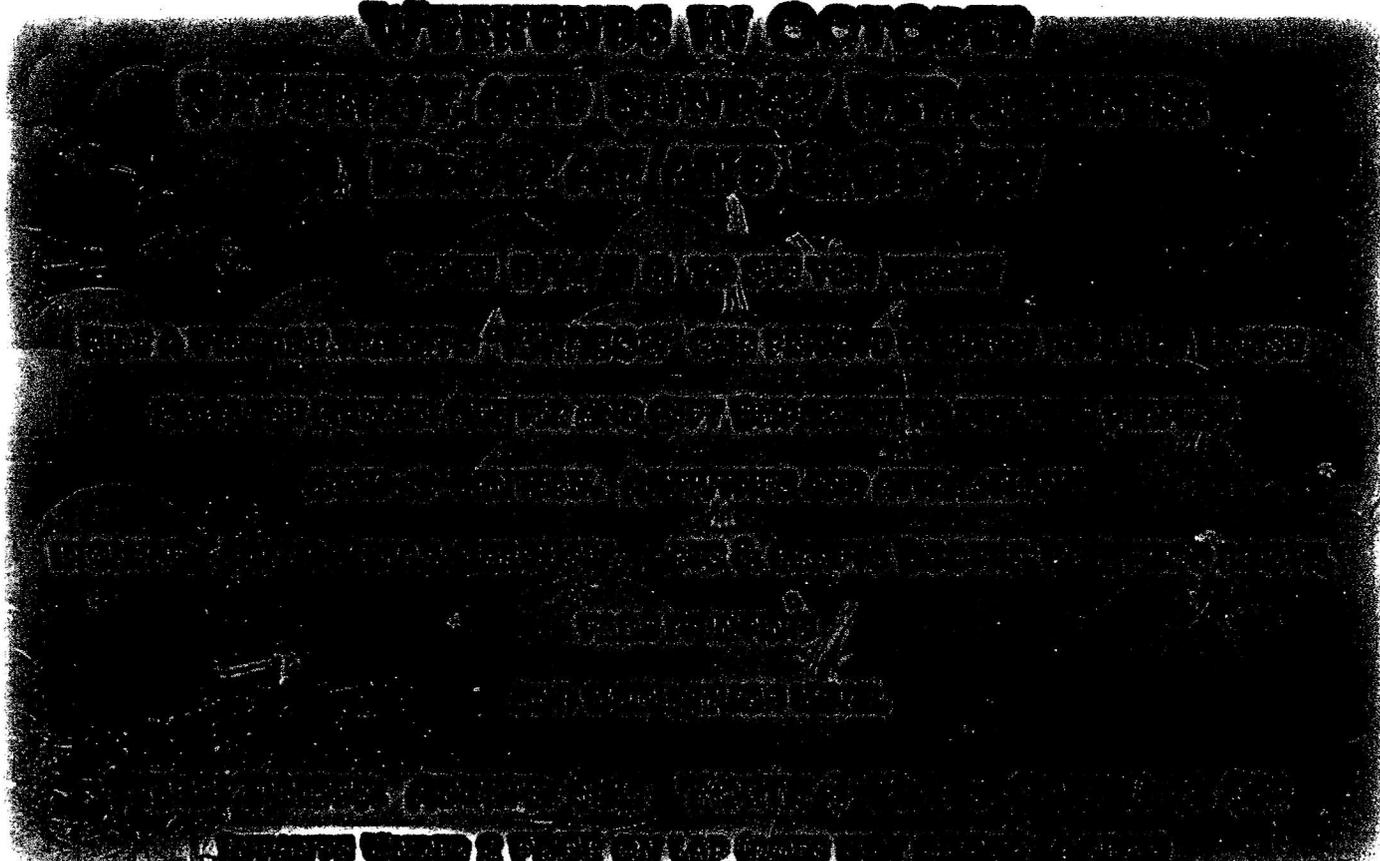
Youth 2-12: \$15

Infants under 2 Free on Lap

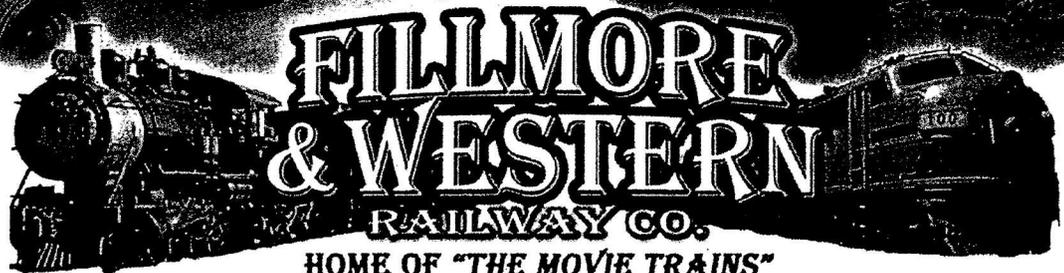
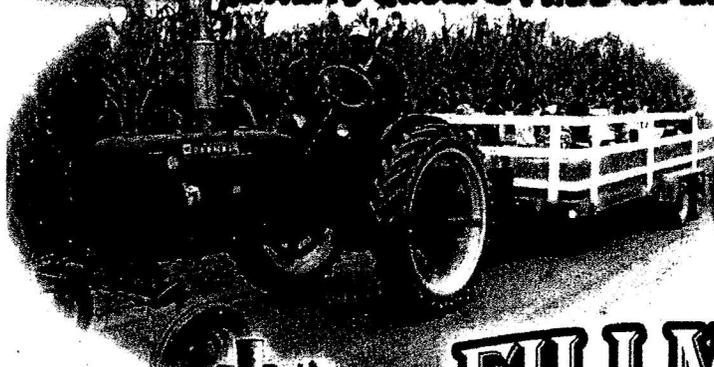
SESPE CREEK Car Show, Chili Cook-Off & Festival 9:00am-4:00pm

PUMPKIN LINER

WORKING IN COOPERATION



STARTING WHEN & PLACE ON THE RAILS



WWW.FWRY.COM

HOME OF "THE MOVIE TRAINS"

(805) 524-2546

In Search of... The

Headless Horseman

Family Dinner Train

OCTOBER 4, 11, 17, 25 & 26

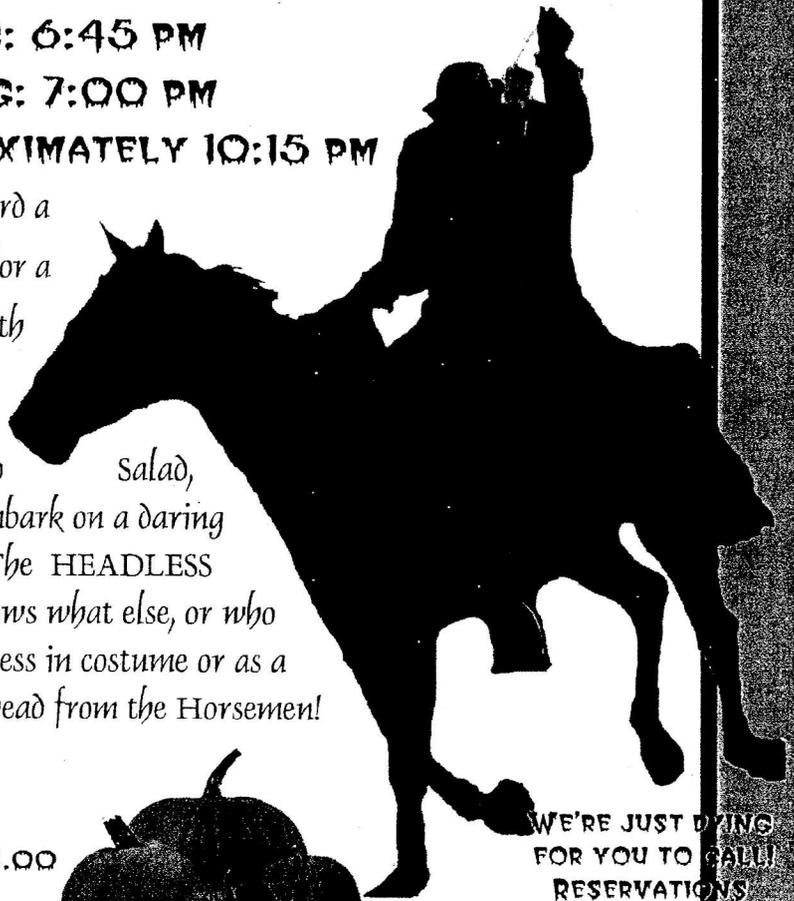
FRIGHTY, SATURDAY AND SUNDAY DEPARTURES:

BODIES BOARDING: 6:45 PM

DEARLY DEPARTING: 7:00 PM

DYING TO RETURN: APPROXIMATELY 10:15 PM

If you Dare .. Creep onboard a hauntingly vintage train for a spooktacular adventure, with "Ichabog" as your destination. Feast on BBQ Tri-tip and Chicken, Potato Salad, Bread and Beans. Then embark on a daring hayride and search for The HEADLESS HORSEMAN and who knows what else, or who else might be lurking ... Dress in costume or as a mere mortal. Protect your head from the Horsemen!



TICKET PRICE *

ADULTS: \$49.00 YOUTH(4-12) \$34.00
CHILDREN (2-3) \$26.00
UNDER 2 FREE ON LAP
*INCLUDES TAX

WE'RE JUST DYING FOR YOU TO CALL! RESERVATIONS REQUIRED LIMITED SEATING COSTUMES ENCOURAGED



FILLMORE & WESTERN

RAILWAY CO.

HOME OF "THE MOVIE TRAINS"

WWW.FWRY.COM

(805) 524-2546

2014

North Pole Express

*Family fun on a vintage train to celebrate
Christmas and the Holidays!*

>>>Nov 29 thru Dec 23<<<

On Dec 26>> Return Santa to the North Pole

Select Wednesday, Thursday, Friday, Saturday & Sunday

Departure Times From F&W Depot: 4:30PM, 6:00 PM & 7:30 PM

Train Rides return to Depot at 5:30PM, 7:00 PM & 8:30 PM

*Dress warm and remember to bring your camera to take pictures after the ride with Santa.
Vendors are on site so that you can purchase some unique gifts*



Adults: \$29

Youth 2-12: \$19

Under Age 2: FREE on lap

805-524-2546

www.fwry.com

Christmas Tree Holiday Train

Saturdays & Sundays Nov. 29 thru Dec. 21

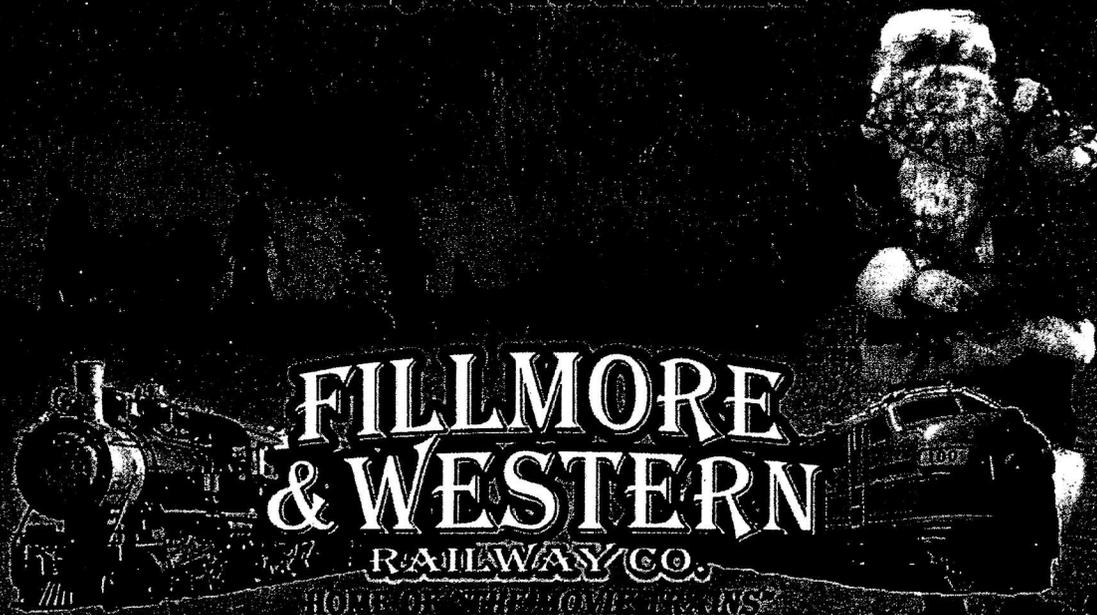
Christmas Tree Train - Departures: 10am & 2pm

On weekends from November 29 through December 21, you can bring the entire family and start or continue a Christmas tradition by taking the train to the Christmas Tree Farm to select and cut the perfect tree. If a tree is not on your list, take this holiday train ride with Santa to shop at Loose Caboose Garden Center and Gift Emporium. At Loose Caboose Garden Center and Gift Emporium you can choose from a variety of unique gifts and Christmas decor. Food and beverages (including beer & wine) will also be available onboard.

Santa Shopper Train - Departures: 12pm

On Monday, December 15, December 20 & 21, you will get to take the Loose Caboose Garden Center and Gift Emporium for all their holiday gifts, and when you are done, follow the path of the tree to the park to select and cut the perfect tree. The train will also have a special display of gifts and food and beverages.

Train #1 - 10:00 AM - 12:30 PM
Train #2 - 12:30 PM - 2:30 PM
Train #3 - 2:30 PM - 4:30 PM
Train #4 - 4:30 PM - 6:30 PM
Train #5 - 6:30 PM - 8:30 PM
Train #6 - 8:30 PM - 10:30 PM
Train #7 - 10:30 PM - 12:30 AM



**FILLMORE
& WESTERN**
RAILWAY CO.

HOPE OF THE HOMER RIVERS

WWW.FWRY.COM

(805) 524-2546

Dinner with Santa

Friday Nights December 12th & 19th
Departs: 5:30pm - Returns 7:30pm

Adult Menu \$ 47*

Your Choice of
Sliced Turkey or Ham,
Mashed Potatoes, Vegetables
and Dessert

Youth Menu \$ 26*

Childs portion turkey or ham,
mashed potatoes, vegetables and
dessert for ages 2 to 12

Under age 2

Free on Lap

**Does not occupy seat
no meal is included.**

Create a Family Holiday Tradition
Reservations Required

*Tax included

*Gather the family for a
holiday dinner hosted
by Santa Claus! Have
your wish lists ready to
present to Santa. Bring
your camera and take
photos with Santa
during the journey. All
Aboard to create a
memorable family
tradition. Make your
reservations early.*

HO, HO, HO

**FILLMORE
& WESTERN**
RAILWAY CO.

www.fwry.com (805)524-2546

VENTURA
SUPERIOR COURT
FILED

MAR 06 2014

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____, Deputy

Maria A. Acosta

1 Steven T. Mattas (SBN: 154247)
smattas@meyersnave.com
2 Jenny L. Riggs (SBN: 204417)
jriggs@meyersnave.com
3 MEYERS, NAVE, RIBACK, SILVER & WILSON
4 633 West Fifth Street, Suite 1700
Los Angeles, California 90071
5 Telephone: (213) 626-2906
Facsimile: (213) 626-0215

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

6 Attorneys for Plaintiff
7 VENTURA COUNTY TRANSPORTATION COMMISSION

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF VENTURA**

10
11 VENTURA COUNTY TRANSPORTATION
12 COMMISSION,

13 Plaintiff,

14 v.

15 FILLMORE & WESTERN RAILWAY, INC.,
a California Corporation; and DOES 1-10,
16 Inclusive,

17 Defendants.

Case No. 56-2014-00449769-CL-UD-VTA

**DECLARATION OF DARREN KETTLE
IN SUPPORT OF VENTURA COUNTY
TRANSPORTATION COMMISSION'S
COMPLAINT FOR UNLAWFUL
DETAINER**

Action Filed:

Trial Date:

18
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DECLARATION OF DARREN KETTLE IN SUPPORT OF VENTURA COUNTY TRANSPORTATION
COMMISSION'S COMPLAINT FOR UNLAWFUL DETAINER

1 **DECLARATION OF DARREN KETTLE**

2 I, Darren Kettle, declare as follows:

3 1. I am the current Executive Director for the Ventura County Transportation
4 Commission ("VCTC"). In that position, I am responsible for advancing VCTC's mission, which
5 is to improve the transportation services and options available to residents of Ventura County to
6 use in getting to work, school, shopping areas, and other essential services. VCTC is made up of
7 one elected official from each of the ten (10) cities in Ventura County, five (5) members of the
8 County Board of Supervisors and two (2) citizen appointees. VCTC performs its role through a
9 variety of means, including investing in transportation-related projects in Ventura County, and
10 managing federal and state transportation funds allocated to Ventura County. As part of my
11 responsibilities as the Executive Director of VCTC, I am aware that VCTC took responsibility for
12 the Santa Paula Branch Line, the rail line at issue in this dispute, in October 1995 and
13 subsequently, over a decade later, prepared a series of correspondence to the Fillmore & Western
14 Railway over the course of 2010 to 2013. The rail line at issue is the Santa Paula Branch Line,
15 which runs from the Montalvo section of Ventura to Rancho Camulos, near Piru.

16 2. I have personal knowledge of the facts set forth in this declaration, and if called to
17 testify as a witness, I would and could testify competently thereto. I make this declaration in
18 support of VCTC's Complaint for Unlawful Detainer against Fillmore & Western Railway, Inc.,
19 and the City of Fillmore. As the current Executive Director for the Ventura County
20 Transportation Commission, I understand that I qualify and am duly authorized to be a Custodian
21 of Records of certain official records of VCTC, as maintained by VCTC, as reproduced by our
22 archive department, including the official acts of VCTC and the records of the meetings of VCTC.
23 It is the regular practice of VCTC to receive, prepare or maintain such records as are attached to
24 this declaration. I declare and certify the authenticity of all the following records (below) as true
25 and complete copies of records received, maintained and stored in the regular course and scope of
26 business of VCTC and that they were prepared or kept by authorized personnel of VCTC business
27 operations as a regular practice at or near the time of the acts, conditions or events which they
28 intend to convey. I am familiar with the mode of preparation and/or receipt of the aforementioned

1 records. To the best of my knowledge, all of the following records referred to below were
2 prepared, compiled and maintained by personnel with knowledge of these matters of the above
3 named business, in the ordinary course of business, at or near the time of the acts, conditions or
4 events recorded:

5 3. Attached to this declaration as Ex. 1 is a true and correct copy of the lease VCTC
6 entered into with the Fillmore Redevelopment Agency on or about June 5, 2001. With the
7 dissolution of the Fillmore Redevelopment Agency years later, I understand the Fillmore
8 Successor Agency, through the City of Fillmore, assumed responsibility for the Fillmore Lease.

9 4. Attached to this declaration as Ex. 2 is a true and correct copy of the lease VCTC
10 entered into directly with Fillmore & Western Railway, Inc. on or about June 25, 2001 (the
11 "Direct Lease").

12 5. Attached to this declaration as Ex. 3 is a true and correct copy of the Sublease
13 Agreement Fillmore & Western Railway entered into with the Fillmore Redevelopment Agency
14 on or about July 1, 2001, kept on file with VCTC.

15 6. Attached to this declaration as Ex. 4 is a true and correct copy of a letter I authored,
16 dated May 14, 2013, to Mr. Rigo Landeros, City Manager of the City of Fillmore, providing six
17 month notice of termination of our ("without cause") Fillmore Lease to the City of Fillmore, as
18 Successor Agency to the Fillmore Redevelopment Agency.

19 7. Attached to this declaration as Ex. 5 is a true and correct copy of a letter dated May
20 31, 2013 that I eventually received that was purportedly sent from Tiffany Israel, I understand to
21 be counsel for the City of Fillmore as Successor Agency to the City of Fillmore Redevelopment
22 Agency, to Mr. David Wilkinson of Fillmore & Western Railway. The letter conveys to
23 Mr. Wilkinson that the Fillmore Sublease has been cancelled without cause, effective December 1,
24 2013.

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EXHIBIT 1

LEASE AGREEMENT

FOR THE "FILLMORE SEGMENT" OF THE SANTA PAULA BRANCH

Agreement made this 6 day of June, 2001, by and between the CITY OF FILLMORE REDEVELOPMENT AGENCY ("Fillmore"), a local government agency of the State of California, and the VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC"). This Agreement replaces a previous Agreement between the Fillmore and VCTC for service on the Fillmore Segment dated November 13, 1996.

WHEREAS, VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

WHEREAS, Fillmore desires to lease the segment of the line between milepost 414.45 at or near Santa Paula and milepost 435.07 at Rancho Camulos, ("Fillmore Segment") for public/tourist excursions, charter and dinner train operations, and for placement of information/directional signs; and

WHEREAS, Fillmore does not desire to be obligated to provide common carrier freight service on the Fillmore Segment;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into, the parties hereby agree:

1. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties hereto.

"Fillmore Segment" shall mean that portion of the Santa Paula Branch between milepost 414.45 at or near Santa Paula and milepost 435.07 at Rancho Camulos.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California; to milepost 435.07 at or near Rancho Camulos, California, all as shown on Exhibit A hereto.

"Lease Property" shall mean the Track, Track support Structures, building and the real property which comprises land lying within 15 feet of the centerline of any Track existing on the Fillmore segment, on the Effective Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future recreational trails, fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore or of Fillmore 's sublessee and subject to the rights of existing tenants in possession. Where the Santa Paula Branch crosses State Route 126, the "Lease Property" shall include land lying within 25 feet of centerline of Track for a distance of 100 feet from edge of pavement. Where tracks do not exist on the Effective Date, the "Lease Property" shall include land lying within 25 feet of historic centerline of Track.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment. Track work under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, and spot replacement of worn rails. Signal work under this item includes periodic inspections and tests per FRA/PUC requirements and repair/ replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video production and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions,

recreational services, and charter and dinner train operations and any promotional activities related thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavement, and drainage facilities.

"Gross Revenue" shall mean the total revenue collected by Fillmore or its sublessees in the form of fees, rents or any other basis of charges derived from projects using any part of the Lease Property for Still and Motion Picture Production and for Public/Tourist Excursions and shall not be reduced by any expenses incurred by Fillmore or any of its sublessees except for contract fees paid by Fillmore or any of its sublessees to a third party and reimbursement revenues received by Fillmore or its sublessees.

2. Purpose and Scope of Lease:

The purpose of the Lease is to permit Fillmore and/or its sublessees to use the Lease Property for Public/Tourist Excursion purposes, and for informational/directional signage, subject to reservations described in Section 9(c), as part of its efforts to further develop the local economy.

VCTC, for consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore, does lease and demise to Fillmore, subject to all matters of record and the rights of existing tenants in possession, and Fillmore does rent and accept from VCTC the Lease Property.

3. Rental Payments:

- a. Fillmore shall pay to VCTC as initial rental hereunder the sum of Six

Hundred and Seventy-Five Dollars (675.00) monthly, payable in advance on a quarterly basis within thirty (30) days of the beginning of each quarter. This initial rental rate shall be adjusted annually thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles – Long Beach – Anaheim, California) published by the United States Department of Labor, Bureau of Labor Statistics ("index"), which is published for the month of July, 2001 ("Beginning Index").

If the Index published for the month of July prior to the adjustment date ("Extension Index) has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. VCTC and Fillmore agree that the rental rate shown in Section 4(a) be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipt, fee per rider, or other appropriate measures. In the event VCTC and Fillmore are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provisions of Section 24. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 15(b).

c. Fillmore acknowledges and agrees that its obligation to pay rent hereunder and the rights of VCTC in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim or recoupment

('Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore against VCTC under this Agreement or otherwise.

4. Use of Premises:

a. Fillmore shall have the right to use the Lease Property for lawful Public/Tourist Train Excursion use defined herein, and any lawful placement of informational/directional signage, but not to remove the Track or Track Support Structures as defined herein.

b. Fillmore shall maintain at its sole expense the Track and Track Support Structures to such standards as required for its uses and in accordance with applicable regulations.

(1.) Fillmore shall be entitled to receive any State or Federal Funds designated for highway grade crossing signal maintenance on the Fillmore Segment.

c. In the event that specific Track and Track Support Structures are determined to need extensive refurbishment or replacement, beyond maintenance as defined in Section 1, VCTC shall be responsible for said refurbishment or replacement. Any and all refurbishment or replacement activities shall be undertaken at the sole discretion of VCTC as funds may become available. It is understood by the parties that VCTC shall seek state and/or federal funds to the greatest extent possible for such work.

5. Construction:

a. Permanent Improvements

Fillmore shall not have the right to construct any additions or betterments of a permanent nature on the Lease Property without specific written approval in advance by VCTC.

b. Temporary Improvements.

Fillmore shall have the right to construct any temporary improvements necessary to use the premises for the uses permitted herein, provided, however, said temporary improvements shall be timely removed upon cessation of their use.

c. Easements and Dedications.

The parties recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easement and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. VCTC will give Fillmore timely written notice of all such requests, but VCTC will continue to consider such requests, have sole authority to approve or reject proposals and execute and deliver such documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting such easements and dedications. No such easement or dedications, nor any construction in connection therewith, shall unreasonably interfere with the operations of Fillmore or its sub-lessees hereunder.

d. Title

Any parts installed, replacements made or additions improvements or alterations to the Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without cost or expense to VCTC.

However, Fillmore's fixtures, machinery and equipment placed or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore. If the removal of same causes material damage to property of VCTC, Fillmore shall pay the reasonable cost of repair.

Fillmore shall, within one hundred and eighty (180) days following expiration of the Lease Term, remove all of its property from the Leased Property.

6. Indemnification:

Fillmore agrees to investigate, release, defend, indemnify and hold VCTC harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

7. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore

This Agreement may not be assigned by Fillmore without the prior written consent of VCTC. In any event, no such assignment shall be valid unless there shall be delivered to VCTC in due form for recording within ten (10) days after the date of the assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument by the transferee expressly assuming all of Fillmore's obligations and defaults under this Agreement. Upon any assignment of this agreement conforming to the terms here-of, but not otherwise, the assignor shall be released from the performance of obligations on the part of Fillmore thereafter to be performed under this Agreement, except any obligation to hold and apply monies held by the assignor at the date of the assignment, the disposition whereof is governed by the terms of this Agreement, and except further any unperformed obligation which shall have matured prior to such assignment. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, but this shall not impair any remedy of VCTC because of Fillmore's having engaged in an act prohibited by the terms hereof.

b. Mortgage of Leasehold Interest.

Fillmore shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of VCTC.

c. Subletting by Fillmore

Fillmore shall have the right to sublet all or any part of the Lease Property for any permitted use under the terms of this Agreement but it may not sublease to any rail operator whose operation would be subject to regulatory control of any federal or state agency without the prior written consent of VCTC.

8. Limits on Use

a. During the term of this Agreement the Lease Property shall be used by Fillmore for the use specified in Section 4 above and for no other use or purpose. Fillmore shall not use nor permit any other person to use the Lease Property, or any part thereof, for any unlawful purposes. Fillmore shall at all times during said term conform to, and cause all persons using or occupying any part of the lease Property by invitation of, under or by right of Fillmore to comply with all public laws, ordinances, rules, orders and regulations from time to time applicable thereto and regardless of when they become or became effective, including without limitations, those relating to health, safety, noise, environmental protection, waste disposal, air and water quality, and shall furnish satisfactory evidence of such compliance upon request of VCTC. Fillmore shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law

(1) Fillmore covenants and agrees to release, defend, indemnify and save VCTC harmless from any liability, cost, expense, fines, penalties, damages, or surcharges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore or

any person upon the Lease Property by license or invitation of Fillmore or holding or occupying the same or any part thereof under or by right of Fillmore, regardless of whether such liability, cost, expense, fine, penalty, damages, or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, VCTC shall release, defend, indemnify, and save Fillmore harmless from all such matters regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same is caused or occasioned by the neglect, omission or willful act of VCTC or any person (excepting Fillmore and persons upon the Lease Property by license or invitation of Fillmore) upon the Lease Property by license or invitation of VCTC.

(3) Fillmore shall have the right to contest by appropriate legal proceedings, without cost or expense to VCTC, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting VCTC to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore, upon commencing such contest shall furnish to VCTC a document guaranteeing that VCTC and VCTC's interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

9. Conditions and Covenants:

All the provisions of this Agreement and any Riders which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

a. Qualifications on Use

This Agreement is subject to the rights of existing tenants in

possession. Fillmore accepts the Lease Property (including VCTC-owned Improvements) in their present condition without any representation or warranty by VCTC as to the condition of such Lease Property or Improvements, except as may be set forth in Exhibit "A", and VCTC shall not be responsible for any defect or change of conditions in the Lease Property or such Improvements, any damage occurring thereto or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. WARRANTIES AND REPRESENTATIONS.

FILLMORE UNDERSTANDS AND AGREES THAT VCTC MAKES NO WARRANTY NOR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES. FILLMORE SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF VCTC HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST VCTC.

c. VCTC Reservations

VCTC reserves for itself and those to whom it grants such right, right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such rights under this Agreement; 2) construct, maintain and operate any existing and new additional recreational trail facilities; 3) operate freight and regular passenger rail services on the Fillmore Segment and 4) conduct still and motion picture filming, including television filming, commercials and other still and motion television promotional activities.

d. Right of Entry

VCTC or VCTC's agents, representatives or employees shall

have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions in this Agreement are being complied with, maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens

Fillmore agrees and covenants to hold VCTC and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore or Fillmore's subtenants. In the event of the filing of any such lien, Fillmore shall cause such lien to be released within five (5) days after VCTC's written notice to do so. Fillmore shall indemnify and defend VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC as a result of any such lien.

10. Insurance:

While this Agreement is in effect, Fillmore shall furnish evidence satisfactory to VCTC that both VCTC and Fillmore are named as additional insureds for third party liability claims by Fillmore's sublessee, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore shall furnish VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automobile liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore as additional insureds with respect to the operations of Fillmore's sublessees;
- (3) cover the contractual liability assumed by Fillmore's sublessees under this Lease;

as may be reasonably possible to their condition before taking; provided, however, that if the Temporary Taking extends beyond the expiration of the Agreement Term, the award shall be apportioned between VCTC and Fillmore as of the date of expiration, after VCTC shall have received the entire portion of the award attributable to physical damage to the Lease Property and to their condition before Temporary Taking.

12. Late Payments:

Fillmore shall pay VCTC an administrative charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

13. Default:

Fillmore shall be in default under this Agreement (1) if Fillmore fails to pay the Base Rent when due and such failure continues for a period of more than fifteen (15) days, (2) if Fillmore fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from VCTC (or to commence and diligently pursue the cure of such breach if the breach cannot be cured within thirty (30) days; (3) if Fillmore is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extrajudicial means or if any action or proceeding for debtor relief of Fillmore is commenced by Fillmore.

If Fillmore fails to cure a default within thirty (30) days notice from VCTC to do so Fillmore does not present a restoration plan within forty-five (45) days, VCTC shall have the right, without further notice and in addition to any other remedies VCTC may have in law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property.

14. Nonwaiver:

VCTC's failure to enforce or exercise its rights under any term, condition

or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. Acceptance of rent shall be deemed a waiver of VCTC's rights to terminate this Agreement as provided herein, regardless of when accepted.

15. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event which occurred prior to such termination or expiration. If Fillmore fails to surrender possession of the Lease Property upon termination of this Agreement, VCTC shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore and any person or entity claiming through Fillmore from the Lease Property.

b. Notice of Termination

Either party may terminate this Agreement, without cause, upon a six (6) month written notice of termination given to the other party per Section 21 below.

c. Surrender of Premises

Upon the expiration or termination of the Lease Term, Fillmore, without further notice, shall deliver up to VCTC the possession of the Lease Property. Upon the failure or refusal of Fillmore to remove from the Lease Property, as provided in Section 5d., all personal property owned by Fillmore, (a) said personal property shall there-upon, at the option of VCTC become the sole property of VCTC, or (b) if VCTC so elects it may remove from the Lease Property personal property owned by Fillmore, and VCTC may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore took possession, all at the expense of Fillmore, which expense Fillmore agrees to pay upon demand, or (c) VCTC at its sole option may elect that this Agreement with all terms contained herein, including payment of Base Rental for failure to vacate on time may remain in effect until Fillmore's personal property is removed and the Lease Property is restored to VCTC. In the event of such failure or refusal of Fillmore to surrender possession of the Lease Property, VCTC shall have the right to re-enter

(4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC; and

(5) provide for at least ten (10) days' notice to VCTC prior to any other cancellation or modification of coverage.

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against VCTC to the extent permitted by law.

11. Condemnation:

a. Total Taking

In the event of a Taking, this Agreement shall terminate on the earlier of vesting, of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC. Under no circumstances shall Fillmore be entitled to any "bonus value" for any remaining unexpired Term of this Agreement.

If the values of the respective interests of VCTC and Fillmore have been separately determined in the proceeding for the Taking in accordance with this Section 11a., then the values so determined shall be conclusive upon VCTC and Fillmore. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Agreement.

b. Temporary Taking:

If all or part of the Lease Property or of Fillmore's interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore is not prevented from doing so by faking authority. In the event of a Temporary Taking, Fillmore shall receive the entire award and shall, at its sole expense, restore the Lease Property as nearly

upon the Lease Property and remove Fillmore, or any person, firm or corporation claiming by, through or under Fillmore, therefrom.

d. Sale to Other Parties:

~~If during the term of lease, or any extension or continuation~~ thereof, VCTC should elect to sell all or any part of the Lease Property to a private party, Fillmore shall have the right of first refusal to meet any bona fide offer of sale on the same or (to VCTC) more advantageous terms and conditions as contained in such offer and, on failure to meet such bona fide offer within sixty (60) days after notice thereof from VCTC, VCTC shall be free to sell the Lease Property or portion thereof to such private party third person in accordance with the terms and conditions of this offer provided, however, Fillmore's right of first refusal shall run with the property. Both VCTC and Fillmore are required to continue to fulfill any obligations generated under this Agreement prior to the closing of any sale to Fillmore. If sale of the property by VCTC is to a public agency, then Fillmore agrees that VCTC may assign this Agreement to such public agency.

16. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of judgment and costs.

17. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 7 and 8, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

18. Warranties of Fillmore:

Fillmore warrants, at the Effective Date that:

- a. It is a local government agency validly existing and organized under the laws of the State of California;
- b. This Agreement will not be rendered voidable nor unenforceable by reason of any provision of, or lack of consent under, any indenture, agreement or instrument as to which Fillmore is bound as a party or bound by any ordinance of Fillmore.
- c. The signatory hereof on behalf of Fillmore has been duly and fully authorized to execute this Agreement on behalf of Fillmore.

19. Warranties of VCTC:

VCTC warrants at the Effective Date that:

- a. It has full power to lease the Lease Property to Fillmore

20. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director

Ventura County Transportation Commission

950 County Square Drive, Suite 207
Ventura , CA 93003

Fillmore:

City Manager
City of Fillmore
250 Central Avenue
Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party.

22. Severability

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

23. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

24. Dispute Resolution:

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to mediation. VCTC and Fillmore agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute

between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until after the earlier of (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the mediator (as hereinafter defined).

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the mediator, with each party bearing its own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator

shall render his decision, in writing, to all parties within forty-five (45) days of conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"VCTC:"

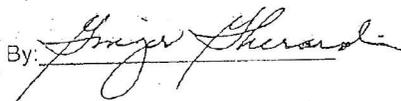
Ventura County

Transportation Commission

"Fillmore:"

City of Fillmore

Redevelopment Agency

By: 

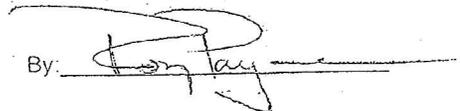
By: 

EXHIBIT 2

LEASE AGREEMENT

FOR RAIL SERVICES ON THE SANTA PAULA BRANCH

Agreement made this 25th day of June, 2001, by and between the FILLMORE & WESTERN RAILWAY COMPANY ("Fillmore & Western"), a California corporation, and the VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC").

WHEREAS, VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

WHEREAS, Fillmore & Western desires to lease the segment of the line between milepost 405.31 at or near Montgomery Avenue in the City of San Buenaventura and 435.07 at Rancho Camulos, for still and motion picture production purposes, television filming, commercials and other still and motion television promotional activities, video productions and any other still or motion related media event, freight service, mail and express service, and for public/tourist excursions, charter and dinner train operations; and

WHEREAS, Fillmore & Western does not desire to be obligated to provide common carrier freight service on the Fillmore & Western Segment;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein and other good and valuable consideration, receipt of which is acknowledged by the parties, the parties hereby agree:

1. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties hereto.

"Freight Service" shall mean the movement of bulk commodities (such as coal and chemicals), automobiles or raw materials traditionally hauled by rail carriers.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California, all as shown on Exhibit A hereto.

"Lease Property" shall mean the Track, Track support Structures, buildings and the real property which comprises land lying within 15 feet of the centerline of any Track existing on the Santa Paula Branch Line between milepost 405.31 and milepost 435.07, on the Effective Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future recreational trails, fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore & Western or of Fillmore & Western's sublessee and subject to the rights of existing tenants in possession.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Mail and Express Service" shall mean premium rail transportation service at premium rates -- expedited, regularly scheduled train service at prices which are generally higher than freight service -- that is provided as an adjunct to Amtrak's passenger service.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment for Fillmore & Western's uses and in accordance with applicable regulations. "Track work" under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, spot replacement of worn rails and weed abatement. "Signal work" under this item includes periodic inspections and tests per FRA/PUC requirements and repair/ replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture

production, television filming, commercials and other still and motion television promotional activities, video production and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions, recreational and dinner train operations and any promotional activities relate thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs, complete bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavement, and drainage facilities.

"Gross Revenue" shall mean the total revenue collected by Fillmore & Western or its sublessees in the form of fees, rents or any other basis of charges derived from projects using any part of the Lease Property for Still and Motion Picture Production and for Public/Tourist Excursions and shall not be reduced by any expenses incurred by Fillmore & Western or any or its sublessees except for contract fees paid by Fillmore & Western or any or its sublessees to a third party and reimbursement revenues received by Fillmore & Western or its sublessees.

2. Purpose and Scope of Lease:

The purpose of the Lease is to permit Fillmore & Western and/or its sublessees to use the Lease Property and Santa Paula Branch for Still and Motion Picture Production purposes (including television and video productions), Public/Tourist Excursion purposes (including charter and dinner train operations), freight services, and mail and express service, subject to reservations described in Section 9C, as part of its efforts to further develop the local economy. The purposes outlined in this article shall be limited to specific segments of track as follows:

- Still and Motion Picture Productions – milepost 405.31 to milepost 435.07
- Public/Tourist Excursions – milepost 403.35 to milepost 414.45

- Freight Services – milepost 414.95 to milepost 435.07
- Mail and Express Service – milepost 403.35 to milepost 435.07

VCTC, for consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore & Western, does lease and demise the Lease Property (as herein defined) to Fillmore & Western, subject to all matters of record and the rights of existing tenants in possession, and Fillmore & Western does rent and accept the Lease Property from VCTC.

3. Rental Payments:

a. Fillmore & Western shall pay to VCTC as initial rental hereunder the sum of Six Hundred Dollars (\$600.00) monthly. Fillmore & Western shall also pay as Movie Rental to VCTC a five percent (5%) fee for each day of Still and Motion Picture Production use of the Lease Property. Fillmore & Western shall pay Base Rental and Movie Rental to VCTC within fifteen (15) days of the end of each month including with payment a statement detailing the number of days of Still and Motion Picture Production during the period. Timely payment of Base Rental and Movie Rental is of the essence; VCTC may levee a one and one-half percent (1 1/2%) late fee on Fillmore & Western for each thirty (30) days that rental payments and production statements are past due.

This initial rental rate shall be adjusted annually thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles – Long Beach – Anaheim, California, published by the United States Department of Labor, Bureau of Labor Statistics ("index"), which is published for the month of July, 2001 ("Beginning Index").

If the Index published for the month of July prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statics. If the Index is discontinued or revised during the term, such other government index computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. VCTC and Fillmore & Western agree that the rental rate shown in Section 3a be reviewed , and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipt, fee per rider, or other appropriate measures. In the event VCTC and Fillmore & Western are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provisions of Section 24. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 15(b).

c. Fillmore & Western acknowledges and agrees that its obligation to pay rent hereunder and the rights of VCTC in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim or recoupment ("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore & Western against VCTC under this Agreement or otherwise.

4. Use of Premises:

a. Fillmore & Western shall have the right to use the Lease Property for any lawful Still and Motion Picture Purposes (including television and video productions), any lawful Public/Tourist Train Excursion use defined herein, freight services, and mail and express services, but not to remove "Track or Track Support Structures."

b. Fillmore & Western shall maintain the Track and Track Support

Structures from milepost 405.31 to milepost 435.07 to such standards as required for its uses and in accordance with applicable regulations.

(1.) Fillmore & Western shall be entitled to receive, as part of its maintenance allowance as defined below, any State or Federal Funds designated for highway grade crossing signal maintenance on the Lease Property.

(2.) Fillmore & Western shall receive a maintenance allowance in the lesser amount of One Hundred Seventy Thousand Dollars (\$170,000) or the total of its grade crossing signal maintenance funds and the annual income derived by VCTC from its property leases at the time of the Effective Date of this Agreement, excepting the revenues derived by VCTC from Fillmore & Western through this Agreement

c. In the event that specific Track and Track Support Structures are determined to need extensive replacement, beyond maintenance as defined in Section 1, VCTC shall be responsible for said replacement. Any and all replacement activities shall be undertaken at the sole discretion of VCTC as funds may become available. It is understood by the parties that VCTC shall seek state and/or federal funds to the greatest extent possible for such work.

5. Construction:

a. Permanent Improvements

Fillmore & Western shall not have the right to construct any additions or improvements of a permanent nature on the Lease Property without prior specific written approval in advance by VCTC. At such time VCTC has authorized construction of any additions or improvements, such construction shall be done in a good and workmanlike fashion. As such additions or improvements are constructed, Fillmore & Western shall be responsible for maintaining them at a level adequate to support their reasonable use for their expected useful life.

b. Temporary Improvements.

Fillmore & Western shall have the right to construct any temporary improvements necessary to use the premises for the uses permitted herein, provided, however, said temporary improvements shall be timely removed upon cessation of their use. In the event

that such improvements are not timely removed, VCTC shall have the right, in its discretion, after written notice to Fillmore & Western, to remove such improvements and Fillmore & Western shall be obligated to reimburse VCTC for all costs incurred by VCTC in such removal. In any event, temporary improvements shall not impede vehicular or pedestrian crossings at any public street or other legal public or private crossing without written authorization from VCTC and any applicable permitting authority.

c. Easements and Dedications.

The parties recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easement and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. VCTC will give Fillmore & Western timely written notice of all such requests, provided, however, that VCTC shall have the sole discretion to consider such requests, to approve or reject proposals and execute and deliver such documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting such easements and dedications. No such easement or dedications, nor any construction in connection therewith, shall unreasonably interfere with the operations of Fillmore & Western or its sub-lessees hereunder.

d. Title

Any parts installed, replacements made or additions, improvements or alterations to the Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without cost or expense to VCTC.

However, Fillmore & Western's fixtures, machinery and equipment placed or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore & Western. If the removal of same causes material damage to property of VCTC, Fillmore & Western shall pay the reasonable cost of repair.

Fillmore & Western shall, within one hundred and eighty (180) days following expiration of the Lease Term, remove all of its property from the Leased Property.

6. Indemnification:

Fillmore & Western agrees to investigate, release, defend, indemnify and hold VCTC harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC may incur, sustain or to which VCTC may be subjected on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

7. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore & Western

This Agreement may not be assigned by Fillmore & Western without the prior written consent of VCTC. In any event, no such assignment shall be valid unless there shall be delivered to VCTC in due form for recording within ten (10) days after the date of the assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument executed by the assignee expressly assuming all of Fillmore & Western's duties, obligations and defaults under this Agreement. Upon any assignment of this agreement conforming to the terms hereof, but not otherwise, the Fillmore & Western shall be released from the performance of obligations thereafter to be performed by it pursuant to this Agreement, except any obligation to hold and apply monies held by the Fillmore & Western at the date of the assignment, the disposition whereof is governed by the terms of this Agreement, and except further any unperformed obligation which shall have matured prior to such assignment. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is

void, and VCTC shall have available to it all remedies set forth in this Agreement as well as any other remedy at law or in equity.

b. Mortgage of Leasehold Interest.

Fillmore & Western shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of VCTC.

c. Subletting by Fillmore & Western

Fillmore & Western shall not have the right to sublet all or any part of the Lease Property for any permitted use under the terms of this Agreement without the prior written consent of VCTC.

8. Limits on Use

a. During the Lease Term, the Lease Property shall be used by Fillmore & Western for the use specified in Section 4 above and for no other use or purpose. Fillmore & Western shall not use nor permit any other person to use the Lease Property, or any part thereof, in contravention of the terms of this Agreement or for any unlawful purposes. Fillmore & Western shall at all times during the Lease Term conform to, and cause all persons using or occupying any part of the Lease Property by invitation of, under or by right of Fillmore & Western to comply with all public laws, ordinances, rules, orders and regulations from time to time applicable thereto and regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, air and water quality, and shall furnish satisfactory evidence of such compliance upon request of VCTC. Fillmore & Western shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law

(1) Fillmore & Western covenants and agrees to release, defend, indemnify and save VCTC harmless from any liability, cost, expense, fines, penalties, damages, or surcharges imposed for any violation of any and all laws, ordinances, rules, orders and

regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore & Western or any person upon the Lease Property by license or invitation of Fillmore & Western or holding or occupying the same or any part thereof under or by right of Fillmore & Western, regardless of whether such liability, cost, expense, fine, penalty, damages, or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, VCTC shall release, defend, indemnify, and save Fillmore & Western harmless from all such matters regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed before, during or after the expiration of this Agreement, provided the act giving rise to same is caused or occasioned by the neglect, omission or willful act of VCTC or any person (excepting Fillmore & Western and persons upon the Lease Property by license or invitation of Fillmore & Western) upon the Lease Property by license or invitation of VCTC.

(3) Fillmore & Western shall have the right to contest by appropriate legal proceedings, without cost or expense to VCTC, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting VCTC to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore & Western, upon commencing such contest shall furnish to VCTC a document guaranteeing that VCTC and VCTC's interest in the Lease Property shall be released, defended and held harmless from any penalty, damage, charge or claim resulting from such contest.

9. Conditions and Covenants:

All the provisions of this Agreement and any Riders or Amendments which

are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

a. Qualifications on Use

This Agreement is subject to the rights of existing tenants in possession. Fillmore & Western accepts the Lease Property (including VCTC-owned Improvements) in their present condition without any representation or warranty by VCTC as to the condition of such Lease Property or Improvements, and VCTC shall not be responsible for any defect or change of conditions in the Lease Property or such Improvements, any damage occurring thereto or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. WARRANTIES AND REPRESENTATIONS.

FILLMORE & WESTERN UNDERSTANDS AND AGREES THAT VCTC MAKES NO WARRANTY NOR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES. FILLMORE & WESTERN SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF VCTC HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST VCTC.

c. VCTC Reservations

VCTC reserves for itself and those to whom it grants such right, the right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such rights under this Agreement does not interfere with the reasonable use of the

Lease Property by Fillmore & Western as permitted herein; 2) construct, maintain and operate any existing and new additional recreational trail facilities; and 3) operate freight and regular passenger rail services.

d. Right of Entry

VCTC or VCTC's agents, representatives or employees shall have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions in this Agreement are being complied with, maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens

Fillmore & Western agrees and covenants to defend, indemnify and hold VCTC and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore & Western or Fillmore & Western's subtenants. In the event of the filing of any such lien, Fillmore & Western shall cause such lien to be released within five (5) days after VCTC's written notice to do so. Fillmore & Western shall indemnify and defend VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC as a result of any such lien.

10. Insurance:

While this Agreement is in effect, Fillmore & Western shall furnish evidence satisfactory to VCTC that VCTC is named as an additional insured, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western shall furnish VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automobile liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore & Western as additional insureds with respect to the operations of Fillmore & Western's sublessees;
- (3) cover the contractual liability assumed by Fillmore & Western's sublessees under this Lease;
- (4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC; and
- (5) provide for at least ten (10) days' notice to VCTC prior to any other cancellation or modification of coverage.

Federal Employer's Liability Act or Workers Compensation insurance, as the case may be, shall cover all persons employed by Fillmore & Western or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against VCTC to the extent permitted by law.

11. Condemnation:

a. Total Taking

In the event of a Taking, this Agreement shall terminate on the earlier of vesting, of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC. Under no circumstances shall Fillmore & Western be entitled to any "bonus value" for any remaining unexpired Term of this Agreement.

If the values of the respective interests of VCTC and Fillmore & Western have been separately determined in the proceeding for the Taking in accordance with this Section 11a., then the values so determined shall be conclusive upon VCTC and Fillmore & Western. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Agreement.

b. Temporary Taking:

If all or part of the Lease Property or of Fillmore & Western's Interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore & Western shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore & Western is not prevented from doing so by taking authority. In the event of a Temporary Taking, Fillmore & Western shall receive the entire award and shall, at its sole expense, restore the Lease Property as nearly as may be reasonably possible to their condition before taking; provided, however, that if the Temporary Taking extends beyond the expiration of the Agreement Term, the award shall be apportioned between VCTC and Fillmore & Western as of the date of expiration, after VCTC shall have received the entire portion of the award necessary to repair and restore physical damage to the Lease Property and return it to its condition before the Temporary Taking.

12. Late Payments:

Fillmore & Western shall pay VCTC an administrative charge of one and One-half percent (1-1/2%) per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

13. Default:

Fillmore & Western shall be in default under this Agreement (1) if Fillmore & Western fails to pay the Base Rent and Movie Rent when due and such failure continues for a period of more than fifteen (15) days, (2) if Fillmore & Western fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from VCTC or to commence and diligently pursue the cure of such breach if the breach cannot be cured within thirty (30) days; (3) if Fillmore & Western is adjudged bankrupt or becomes insolvent or seeks general debtor

relief by extrajudicial means or if any action or proceeding for debtor relief of Fillmore & Western is commenced by Fillmore & Western.

If Fillmore & Western fails to cure a default within thirty (30) days notice from VCTC to do so and Fillmore & Western does not present a restoration plan within forty-five (45) days of such notice, VCTC shall have the right, without further notice and in addition to any other remedies VCTC may have in law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property and Fillmore & Western shall be obligated to reimburse VCTC for all expenses incurred by VCTC in retaking possession, including without limitation, repairs and restoration of the Lease Property to the condition it was at the execution of this Agreement and attorneys fees and costs.

14. Nonwaiver:

VCTC's failure to enforce or exercise its rights under any term, condition or covenant of this Agreement shall not be construed as a waiver of the breach of any other or further rights or term, covenant or condition of the same or other nature. Acceptance of rent shall be deemed a waiver of VCTC's rights to terminate this Agreement as provided herein, regardless of when accepted.

15. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from its obligations regarding an event which occurred prior to such termination or expiration. If Fillmore & Western fails to surrender possession of the Lease Property upon termination of this Agreement, VCTC shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore & Western and any person or entity claiming through Fillmore & Western from the Lease Property

b. Notice of Termination

Either party may terminate this Agreement, with cause, upon a six (6) month written notice of termination given to the other party per Section 21 below.

c. Surrender of Premises

Upon the expiration or termination of the Lease Term, Fillmore & Western, without further notice, shall deliver up to VCTC the possession of the Lease Property. Upon the failure or refusal of Fillmore & Western to remove from the Lease Property, as provided in Section 5d., all personal property owned by Fillmore & Western, (a) said personal property shall thereupon, at the option of VCTC become the sole property of VCTC, or (b) if VCTC so elects it may remove from the Lease Property personal property owned by Fillmore & Western, and VCTC may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western took possession, all at the expense of Fillmore & Western, which expense Fillmore & Western agrees to pay upon demand, or (c) VCTC at its sole option may elect that this Agreement with all terms contained herein, including payment of Base Rental for failure to vacate on time may remain in effect until Fillmore & Western's personal property is removed and the Lease Property is restored to VCTC. In the event of such failure or refusal of Fillmore & Western to surrender possession of the Lease Property, VCTC shall have the right to re-enter upon the Lease Property and remove Fillmore & Western, or any person, firm or corporation claiming by, through or under Fillmore & Western, therefrom.

16. Attorney's Fees:

If either party takes any steps or brings an action to compel performance or to recover for breach of any term of this Agreement, including without limitation mediation or arbitration, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of any judgment and all costs.

17. Entire Agreement:

The contents of this Agreement are the entire agreement between the

parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 7 and 8, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

18. Warranties of Fillmore & Western:

Fillmore & Western warrants, at the Effective Date that:

- a. It is a California Corporation validly existing and organized under the laws of the State of California;
- b. This Agreement will not be rendered voidable nor unenforceable by reason of any provision of, or lack of consent under, any indenture, agreement or instrument to which Fillmore & Western is bound as a party or bound by any ordinance.
- c. The signatory hereof on behalf of Fillmore & Western has been duly and fully authorized to execute this Agreement on behalf of Fillmore & Western.

19. Warranties of VCTC:

VCTC warrants at the Effective Date it has full power to lease the Lease Property to Fillmore & Western

20. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director

Ventura County Transportation Commission

950 County Square Drive, Suite 207

Ventura , CA 93003

Fillmore & Western:

David Wilkinson, President

Fillmore & Western

351 Santa Clara Avenue

Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party. Notices given pursuant to this Agreement shall be deemed received at the time of delivery if delivered and on the fifth (5th) day after the date postmarked if sent by the United States mail.

22. Severability

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

23. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

24. Dispute Resolution:

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to non-binding mediation. VCTC and Fillmore & Western agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until after the earlier of (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the mediator (as hereinafter defined).

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the mediator, with each party bearing it's own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take

testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator shall render his decision, in writing, to all parties within forty-five (45) days of conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

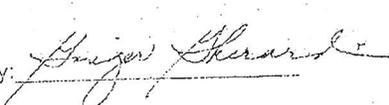
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"VCTC:"

Ventura County
Transportation Commission

"Fillmore & Western:"

Fillmore & Western Railway Company

By: 

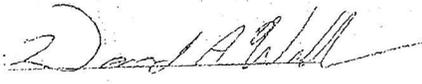
By: 

EXHIBIT 3

SUB-LEASE AGREEMENT FOR THE SANTA PAULA BRANCH

This Agreement is made this 1st day of July, 2001, by and between the CITY OF FILLMORE REDEVELOPMENT AGENCY ("Fillmore"), a local government agency of the State of California, and FILLMORE & WESTERN RAILWAY COMPANY, a California corporation, in contemplation of the following facts:

A. The Ventura County Transportation Commission ("VCTC") owns a line of railroad subject to the Interstate Commerce Act, from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

B. Fillmore has, executed a certain "Lease Agreement for the Fillmore Segment of the Santa Paula Branch" with the Ventura County Transportation Commission ("VCTC") for the use of a portion of a line of railroad owned by VCTC and subject to the Interstate Commerce Act, from milepost 414.45 at or near 8th Street in Santa Paula, California, to milepost 435.07 at or near Rancho Camulos, ("Fillmore Segment");

C. Fillmore has leased the Fillmore Segment from VCTC for any lawful Public/Tourist Train Excursions;

D. Fillmore desires to afford the use of the Fillmore Segment to Fillmore & Western Railway Co. for the same purposes and upon substantially the same terms and conditions as oblige Fillmore under the said Lease Agreement;

E. This Agreement replaces a previous Agreement between Fillmore and the Fillmore & Western Railway Company dated November 13, 1996.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into, the parties hereby agree:

1. General Provisions:

Excepting as otherwise specifically provided in this Agreement, Fillmore & Western Railway Co. shall during the term of this Agreement warrant, agree to, perform, observe and refrain from doing all those promises and acts to be performed by and matters prohibited to Fillmore under the terms of the said Lease Agreement dated between VCTC and Fillmore, the intent of the parties hereto being that Fillmore shall be fully and completely relieved by Fillmore & Western Railway Co. of all of the obligations of Fillmore according to that Lease Agreement. To that end, Fillmore & Western Railway Co. shall, with or without demand from Fillmore, defend and hold Fillmore harmless from and against any and all claims, liabilities, actions, and causes of action, whether or not well founded, which shall be brought or threatened against Fillmore or any of its officers, agents or employees by VCTC or any other person or entity to enforce or interpret or construe the terms of the said Lease Agreement or in any way pursuant to its provisions. A copy of said Lease Agreement is attached to this Agreement and by this reference incorporated herein in all its particulars.

2. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties hereto.

"Fillmore Segment" shall mean that portion of the Santa Paula Branch between milepost 414.45 at or near 8th Street in Santa Paula and milepost 435.07 at or near Rancho Camulos.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California.

"Lease Property" shall mean the Track, Track Support Structures, buildings and real property which comprises land lying within 15 feet of the centerline of any Track existing on the Fillmore Segment on the Execution Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore or of Fillmore's sublessee and subject to the rights of existing tenants in possession.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment. Track work under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, and spot replacement of worn rails. Signal work under this item includes periodic inspections and tests per FRA/PUC requirements and repair/replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video productions and any other still or motion related media events.

"Public/Tourist Train Excursions" shall include public and private excursions, recreational and dinner train operations and any promotional activities related thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete, bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, or other structures, tunnels, grading, embankments, dikes, pavements, and drainage facilities.

3. Purpose and Scope of Lease:

The purpose of this lease is to permit Fillmore & Western Railway Co. to use the Lease Property for Public/Tourist Train Excursion purposes; subject to reservations described in Section 11c, as part of the efforts of Fillmore to further develop the local economy. For purposes of promoting the local economy, for the term of this Lease Agreement, Fillmore & Western Railway Co. agrees to headquarter its operations and equipment in the City of Fillmore and to promote and support the City of Fillmore and its business establishments in its business activities.

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4. Demise and License:

Fillmore, for and in consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore & Western Railway Co., does lease and demise to Fillmore & Western Railway Co. for the Lease Term, subject to all matters of record and the reservations of VCTC under its Lease Agreement with Fillmore, and Fillmore & Western Railway Co. does rent and accept from Fillmore the Lease Property.

5. Rental Payments:

a. Effective July 1, 2001, Fillmore & Western Railway Co. shall pay as rental hereunder Six Hundred and Seventy-Five Dollars (\$675.00) monthly, plus Twenty-Five Cents (\$0.25) per each paid adult passenger and Fifteen Cents (\$0.15) per each paid juvenile passenger (under age sixteen [16]) ("Base Rental"). Fillmore & Western Railway Co. shall pay Base Rental to Fillmore within fifteen (15) days of the end of each month including with payment a statement detailing the number of passengers (paid and unpaid) during the period.

This rental rate shall be adjusted annually on July 1, thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles-Long Beach-Anaheim, California, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the month of June, 2001 ("Beginning Index").

If the Index published for the month of June prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. Fillmore and Fillmore & Western Railway Co. agree that the rental rate shown in Section 5a shall be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipts, fee per rider, or other appropriate measures. In the event Fillmore and Fillmore & Western Railway Co. are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provision of Section 26. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 19(b).

c. Fillmore & Western Railway Co. acknowledges and agrees that its obligation to pay Base Rental hereunder and the rights of Fillmore in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment ("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore & Western Railway Co. against Fillmore under this Agreement or otherwise.

d. Fillmore & Western Railway Co. recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Fillmore & Western Railway Co. may be subject to the payment of property taxes levied on such interest. Fillmore & Western Railway Co. shall pay all real and personal property taxes and assessments applicable to the Lease Property and to the personal property thereon.

e. It is the intention of the parties that Fillmore shall receive the Base Rental free from all taxes, charges, expenses, costs, and deductions of every description, which are specified in this Agreement as being the obligation of Fillmore & Western Railway Co..

f. Fillmore shall have the right to inspect and audit the records of Fillmore & Western Railway Co. relating to the calculation of Base Rental Payments.

g. Fillmore & Western Railway Co. agrees to use forms reviewed and approved by Fillmore for purposes of Calculation of Base Rental.

h. With respect to the PURCHASE AND SALE AGREEMENT, SANTA PAULA AND VENTURA BRANCHES, between Southern Pacific Transportation Company as Seller and Ventura County Transportation Commission as Purchaser, Article 6: Reservations Paragraph 6.2 Income from Certain Leases and Other Agreements, the parties agree that the conditions set forth in the above referenced paragraph do not apply to this Agreement.

6. Use of Premises:

a. Fillmore & Western Railway Co. shall have the right to use the Lease Property for any lawful Public/Tourist Train Excursion use defined herein, but not to remove the Track or Track Support Structures, as itemized on Exhibit "A" attached hereto, entitled "Inventory of Track and Track Support Structures" unless specifically authorized to do so in writing by Fillmore.

b. Fillmore & Western Railway Co. shall maintain at its sole expense the Track and Track Structures to such standards as required for its uses and in accordance with applicable regulations including, but not limited to, applicable regulations of the California Public Utilities Commission and Federal Regulations. Any materials used to replace defective components of the Track or the Track Support Structures shall be of the same or superior type and quality as that being replaced.

c. In the event that specific Track and Track Support Structures are determined to need extensive refurbishment or replacement, beyond Maintenance as defined in Section 2, VCTC shall be responsible for said refurbishment or replacement. Fillmore & Western Railway Co. acknowledges that any and all refurbishment or replacement activities beyond Maintenance shall be undertaken at the sole discretion of VCTC as funds may become available and Fillmore shall not be responsible whatsoever to undertake any refurbishment, replacement or Maintenance activities.

7. Construction:

a. Permanent Improvements.

Fillmore & Western Railway Co. shall not have the right to construct any additions or betterments of a permanent nature on the Lease Property without specific written

approval in advance by Fillmore.

b. Temporary Improvements.

Fillmore & Western Railway Co. shall have the right to construct any temporary improvements necessary for the use of the Leased Property as permitted herein, provided, however, said temporary improvements shall be promptly removed upon cessation of their use.

c. Easements and Dedications.

The parties each recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easements and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. Fillmore will give Fillmore & Western Railway Co. timely written notice of all such requests, but VCTC under the terms of its Lease Agreement with Fillmore, may continue to consider such requests, have sole authority to approve or reject proposals and execute and deliver documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting easements and dedications. No such easement or dedication, nor any construction in connection therewith shall unreasonably interfere with the operations of Fillmore & Western Railway Co..

d. Title.

Any parts installed, replacements made or additions, improvements or alterations to the existing Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without further cost or expense to VCTC or Fillmore. Any supplemental trackage (i.e. new sidings, yard or shop trackage) added to the original Track and Track Support Structures by Fillmore & Western Railway Co. shall remain the property of Fillmore & Western Railway Co. and shall not be considered accessions to the Track and Track Support Structures and title shall not be vested in VCTC unless Fillmore & Western Railway Co. receive due compensation.

However, Fillmore & Western Railway Co.'s fixtures, machinery and equipment placed on or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore & Western Railway Co. unless the removal of same causes material damage to property of VCTC or of Fillmore, in which event Fillmore & Western Railway Co. shall pay the reasonable cost of repair.

At the termination of the Lease Term, Fillmore & Western Railway Co. shall, within One Hundred Eighty (180) days following, remove at Fillmore & Western Railway Co.'s sole expense, all of its property from the Lease Property.

8. Indemnification:

a. Fillmore & Western Railway Co. shall investigate, release, defend, indemnify and hold VCTC and Fillmore harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC or Fillmore, or both, may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees,

subcontractors, agents and invitees of VCTC and of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC or Fillmore.

9. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore & Western Railway Co..

Fillmore & Western Railway Co. may not assign this Agreement without the prior written consent of Fillmore. The assignment shall not be valid unless there shall be delivered to Fillmore in due form for recording within ten (10) business days after the date of assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument by the transferee expressly assuming all of Fillmore & Western Railway Co.'s obligations and defaults under this Agreement. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, but this shall not impair any remedy of Fillmore because of Fillmore & Western Railway Co.'s having engaged in an act prohibited by the terms hereof.

b. Mortgage of Leasehold Interest.

Fillmore & Western Railway Co. shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of Fillmore, and any attempt by Fillmore & Western Railway Co. to do so without such consent shall be absolutely void and without effect.

c. Subletting by Fillmore & Western Railway Co..

Fillmore & Western Railway Co. shall not have the right, without prior written consent of Fillmore, to sublet a part of the Lease Property.

10. Limits on Use:

a. During the term of this Agreement the Lease Property shall be used by Fillmore & Western Railway Co. for the use specified in Section 6 above and for no other use or purpose. Fillmore & Western Railway Co. shall not use nor permit any other person to use the Lease Property, or any part thereof, for any unlawful purposes. Fillmore & Western Railway Co. shall at all times during said term conform to, and cause all persons using or occupying any part of the Lease Property and Improvements by invitation of, under or by right of Fillmore & Western Railway Co. to comply with, all public laws, ordinances, rules, orders and regulations from time to time applicable thereto regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and air and water quality, and shall furnish satisfactory evidence of such compliance upon request of Fillmore. Fillmore & Western Railway Co. shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law.

(1) Fillmore & Western Railway Co. covenants and agrees to release, defend, indemnify and save Fillmore and VCTC harmless from any liability, cost,

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expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore & Western Railway Co. or any person upon the Lease Property by license or invitation of Fillmore & Western Railway Co. or holding or occupying the same or any part thereof or by right of Fillmore & Western Railway Co., regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, Fillmore covenants and agrees to release, defend, indemnify and save Fillmore & Western Railway Co. harmless from any liability, cost, expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of any predecessor entity or any person upon the Lease Property by license or invitation of predecessor entity or holding or occupying the same or any part thereof or by right of predecessor entity, regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurred prior to October 31, 1996.

(3) Fillmore & Western Railway Co. shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore & Western Railway Co., upon commencing such contest shall furnish to Fillmore a document guaranteeing that Fillmore and Fillmore's interest and VCTC and VCTC's interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

(4) Fillmore and VCTC shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore & Western Railway Co., the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore & Western Railway Co. to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore and VCTC, upon commencing such contest shall furnish to Fillmore & Western Railway Co. a document guaranteeing that Fillmore & Western Railway Co. and Fillmore & Western Railway Co.'s interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

11. Conditions and Covenants:

All of the provisions of this Agreement and any Riders which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provisions.

a. Qualifications on Use.

This Agreement is subject to the right of existing tenants in possession.

Fillmore & Western Railway Co. accepts the Lease Property (including VCTC owned and other existing improvements) in its present condition without any representation or warranty by Fillmore as to the condition of such Lease Property or Improvements, and Fillmore shall not be responsible for any defect or change of condition in the Lease Property or such Improvements, any damage occurring thereto, or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. Fillmore & Western Railway Co. UNDERSTANDS AND AGREES THAT FILLMORE MAKES NO WARRANTY OR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE UNDER THE REQUIREMENTS OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES, INCLUDING THE CITY OF FILLMORE AND ITS ASSOCIATED AGENCIES AND DEPARTMENTS. Fillmore & Western Railway Co. SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF FILLMORE HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST FILLMORE OR THE CITY OF FILLMORE.

c. VCTC Reservations.

Fillmore & Western Railway Co. acknowledges that VCTC has reserved for itself and those to whom it grants such right, the right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such right does not unreasonably interfere with Fillmore's rights under its Lease Agreement with VCTC; 2) construct, maintain and operate any existing and new and additional recreational trail facilities; an 3) operate freight and regular passenger rail services on the Fillmore segment.

d. Right of Entry.

Agents, representatives or employees of Fillmore and VCTC shall have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions of this Agreement and other Agreements applicable to the Lease Property are being complied with, and for maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens.

Fillmore & Western Railway Co. agrees and covenants to hold Fillmore and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore & Western Railway Co.. In the event of the filing of any such lien, Fillmore & Western Railway Co. shall cause such lien to be released within five (5) business days after Fillmore's written notice to do so. Fillmore & Western Railway Co. shall indemnify and defend Fillmore and VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC or Fillmore as a result of any such lien.

12. Insurance:

While this Agreement is in effect, Fillmore & Western Railway Co. shall furnish evidence satisfactory to Fillmore that both VCTC and Fillmore are named as additional insureds for third party liability claims, meeting the requirements stated below, in a form satisfactory to Fillmore. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western Railway Co. shall furnish Fillmore with evidence satisfactory to Fillmore that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automotive liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore as additional insureds with respect to the operations of Fillmore & Western Railway Co.;
- (3) cover the contractual liability assumed by Fillmore & Western Railway Co. under this Lease;
- (4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC or Fillmore; and
- (5) provide for at least ten (10) days' notice to VCTC and Fillmore prior to any other cancellation or modification of coverage.

The insurance coverage shall also comply with the following requirements:

(a) A "Deductible" clause is permitted subject to Fillmore & Western Railway Co. being solely responsible to be Self Insured for the amount of the deductible and to assume full responsibility for payment of any claims, which fall below the deductible amount of the insurance coverage.

(b) Provides coverage for "all operations of the Insured conducted on the Lease Property" and contains a description of the work performed by the Insured.

(c) All signatures must be handwritten in ink on any policy, certificate or endorsement; rubber stamp signatures are not acceptable.

(d) Said policy shall contain a cancellation clause reading in substance as the following approved notice:

"It is agreed that this policy shall not be canceled nor the amounts of coverage provided herein reduced until thirty (30) days after Fillmore's City Attorney shall have received written notice of such cancellation or reduction, as evidence by return receipt of registered mail."

(e) No policy shall be acceptable unless first approved as to form by the City Attorney of Fillmore.

(f) if Fillmore & Western Railway Co. is involved with the preparation and/or

sale of food and/or drink on the concession premises, then products liability coverage shall also be required.

(g) Insurance Binders shall not be accepted by Fillmore as proof of insurance coverage.

b. Worker's Compensation:

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore & Western Railway Co. or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against Fillmore and/or VCTC to the extent permitted by law.

13. Condemnation:

a. Total Taking.

The term "Taking" means the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Lease is in effect. In the event of a Taking, this Agreement shall terminate on the earlier of vesting of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC and/or Fillmore. Under no circumstances shall Fillmore & Western Railway Co. be entitled to any "bonus value" for any remaining unexpired Term of this Lease.

If the values of the respective interests of VCTC, Fillmore and Fillmore & Western Railway Co. have been separately determined in the proceeding for the Taking in accordance with this Section 13a., then the values so determined shall be conclusive upon VCTC, Fillmore and Fillmore & Western Railway Co.. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Lease.

b. Temporary Taking:

(1) If all or part of the Lease Property or of Fillmore & Western Railway Co.'s interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore & Western Railway Co. shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore & Western Railway Co. is not prevented from doing so by the taking authority. In the event of a Temporary Taking, Fillmore & Western Railway Co. shall be entitled to receive from the award, up to one hundred (100%) percent reimbursement of its total forecast revenue for the period of the Taking as compensatory damages for any lost revenue resulting from the Temporary Taking.

(2) In the event all or part of Fillmore & Western Railway Co.'s interest under this lease is taken by any competent authority for its temporary use or occupancy for the full term of this lease, Short line shall receive the entire award for such interest.

14. Late Payments:

Fillmore & Western Railway Co. shall pay Fillmore an administrative charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, for any amount due.

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hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

15. Default:

Fillmore & Western Railway Co. shall be in default under this Agreement (1) if Fillmore & Western Railway Co. fails to pay the Base Rental and ~~Movie Rental~~ when due and such failure continues for a period of more than ten (10) business days, (2) if Fillmore & Western Railway Co. fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from Fillmore or to commence and diligently pursue the cure of such a breach if the breach can be cured within thirty (30) days; (3) if Short line is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extra judicial means or if any action or proceeding for debt relief of Fillmore & Western Railway Co. is commenced by Fillmore & Western Railway Co..

If Fillmore & Western Railway Co. fails to cure a default within thirty (30) days of notice from Fillmore to do so, or Fillmore & Western Railway Co. does not present a restoration plan within thirty (30) days, Fillmore shall have the right, without further notice and in addition to any other remedies Fillmore may have by law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property.

16. ANTI-DISCRIMINATION CLAUSE:

Fillmore & Western Railway Co. herein covenants by and for itself and its assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall Fillmore & Western Railway Co. itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

17. Relocation:

Fillmore & Western Railway Co. acknowledges that it is a post acquisition tenant having entered into this Agreement and taken occupancy of the premises from Fillmore after Fillmore's acquisition of the premises. By entering into this Agreement, Fillmore & Western Railway Co. and any subtenant or successor in interest to Fillmore & Western Railway Co. under this Agreement hereby expressly waives any claim for compensation for fixtures and equipment installed on the premises at such time as the Agreement is terminated or the term expires. Fillmore & Western Railway Co., any subtenant, and any successor in interest to Fillmore & Western Railway Co. also waive any claim against Fillmore for moving expenses, relocation assistance, and any claim for loss or damage to goodwill, as a result of being required to vacate the premises if this Agreement is terminated for any reason or due to expiration of the term of this Agreement. Fillmore & Western Railway Co. shall not be considered a "displaced person" as such term is defined in Section 7260 (b) (c) or (d) of the California Government Code as it relates to Fillmore. Fillmore & Western Railway Co. disclaims such status and hereby acknowledges its ineligibility for relocation assistance as provided in California Government Code Sections 7260 through 7277, as it now exists or may be amended.

18. Nonwaiver:

Fillmore's failure to enforce or exercise its rights under any term, condition or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. Acceptance of rent shall not be deemed a waiver of Fillmore's rights to terminate this agreement as provided herein, regardless of when rent is accepted.

19. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event that occurred prior to such termination or expiration. If Fillmore & Western Railway Co. fails to surrender possession of the Lease Property upon termination of this Agreement, Fillmore shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore & Western Railway Co. and any person or entity claiming through Fillmore & Western Railway Co. from the Lease Property.

b. Notice of termination.

Either party may terminate this Agreement, without cause, upon six (6) month written notice of termination given to the other party per Section 25 23 below.

c. Surrender of Premises.

Upon the expiration or termination of the Lease Term, Fillmore & Western Railway Co., without further notice, shall deliver up to Fillmore the possession of the Lease Property. Fillmore & Western Railway Co. shall restore the Lease Property to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, normal wear and tear, erosive affects of time, and improvements or alterations made with specific written approval excepted. Upon the failure or refusal of Fillmore & Western Railway Co. to remove from the Lease Property, as provided in Section 7d., all personal property owned by Fillmore & Western Railway Co., (a) said personal property shall thereupon, at the option of Fillmore, become the sole property of Fillmore, or (b) if Fillmore so elects it may remove from the Lease Property personal property owned by Fillmore & Western Railway Co., and Fillmore may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, all at the expense of Fillmore & Western Railway Co., which expense Fillmore & Western Railway Co. agrees to pay upon demand, or (c) Fillmore at its sole option may elect that this Agreement with all terms contained herein, including the payment of Rent for failure to vacate on time may remain in effect until Fillmore & Western Railway Co.'s personal property is removed and the Lease Property is restored by Fillmore. In the event of such failure or refusal of Fillmore & Western Railway Co. to surrender possession of the Lease Property, Fillmore shall have the right to re-enter upon the Lease Property and remove Fillmore & Western Railway Co., or any person, firm or corporation claiming by, through or under Fillmore & Western Railway Co., therefrom.

d. Highway Grade Separation Projects.

The parties acknowledge that in the event that any highway/railroad grade separation projects involving the Lease Property are approved by government agencies having jurisdiction, Fillmore may terminate this Agreement in order to eliminate any obligation

upon Fillmore to participate in such project.

20. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, the non-prevailing party agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the prevailing party in the enforcement of this Agreement.

21. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 8 and 9, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

22. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

23. Notices:

All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by first class mail, postage prepaid, to the parties at their last known address.

24. Severability:

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

25. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

26. Dispute Resolution

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to mediation. VCTC and Fillmore agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in Subsection c.

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b. Mediation Prerequisite to Litigation
No party may undertake litigation with reference to any such dispute until (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the Mediator (as hereinafter defined), whichever is earlier.

c. Methods and Procedures for Mediation
Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the Mediator, with each party bearing its own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of any or all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator shall render his decision, in writing, to all parties within forty-five (45) days of the conclusion of taking testimony and/or evidence regarding the dispute.

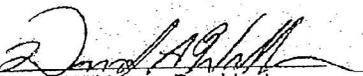
(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation that may arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"FILLMORE & WESTERN RAILWAY CO.:"
Fillmore & Western Railway Co.,
a California corporation

by: 
David Wilkinson, President

by: 
Tresa Wilkinson, Secretary

"FILLMORE:"
City of Fillmore
Redevelopment Agency

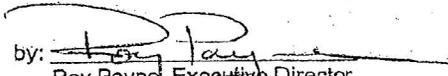
by: 
Roy Payne, Executive Director

EXHIBIT 4



Ventura County Transportation Commission

May 14, 2013

Mr. Rigo Landeros,
Acting City Manager
City of Fillmore
250 Central Avenue
Fillmore, CA, 93015

Subject: Santa Paula Branch Line Lease with Fillmore Redevelopment Agency

Dear Mr. Landeros:

The Ventura County Transportation Commission (VCTC) took an action at the May 10, 2013 Commission meeting to address the future of the Santa Paula Branch Line (SPBL). In the action taken, the Commission expressed their strong desire to bring the SPBL to a cost neutral and preferably "profitable" status as soon as reasonably possible. The Commission further recognized the need to simplify all agreements between VCTC and other entities concerning the SPBL and directed staff to take action to update and/or simplify all leases or other agreements.

As you are aware, on June 6, 2001, the City of Fillmore Redevelopment Agency entered into a lease agreement with VCTC for a portion of the SPBL from milepost 414.45 at or near Santa Paula to milepost 435.07 at Rancho Camulos. The VCTC is providing notice to the City of Fillmore, as the successor agency to the City of Fillmore Redevelopment Agency, that in accordance with Section 15 of the Lease Agreement date 6/6/2001, VCTC intends to terminate that agreement effective December 1, 2013.

In the interim, VCTC would like to begin discussions with the City of Fillmore outlining points of interest in any new agreements that may be desired. Please contact me at your earliest convenience so that this important process can begin.

Sincerely,

Darren Kettle
Executive Director

EXHIBIT 5