

UNION PACIFIC RAILROAD
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606-1718

P 312.777.2055
F 877.213.4433
mackshumate@up.com

Mack H. Shumate, Jr.
Senior General Attorney, Law Department

August 23, 2012

232836

E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

ENTERED
Office of Proceedings
August 23, 2012
Part of
Public Record

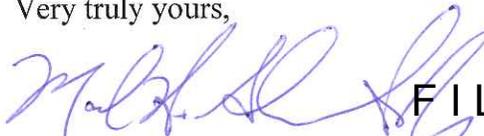
RE: STB Finance Docket No. 35666; Verified Notice of Class Exemption Under 49 C.F.R. § 1180.2(d)(1) and 49 C.F.R. § 11802(d)(7) for a Transaction Proposed Under 49 U.S.C. 11323 Involving More than One Common Carrier; Union Pacific Railroad Company Class Exemption for Acquisition of and Operating Authority Over and Overhead Trackage Rights Over Various Portions of the Curtiss Branch Line of the San Pedro Railroad Operating Company, LLC All Being Located in Cochise County, Arizona

Dear Ms. Brown:

Enclosed for filing in the above proceeding is Union Pacific Railroad Company's Verified Notice of Exemption and Caption Summary (Exhibit H to the Notice) pursuant to the Class Exemption for Acquisition of and Operating Authority Over Portions of the Curtiss Branch Line 49 C.F.R. § 1180.2(d)(1) and Class Exemption for Overhead Trackage Rights over Portions of the Curtiss Branch Line 49 C.F.R. § 1180.2(d)(7).

Please file this verified Notice of Class Exemption in finance Docket No. 35666. Enclosed is a credit authorization voucher in the amount of \$1,100 for the filing fee.

Very truly yours,



Mack H. Shumate, Jr.
Senior General Attorney

FILED
August 23, 2012
SURFACE

FEE RECEIVED
August 23, 2012
SURFACE
TRANSPORTATION BOARD

MHS:mmml
Encl.

TRANSPORTATION BOARD

2012_08_12_brown-ltr-STB NOE-35666



Before the
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35666

--UNION PACIFIC RAILROAD COMPANY--
CLASS EXEMPTION FOR ACQUISITION OF
AND OPERATING AUTHORITY OVER AND
OVERHEAD TRACKAGE RIGHTS OVER VARIOUS
PORTIONS OF THE CURTISS BRANCH LINE OF
THE SAN PEDRO RAILROAD OPERATING COMPANY, LLC
ALL BEING LOCATED IN COCHISE COUNTY, ARIZONA

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1180.2(d)(1) AND
49 C.F.R. § 1180.2(d)(7)
FOR A TRANSACTION PROPOSED
UNDER 49 U.S.C. 11323 INVOLVING
MORE THAN ONE COMMON CARRIER**

UNION PACIFIC RAILROAD COMPANY

Mack H. Shumate, Jr., Senior General Attorney
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606
(312) 777-2055
(312) 777-2065 FAX
email: mackshumate@up.com

Dated: August 23, 2012
Filed: August 23, 2012

Before the
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35666

--UNION PACIFIC RAILROAD COMPANY--
CLASS EXEMPTION FOR ACQUISITION OF
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**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1180.2(d)(1) AND
49 C.F.R. § 1180.2(d)(7)
FOR A TRANSACTION PROPOSED
UNDER 49 U.S.C. 11323 INVOLVING
MORE THAN ONE COMMON CARRIER**

Union Pacific Railroad Company ("Union Pacific") submits this Verified Notice of Exemption under class exemption 49 C.F.R. § 1180.2(d)(1) and 49 C.F.R. § 1180.2(d)(7), for a transaction proposed under 49 U.S.C. 11323 involving more than one common carrier covering (1) the acquisition and operation of a line of railroad which will not constitute a major market extension and where the Surface Transportation Board ("Board") has found that the public convenience and necessity permit abandonment and (2) for acquisition of overhead trackage rights by a rail carrier over lines owned or operated by another rail carrier which are based on written agreements

and are not filed nor sought in responsive applications in a rail consolidation proceeding.

EXEMPTIONS SOUGHT

Union Pacific seeks a class exemption for the acquisition of and operating authority over two portions of the Curtiss Branch Line, as hereinafter defined and depicted on the Print attached hereto as **Exhibit "A"**¹ which is hereby made a part hereof, which Union Pacific desires to acquire from the San Pedro Railroad Operating Company, LLC ("SPROC"), an existing class III short line railroad, and a related class exemption for Overhead Trackage Rights over another portion of the Curtiss Branch Line which SPROC has been authorized by the Board to lease from Union Pacific and operate over. Union Pacific proposes to purchase from SPROC the line segments between MP 1040.15 at Curtiss and MP 1041.32 near Curtiss and between 1071.16 and MP 1084 at Naco, both segments are indicated in blue on **Exhibit "A"**. Union Pacific also proposes to purchase from SPROC, SPROC's operating rights over the line segment between MP 1041.32 and MP 1071.16 over a right of way that Union Pacific currently owns (this segment is indicated in red on **Exhibit "A"**). In addition, SPROC has agreed to grant Union Pacific overhead trackage rights over a line between MP 1033.008 at Benson and MP 1040.15 at Curtiss that SPROC currently leases from Union Pacific (this segment is indicated in green on **Exhibit "A"**) (the "Leased Line").

A declaration of John J. Miller dated September 14, 2011 and filed pursuant to 28 U.S.C. § 1746 with the United States Court of Federal Claims in Jack Ladd and Marie

¹ A visual summary of the current property interests of the Union Pacific and SPROC in the entire line that is the subject of this transaction ("the ABC Line") is depicted on the print attached hereto as **Exhibit "A."**

Ladd, et al., plaintiffs v. United States of America, defendant, No. 07-271L is attached hereto as **Exhibit “A-1”** and is hereby made a part hereof. This declaration gives a summary of the transactions and events concerning the background and future potential use of the Curtiss Branch Line.

In support of the Exemption under 49 C.F.R. § 1180.2(d)(1) Union Pacific states as follows: First, by decision served February 3, 2006 in Docket No. AB-1081X, the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903, the abandonment by SPROC of the portions of the Curtiss Branch Line which Union Pacific desires to acquire (the two segments indicated in blue on **Exhibit “A”** and the segment indicated in red on **Exhibit “A”**) and other lines owned or otherwise controlled by SPROC. Second, for the acquisition of a line of railroad to be exempt under these provisions, such acquisition cannot constitute a major market extension. Union Pacific is of the opinion that the acquisition of and authority to operate over all portions of the Curtiss Branch Line covered by this Notice of Exemption would not constitute a major market extension for the Union Pacific because, (1) the Curtiss Branch Line does not extend to the international border with Mexico; (2) the Curtiss Branch Line is not in or near any major commercial markets or rail routes; (3) except for the Leased Line, the entire Curtiss Branch Line was approved for abandonment by the Board on February 3, 2006 in Docket No. AB-1081X; and (4) the Union Pacific still currently retains real property ownership of the majority of the right-of-way which makes up the Curtiss Branch Line.

In support of the Exemption under 49 C.F.R. § 1180.2(d)(7), the Overhead Trackage Rights (the “Overhead Trackage Rights”) sought by Union Pacific over the

Leased Line are based on a written agreement and such Overhead Trackage Rights were neither filed nor sought by Union Pacific as a responsive application in a rail consolidation proceeding. A redacted copy of the proposed Trackage Rights Agreement between Union Pacific and SPROC is attached hereto as **Exhibit "C"** and hereby made a part hereof. A copy of the signed original will be filed with the Board within ten (10) days of the filing of this Verified Notice of Exemption.

The exemption for the acquisition of and operation over a portion of the Curtiss Branch Line and the exemption for the acquisition of Overhead Trackage Rights by Union Pacific over that portion of the Curtiss Branch Line defined herein as the Leased Line, are related and interdependent and collectively included under this Notice of Exemption. Both exemptions are covered by the same written Purchase and Sale Agreement (the "PSA") between SPROC and Union Pacific, a copy of which is attached hereto as **Exhibit "B"** and hereby made a part hereof. Union Pacific is of the opinion that the components of this transaction fall within the applicable respective exemptions under 49 C.F.R. § 1108.2(d)(1) and 49 C.F.R. § 1108.2(d)(7) for transactions proposed under 49 U.S.C. 11323. The Curtiss Branch Line is located in Cochise County, Arizona.

BACKGROUND

By agreement dated January 31, 1995 entitled, Sale Agreement – Douglas and Bisbee Branches By and Between SWKR Operating Co., Inc. ("SWKR") (a then wholly-owned subsidiary of Kyle Railways, Inc.)² and the Southern Pacific Transportation Company ("Southern Pacific") predecessor by merger to Union Pacific (the "Sale Agreement") a copy of which being attached hereto as **Exhibit "D"** and hereby made a

² Kyle Railways, Inc., was successively acquired by StatesRail, Inc., in 1997 and StatesRail, Inc.,

part hereof, Southern Pacific did convey, transfer and otherwise sell to SWKR the following: (1) all of Southern Pacific's ownership interest in the Bisbee Branch from Milepost 1085.0 at Bisbee Junction to Milepost 1090.6 at Bisbee, a distance of 5.6 miles (the "Bisbee Branch"); and the portions of the Douglas Branch not covered by the Curtiss Easement, as hereinafter defined, from Milepost 1040.15 near Curtiss to Milepost 1055.8 near Charleston a distance of 19.9 miles from Milepost 1055.8 near Charleston to Milepost 1097.3 near Paul Spur, a distance of 41.5 miles; and from Milepost 1097.3 near Paul Spur to Milepost 1106.5 near Douglas, a distance of 9.2 miles (collectively, "Line A"); and (2) an easement for railroad operating purposes only over that portion of the Douglas Branch Line from Milepost 1041.32 to and including Milepost 1071.16 (the "Curtiss Easement"), a copy of which being attached hereto as **Exhibit "E"** and hereby made a part hereof, ("Line B"). Under the Sale Agreement, Southern Pacific also leased to SWKR the portion of the Curtiss Branch Line from Benson at Milepost 1033.008 to and including Milepost 1040.15 near Curtiss ("Line C") referred to herein as the Leased Line. A copy of the Lease for the Leased Line is attached hereto as **Exhibit "F"** and is hereby made a part hereof. By Interstate Commerce Commission decision with a Service Date of December 23, 1994, the Commission approved SWKR's Notice of Exemption in SWKR Operating Co., Inc. – Acquisition and Operation Exemption in Southern Pacific Transportation Co., Finance Docket No. 32621, to acquire ownership, easement for railroad purposes or lease, as the case may be, and authority to operate the entire 84.9 miles of line of railroad

was then acquired by RailAmerica, Inc., in 2001.

consisting of Line A, Line B, and Line C (herein collectively referred to as the “ABC Line”).³

Under the Agreement for Purchase of Railroad Assets of SWKR between SWKR and SPROC dated as of October 24, 2003, which was consented to by Union Pacific as successor in interest to Southern Pacific (the “SPROC Purchase Agreement”) a copy of which being attached hereto as **Exhibit “G”** and hereby made a part hereof, SWKR sold and conveyed all of SWKR’s owned real and personal property interests including easements for railroad purposes and leaseholds with all railroad operating interests in the ABC Line to SPROC. The Board by decision with a Service Date of November 21, 2003 in STB Finance Docket No. 34430 authorized SPROC under 49 C.F.R. 1150.31 to acquire and operate all of SWKR’s owned real and personal property interests, easements for railroad purposes and leaseholds with all railroad operating interests in the ABC Line.

By decision served February 3, 2006, the Board under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by SPROC of approximately 76.2 miles of the ABC Line in Cochise County, Arizona, as follows: (1) The Bisbee Branch, between Milepost 1085.0 at Bisbee Junction and Milepost 1090.6 at Bisbee, a distance of 5.6 miles; and (2) The Douglas Branch Line consisting of (a) the railroad line between Milepost 1097.3 near Paul Spur and Milepost 1106.5 near Douglas, a distance of 9.2 miles, (b) the railroad line between Milepost 1055.8 near Charleston and Milepost 1097.3 near Paul Spur, a distance of 41.5 miles, and (c) the railroad line between Milepost 1040.15 near Curtiss and Milepost 1055.8

³ The ABC Line consisting of Line A, Line B and Line C as depicted on **Exhibit “A”**.

near Charleston, a distance of 19.9 miles. The portion of the ABC Line covered by the lease from Southern Pacific to SPROC (Line C) and referred to herein as the Leased Line was not included in the Abandonment in Docket No. AB-1081X.

On January 29, 2007, SPROC filed a letter stating that it had consummated the abandonment authorized in Docket No. AB-1081X for the following railroad line segments of the ABC Line: (1) Milepost 1084.0 to Milepost 1097.3 at Paul Spur, (2) Milepost 1097.3 at Paul Spur to Milepost 1106.5 near Douglas, and (3) Milepost 1085.0 at Bisbee Junction to Milepost 1090.6 at Bisbee. At the request of SPROC, the Board by decision with a service date of July 5, 2012 has most recently extended the deadline to consummate the abandonment of the portion of the ABC Line from Milepost 1040.15 near Curtiss to Milepost 1084.0 near Naco to September 26, 2012.

Rather than consummate the abandonment and discontinuance of service on the portion of the ABC Line from Milepost 1040.15 near Curtiss to Milepost 1084.0 near Naco, the Union Pacific as Buyer and the SPROC as Seller are entering into the PSA (see **Exhibit "B"** hereto) under which SPROC agrees to sell and Union Pacific agrees to purchase that certain real property and improvements thereon and Union Pacific seeks operating authority over SPROC's fee ownership interest from Milepost 1040.15 to Milepost 1041.32 ("Parcel 1") and from Milepost 1071.16 to Milepost 1084.0 ("Parcel 2") and all of SPROC's right, title and interest in the property from Milepost 1041.32 to Milepost 1071.16⁴ which, but is not limited to SPROC's Freight Operating easement over the portion of the ABC Line referred to herein as the Curtiss Easement ("Parcel

⁴ Indicated in blue on the attached print, **Exhibit "A"**.

3").⁵ For purposes of this Notice of Exemption, Parcel 1, Parcel 2, Parcel 3 and the Leased Line are collectively referred to herein as the "Curtiss Branch Line."

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4(g), Union Pacific submits the following information:

Section 1180.6 Supporting Information

Section 1180.6 (a)(1)(i) A Brief Summary of the Proposed Transaction, the Name of Applicants, Their Business Address, Telephone Number and the Name of the Counsel to Whom Questions Regarding the Transaction Can be Addressed.

Union Pacific Railroad Company ("Union Pacific") submits this Verified Notice of Exemption under class exemption 49 C.F.R. § 1180.2(d)(1) and 49 C.F.R. § 1180.2(d)(7), for a transaction proposed under 49 U.S.C. 11323 involving more than one common carrier covering (1) the acquisition and operation of a line of railroad which will not constitute a major market extension and where the Surface Transportation Board ("Board") has found that the public convenience and necessity permit abandonment and (2) for acquisition of overhead trackage rights by a rail carrier over lines owned or operated by another rail carrier which are based on written agreements and are not filed nor sought in responsive applications in a rail consolidation proceeding. The specifics of the Proposed Transaction are detailed under Exemptions Sought above.

Name and address of railroad applicant:

Union Pacific Railroad Company
1416 Dodge Street
Room 830
Omaha, NE 68179

⁵ Indicated in red on the attached print, **Exhibit "A"**.

Questions regarding this transaction are to be addressed to Union Pacific's

Counsel:

Mack H. Shumate, Jr., Senior General Attorney
Union Pacific Railroad Company
Law Department
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606
(312) 777-2055
(312) 777-2065 FAX
mackshumate@up.com

Section 1180.6(a)(1)(ii) Consummation Date

The transfer from SPROC to Union Pacific of the property interests and easement for railroad operations for Parcel 1, Parcel 2 and Parcel 3 and the grant of overhead trackage rights from SPROC to Union Pacific for the Leased Line are all collectively referenced as being the Curtiss Branch Line and are all covered by the Purchase and Sale Agreement and assumption of railroad operations thereover and thereunder by the Union Pacific will be consummated on or shortly after the Effective Date of this Notice of Exemption, at least 30 days from the date of filing of this notice.

Section 1180.6(a)(1)(iii) Purpose Sought to be Accomplished

The transfer from SPROC to Union Pacific of the property interests and easement for railroad operations for Parcel 1, Parcel 2 and Parcel 3 and the grant of overhead trackage rights from SPROC to Union Pacific for the Leased Line are all collectively referenced as being the Curtiss Branch Line and are all covered by the Purchase and Sale Agreement. The assumption of railroad operations on Parcel 1, Parcel 2 and Parcel 3 and acquisition of the Overhead Trackage Rights on the Leased Line by the Union Pacific will maintain continuity of railroad service on the Curtiss Branch Line and preserve the Curtiss Branch Line for future and improved railroad

service. The grant of the Overhead Trackage Rights from SPROC to Union Pacific on the Leased Line will also provide the connection necessary for Union Pacific to serve and operate the southern portion of the Curtiss Branch Line.

Section 1180.6(a)(5) List of States in Which the Parties' Property is Situated

The track, right-of-way structures and operating authority covered by the subject Purchase and Sale Agreement is located in Cochise County, State of Arizona.

Section 1180.6(a)(6) Map

A print of a map illustrating the various property interests and operating interests to be acquired by Union Pacific from SPROC is attached hereto as **Exhibit "A"**.

Section 1180.6(a)(7)(ii)

A copy of the Purchase and Sale Agreement ("PSA") between SPROC as Seller and Union Pacific as Buyer covering the Curtiss Branch Line is attached hereto as **Exhibit "B"**. A copy of the Overhead Trackage Rights Agreement between SPROC and Union Pacific as User of said Overhead Trackage Rights is attached hereto as **Exhibit "C"**.

Labor Protection

Union Pacific Railroad Company is agreeable to the labor protection conditions generally imposed in line sale acquisition and trackage rights proceedings as found in *Norfolk and Western Ry. Co. – Trackage Rights – BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. – Lease and Operate*, 360 I.C.C. 653 (1980). Union Pacific will concur with the statutory obligation to protect the interests of employees. See, 49 U.S.C. 10502(g) and 11436.

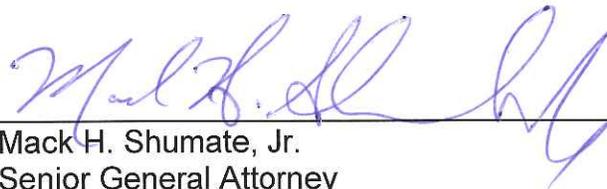
Environmental and History Matters

Union Pacific sees no environmental or historic impacts associated with the proposed transactions in that while portions of the track structure have been removed in accordance with the Abandonment Authority granted in Docket No. AB-1081X to SPROC, all structures on the Curtiss Branch Line remain. There are no bridges on the Curtiss Branch Line. If and when common carrier operation by rail on the Curtiss Branch Line is proposed to be reinstated as demand requires, Union Pacific will seek applicable Board authority as may then be necessary. Therefore, an Environmental and Historic Report and documentation normally need not be submitted for this type of transaction pursuant to 49 C.F.R. §§ 1105.6(c)(4) and 1105.8(b)(3).

Dated this 23rd day of August, 2012.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY



Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606
(312) 777-2055
(312) 777-2065 FAX
Email: mackshumate@up.com

CERTIFICATE OF SERVICE

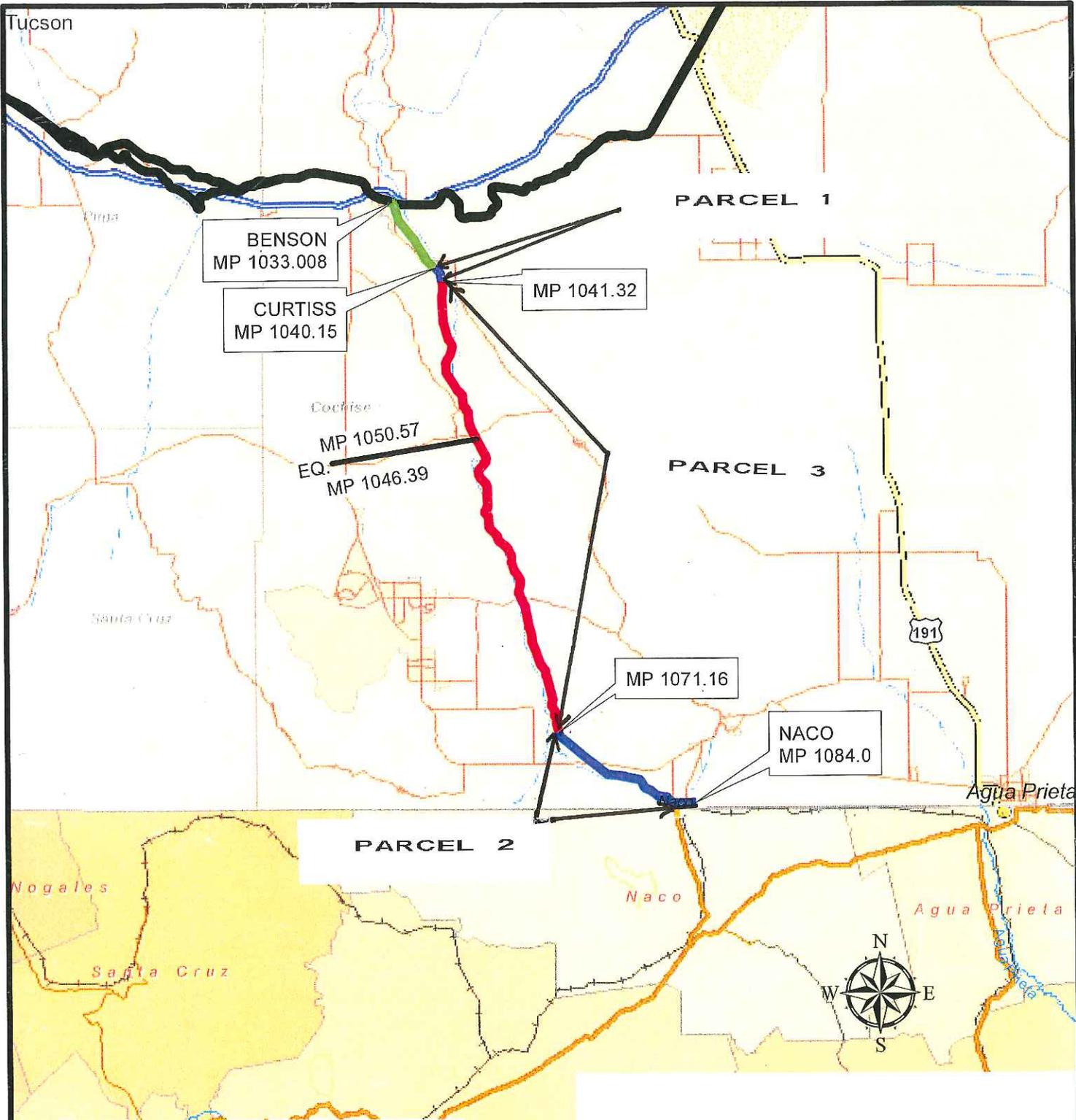
I certify that I have this day served a copy of the foregoing document upon the following by first class United States mail:

John Heffner
Strasburger & Price, LLP
1700 K Street, N.W., Suite 640
Washington, D.C.C. 20006

Dated at Chicago, Illinois this 23rd day of August, 2012



Mack H. Shumate, Jr.



Legend

-  LEASED BY UP TO SPROC - (OVERHEAD TRACKAGE REQUIRED BY UP OVER SPROC)
-  OWNED BY SPROC (TO BE PURCHASED BY UP FROM SPROC)
-  OWNED BY UP (OPERATING RIGHT TO BE ACQUIRED BY UP FROM SPROC)
-  OTHER UPRR LINES

EXHIBIT 'A'

RE-AQUISITION OF A PORTION OF CURTISS BRANCH BY UP



IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JACK LADD AND MARIE LADD, et al.,)	
)	
Plaintiffs,)	No. 07-271 L
v.)	
UNITED STATES OF AMERICA,)	Honorable Robert H. Hodges, Jr.
)	
Defendant)	

DECLARATION OF JOHN J. MILLER

I, John J. Miller, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am the Manager Short Line Development in the Network and Industrial Development, Marketing and Sales Department of the Union Pacific Railroad Company (“Union Pacific”).

2. My office address is Union Pacific Railroad Company, 1400 Douglas Street, Mail Stop 1350, Omaha, Nebraska 68179-1350.

3. I have been employed by Union Pacific or its predecessors since November of 1990 and have been in my current position for twelve (12) years.

4. My duties as Manager Short Line Development include the sale and lease of railroad branch lines and the coordination of the railroad network between Union Pacific and short line railroads in the Western Portion of the Union Pacific’s railroad system. This includes the state of Arizona and the line of railroad commonly known as the Curtiss Branch (the “Curtiss Branch”) which runs from a point near Benson, Arizona, at M.P. 1033.008, to a point near Naco, Arizona, at M.P. 1082.5, all as more particularly depicted on the map attached hereto and marked **Exhibit A** which is hereby made a part hereof.

5. The black line depicted on **Exhibit A** is the Union Pacific's mainline commonly referred to as the "Sunset Route" which is a heavily traveled freight line of railroad on the Union Pacific's railroad system.

6. The green line from M.P. 1033.008 near Benson, Arizona to M.P. 1040.15 at Curtiss, Arizona as depicted on **Exhibit A** is a line of railroad owned by Union Pacific and leased to an independent short line railroad known as the San Pedro Railroad Operating Company LLC ("SPROC").

7. The blue line from M.P. 1040.15 at Curtiss, Arizona to M.P. 1041.32 near Curtiss, Arizona as depicted on **Exhibit A** is a line of railroad owned and operated by SPROC.

8. The red line from M.P. 1041.32 near Curtiss, Arizona to M.P. 1071.16 approximately thirteen (13) miles northwest of Naco, Arizona as depicted on **Exhibit A** is a line of railroad over which Union Pacific has an interest in land and over which Union Pacific granted an easement to the SWKR Operating Company, Inc. ("SWKR") on January 30, 1995. Concurrent with said grant of easement from Union Pacific to SWKR, the track structure on the red line was sold by bill of sale from Union Pacific to SWKR. SWKR subsequently entered into an agreement dated October 24, 2003 under which SPROC assumed the rights and obligations of SWKR with regard to the red line. SPROC currently has the railroad operating authority from the Surface Transportation Board ("STB") over the red line and is the current owner of the track structure on the red line.

9. The southern blue line from M.P. 1071.16 to M.P. 1084.0 at Naco, Arizona as depicted on **Exhibit A** is a line of railroad owned and operated by SPROC.

10. Union Pacific is in the process of acquiring through a Purchase and Sale Agreement with SPROC, SPROC's property interests in the blue and red lines. Union Pacific in

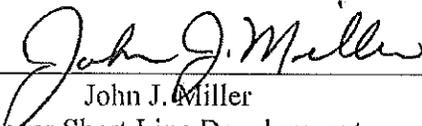
conjunction therewith will seek operating authority from the STB to operate said blue and red lines as part of Union Pacific's railway system. The Purchase and Sale Agreement will provide for the granting of Overhead Tracking Rights from SPROC to Union Pacific with regard to the green line.

11. SPROC has received authority from the STB to abandon its railroad operations over the red and blue lines in Docket No. AB-1081X. On July 26, 2011, the STB granted SPROC's request for an extension of time to consummate said abandonment authority to July 26, 2012. The reason for the requested extension as stated by SPROC in the July 26, 2011 STB decision is, "... that the extension is needed because it and Union Pacific Railroad Company ("UP"), the owner of a portion of the underlying right-of-way, are evaluating the strategic use of this rail corridor and wish to preserve their options for protecting the integrity of the corridor. SPROC also states that UP is interested in acquiring the right-of-way, subject to the execution of a purchase and sale agreement."

12. On behalf of Union Pacific, I concur with the statements attributed to SPROC in the STB's decision in AB-1081X dated July 26, 2011 and confirm that Union Pacific is in the process of negotiating and entering into a purchase and sale agreement with SPROC for the blue and red lines depicted on **Exhibit A** and for overhead trackage rights on the green line depicted on **Exhibit A**. Union Pacific has never abandoned any part of its ownership interest in this line. Union Pacific has never transferred any of its rights in this line to any entities or persons other than SPROC and SWKR. Union Pacific has only transferred to SPROC and SWKR the rights as described above.

I certify to the best of my knowledge, information, and belief that the foregoing is true and correct. Executed this 14th day of September 2011.

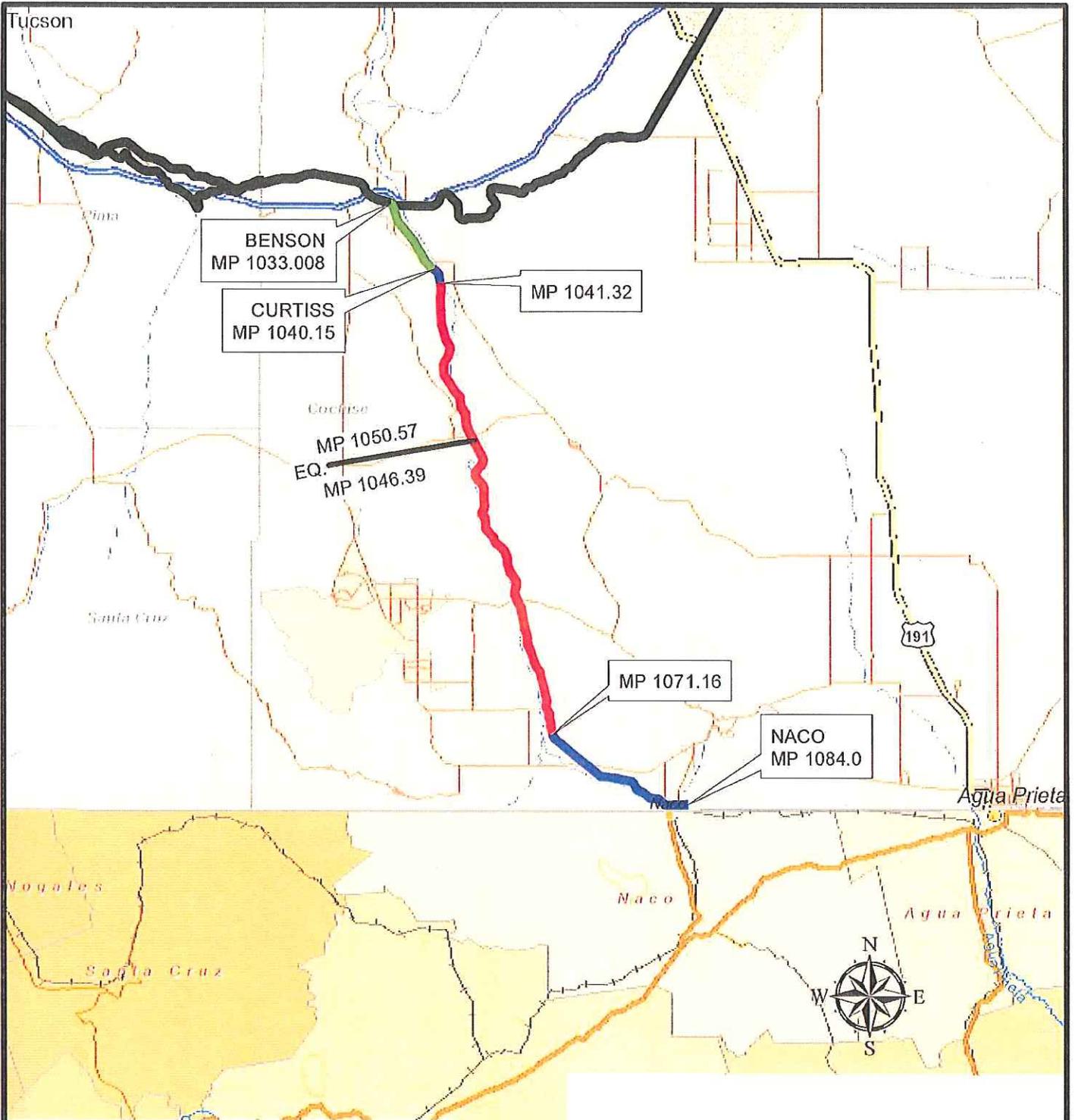
UNION PACIFIC RAILROAD COMPANY

By: 

John J. Miller
Manager Short Line Development

John J. Miller
Manager Short Line Development
Union Pacific Railroad Company
1400 Douglas Street
Mail Stop 1350
Omaha, Nebraska 68179-1350

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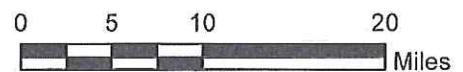


Legend

- LEASED BY UP TO SPROC - (OVERHEAD TRACKAGE REQUIRED BY UP OVER SPROC)
- OWNED BY SPROC (TO BE PURCHASED BY UP FROM SPROC)
- OWNED BY UP (OPERATING RIGHT TO BE ACQUIRED BY UP FROM SPROC)
- OTHER UPRR LINES

EXHIBIT 'A'

RE-AQUISITION OF A PORTION OF CURTISS BRANCH BY UP



PURCHASE AND SALE AGREEMENT

Between

**SAN PEDRO RAILROAD OPERATING COMPANY, LLC,
an Arizona limited liability company**

SELLER

And

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

BUYER

Curtiss Branch Line

PURCHASE AND SALE AGREEMENT

Curtiss Branch Line

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of the ___ day of September, 2012, by and between SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company ("Seller"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Buyer").

RECITALS:

A. On or about January 31, 1995, Southern Pacific Transportation Company, a Delaware corporation, sold to SWKR Operating Co., Inc., an Arizona corporation ("SWKR"), a railroad line located between Benson, Arizona and Naco, Arizona (the "Curtiss Branch Line"), which conveyance was made by quitclaim deed and included all of Buyer's interest in the real property, improvements and fixtures associated with the Curtiss Branch Line.

B. On or about October 31, 2003, Seller acquired from SWKR the Curtiss Branch Line and certain other real and personal property. This acquisition was made by quitclaim deed and included an assumption of certain lease rights over additional rail line located between Benson, Arizona and Naco, Arizona owned by Buyer.

C. Seller remains in possession of, and continues to operate on, the Curtiss Branch Line and desires to sell its right, title and interest therein to Buyer.

D. The parties hereto desire to enter into this Agreement for the purpose of setting forth the terms and conditions of said purchase and sale.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I PROPERTY

1.1 The Property. Seller agrees to sell to Buyer by quit claim deed, and Buyer agrees to so purchase from Seller, that certain real property and improvements thereon (the "Property") located in Cochise County, Arizona, as generally shown on the print attached hereto as **Exhibit A**, and more particularly described in **Exhibit B**, subject to the terms and conditions set forth herein. The Property consists of Seller's fee ownership interest between Milepost 1040.15 and Milepost 1041.32, and Milepost 1071.16 and Milepost 1084.0, and all of Seller's right title and interest located between Milepost 1041.32 and Milepost 1071.15 (each as more particularly depicted on **Exhibit B** attached hereto).

1.2 Included Property. Without limiting the generality of Section 1.1, the Property specifically includes (1) all ancillary property owned by Seller adjacent thereto which has not

been previously sold by Seller, and (2) all personal property located on the Property as of the Execution Date and any and all other railroad operating and nonoperating appurtenances.

**ARTICLE II
PURCHASE PRICE**

2.1 Purchase Price. The purchase price for the Property shall be _____ (the "Purchase Price").

2.2 Payment of Purchase Price. The Purchase Price shall be payable at Closing (defined below) in immediately available United States Funds.

**ARTICLE III
"AS IS" SALE; INSPECTION; SURVEY**

3.1 As Is Sale.

3.1.1 "As Is" Sale. Buyer acknowledges and agrees that the Property is to be sold and conveyed to and accepted by Buyer in an "as is" condition with all faults, and that the Property has been used as a rail corridor and for various commercial and industrial purposes. Except as otherwise expressly set forth herein on in the Deed (defined below), Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property or any of such related matters; in particular, but without limitation, the use, condition, title, occupation or management of the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions, other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements.

3.2 Inspection.

3.2.1 Buyer may, at Buyer's sole discretion and expense, examine any and all matters in connection with the Property, including, without limitation, the physical and environmental condition of the Property, land use regulations affecting the Property, and the economic and financial feasibility of developing the Property. Buyer is granted the privilege, for a period commencing with the Execution Date and extending to and including Closing Date (the "Inspection Period"), of entering upon the Property for the purpose of performing surveys, soil and environmental tests and related engineering and feasibility studies. Seller shall furnish to Buyer, for review and copying, any reports, studies or governmental documentation, and Leases in Seller's possession or control (excluding items which are of public record on the Execution Date) and relating to the Property (the "Property Information"), and shall use commercially reasonable business efforts to assist Buyer in securing information not in Seller's possession as Buyer deems necessary and desirable, provided Seller shall not be required to incur any out-of-pocket expense in providing such cooperation. If the results of Buyer's examinations, tests or studies are unsatisfactory to Buyer, as determined at Buyer's sole and absolute discretion, then Buyer may elect to terminate this Agreement by giving Seller notice of termination before the

end of the Inspection Period. In the event of such termination by Buyer, this Agreement shall terminate and be without any force and effect and without further obligation of either party to the other except for those matters that expressly survive the termination hereof.

3.2.2 The above notwithstanding, the Property Information shall be limited to engineering, soil, environmental, feasibility or similar studies which relate to the Property and which Seller has in its possession or control. THIS DOES NOT CREATE AN OBLIGATION ON THE PART OF SELLER TO CAUSE ANY SUCH TESTS OR STUDIES TO BE UNDERTAKEN, BUT ONLY CREATES AN OBLIGATION ON THE PART OF THE SELLER TO DELIVER COPIES OF ANY SUCH DOCUMENTS OR MATERIALS TO BUYER IF THEY RELATE TO THE PROPERTY AND SELLER IN FACT HAS SUCH DOCUMENTS OR MATERIALS IN ITS POSSESSION OR CONTROL (EXCLUDING ITEMS WHICH ARE OF PUBLIC RECORD ON THE EXECUTION DATE).

3.2.3 All other provisions of this Agreement notwithstanding, Buyer shall not permit any liens to attach to the Property by reason of the exercise of its right to access, test or inspect the Property. Buyer hereby indemnifies and holds Seller harmless from and against any and all liens created by Buyer or contractors, subcontractors, materialmen, laborers or other persons accessing or performing work, tests, or inspections for or on behalf of Buyer, as well as any claims asserted by third parties for injuries or damages to said third parties or their property resulting from their access to the Property or the work or tests by or for Buyer. IT IS THE EXPRESS INTENTION OF THE SELLER AND THE BUYER THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS AN INDEMNITY BY BUYER TO INDEMNIFY AND PROTECT THE SELLER FROM THE CONSEQUENCE OF THE ACTS OF BUYER, OR BUYER'S CONTRACTORS, SUBCONTRACTORS, MATERIALMEN, LABORERS OR OTHER PERSONS ACTING BY OR FOR BUYER, IN ACCESSING THE PROPERTY OR PERFORMING WORK, TESTS OR INSPECTION OF THE PROPERTY ON BEHALF OF BUYER, INCLUDING ACTS OF NEGLIGENCE OR ALLEGED NEGLIGENCE, AND INCLUDING WHERE SAME IS A CONTRIBUTING CAUSE OF THE CLAIM. In addition, in the event this transaction should fail to Close for any reason, Buyer agrees to (A) repair any damage done to the Property by or on behalf of Buyer, its agents, employees or invitees, and (B) in connection with such repairs, restore the Property to as near its original condition as reasonably possible.

3.2.4 The provisions of this Section 3.2 shall survive the expiration or termination of this Agreement or the Closing.

3.3 Survey. Buyer may elect, at its sole cost and expense, to obtain a survey of the Property.

ARTICLE IV TITLE TO PROPERTY

4.1 Deeds. At Closing, Seller shall execute, acknowledge and deliver to Buyer a quit claim deed, in the form attached hereto as **Exhibit C** ("Deed") together with (1) a counterpart of the affidavit of real property value required by Arizona law ("Affidavit of Value"); and (2)

Certificate of Non Foreign Status, in the form attached hereto as Exhibit F (“Certificate of Non-Foreign Status”).

4.2 Bill of Sale. At Closing, Seller shall execute and deliver to Buyer a Bill of Sale in the form attached hereto as **Exhibit D** (“Bill of Sale”).

4.3 Leases and Licenses. At Closing, the leases, licenses, other agreements, and supplements thereto, in effect for, or applicable to, the Property as of the date of this Agreement (which leases, licenses and other agreements are identified on **Attachment 2 to Exhibit E**) (collectively, the “Leases and Licenses”) shall be assigned by Seller to, and assumed by, Buyer by a duly executed Assignment and Assumption Agreement (the “Assignment”) in the form attached hereto as **Exhibit E**. If additional Leases and Licenses are discovered post-Closing that should have been assigned to Buyer but are not included on **Attachment 2 to Exhibit E**, Seller agrees to assign same upon request of Buyer.

4.4 STB Operating and Abandonment Authority. At Closing, all of Seller’s (a) operating authority with respect to the Property as authorized by the Surface Transportation Board (“STB”), (b) abandonment authority with respect to the Property before the STB, and (c) all existing extensions of time to consummate the pending abandonment application before STB, shall be assigned by Seller to, and assumed by, Buyer by a duly executed Assignment and Assumption of Operating and Abandonment Authority Agreement (the “STB Assignment”) in the form attached hereto as **Exhibit G**. Consummation of each of the assignments contemplated by this Section 4.4 shall be subject to the approval of the STB.

4.5 Interim Trail Use. At Closing, Seller shall cause its affiliate Cochise Trails, LLC, an Arizona limited liability company (“Cochise Trails”), to assign to, and Buyer shall assume, all of Cochise Trail’s right title and interest to and under that certain Amended and Restated Interim Trail Use Agreement dated as of August 26, 1996, by and between Cochise Trails, as successor by assignment to San Pedro Trails, Inc., an Arizona corporation, and SWKR with respect only to the Property, by a duly executed Partial Assignment and Assumption of Amended and Restated Interim Trail Use Agreement (“Trail Use Assignment”) in the form attached hereto as **Exhibit H**. Consummation of the assignment contemplated by this Section 4.4 shall be subject to the approval of the STB.

4.6 In order to maintain uninterrupted continuity of STB interstate common carrier by railroad operating authority and approval with respect to the Property and the railroad operations thereon, Closing under this Agreement is subject to and contingent on Buyer receiving a decision from the STB that the Buyer and this transaction qualify for an exemption under 49 C.F.R. § 1180.2(d)(1) and 49 C.F.R. § 1180.2(d)(7). Buyer and Seller shall use their best efforts and cooperate with each other to seek all necessary authority and approval necessary and required under all applicable law and regulation including but not limited to that required under the Interstate Commerce Commission Termination Act, and the regulations promulgated thereunder by the STB.

**ARTICLE V
BUYER'S CONDITIONS TO CLOSING**

The following are conditions precedent to Buyer's obligation to purchase the Property:

5.1 Approval of Title.

5.1.1 Buyer has ordered, but has not yet received, a preliminary title report (the "Title Report") on the Property from First American Title Insurance Company (the "Title Company"). On or before the end of the Feasibility Review Period ("Title Contingency Date"), Buyer shall deliver written notice to Seller ("Buyer's Title Notice") of all matters of title to the Property disapproved by Buyer ("Disapproved Items"). Buyer's failure to deliver Buyer's Title Notice by the Title Contingency Date shall be deemed to be Buyer's approval of all existing title matters. If Buyer timely notifies Seller of Disapproved Items and all or some of the Disapproved Items (except for those Disapproved Items, if any, which will be removed upon Closing in accordance with the terms of this Agreement) are not cured or deleted as exceptions to title prior to the Closing Date, Buyer shall have the option of either waiving its disapproval of such Disapproved Items and proceeding to Closing or terminating this Agreement. Notwithstanding the foregoing, Seller agrees to remove all mortgages, deeds of trust and other monetary liens of any kind or nature, prior to Closing. In the event Buyer elects to terminate this Agreement pursuant to this Section 5.1, Buyer shall notify Seller of its election by written notice no later than the Closing Date. Buyer's failure to timely deliver written notice to Seller of its election to terminate shall be deemed to be Buyer's election to proceed to Closing and to waive its disapproval of such Disapproved Items.

5.2 Compliance by Seller. Seller shall have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Seller, and all representations and warranties made by Seller under this Agreement shall be true and correct as of the Closing Date.

5.3 No Litigation. No court or agency shall have issued an order restraining the consummation of the transactions contemplated by this Agreement and, except as set forth on Schedule 5.3 attached hereto, no litigation affecting the Property shall have been commenced.

**ARTICLE VI
SELLER'S CONDITION TO CLOSING**

The following are conditions precedent to Seller's obligation to sell the Property:

6.1 Compliance by Buyer. It is a condition precedent to Seller's obligation to sell the Property that Buyer shall have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Buyer.

ARTICLE VII CLOSING

7.1 Closing.

7.1.1 Closing Date. The consummation of the transaction contemplated by this Agreement (the "Closing") shall occur and delivery of all items to be made at the Closing under the terms of this Agreement shall be made on or before September 26, 2012 (the "Closing Date") at or through First American Title Insurance Company, 2425 E. Camelback Road, S-300, Phoenix, Arizona 85016 (the "Escrow Agent").

7.2 Deliveries by Seller. On or before 11:00 a.m. on the Closing Date, Seller shall deliver to the Escrow Agent the following items (all duly executed and acknowledged by Seller, as appropriate): (1) the Deed in the form of **Exhibit C**, together with a counterpart of the Affidavit of Value; (2) the Bill of Sale in the form of **Exhibit D**; (3) the Assignment in the form of **Exhibit E**; (4) a Non-Foreign Status Certificate in the form of **Exhibit F**; (5) a rent roll for all Leases updated to within ten (10) days prior to Closing; (6) evidence that Seller has filed with the STB a response in support of Buyer's acquisition of Seller's interest in the Property to intent to take an assignment of Seller's operating authority with respect to the Property; (7) the STB Assignment, in the form of **Exhibit G**; (8) the Trail Assignment in the form of **Exhibit H**; and (9) any other documents, instruments, data, records, correspondence or agreements called for hereunder that have not previously been delivered. In the event that the STB fails to provide its consent to the STB Assignment or the Trail Assignment by the Closing Date, Buyer may either (a) request a reasonable adjournment of the Closing to allow it to obtain all necessary STB consent to the consummation of the STB Assignment and/or the Trail Assignment, or (b) proceed to close the transaction without such STB consent, provided, in such event, Seller shall be required to deliver executed counterparts of each of the STB Assignment and the Trail Assignment and further agrees to cooperate with Buyer, and execute such additional documents as reasonably requested by Buyer, as may be necessary for Buyer to obtain STB's consent to each of the STB Assignment and the Trail Assignment. Seller's obligation with respect to the immediately preceding sentence shall, if applicable, survive the Closing and the recordation of the Deed.

7.2.1. Original Leases and Licenses. Within thirty (30) days following the Closing, Seller shall deliver to Buyer the original Leases and Licenses and files pertaining thereto.

7.3 Deliveries by Buyer. On or before the Closing Date, Buyer shall deliver to the Title Company the following items (all duly executed and acknowledged by Buyer, as appropriate): (1) the Purchase Price plus or minus prorations in accordance with Section 7.5 hereof; (2) a counterpart of the Affidavit of Value, (3) the Assignment in the form of **Exhibit E**; (4) a counterpart of the STB Assignment, in the form of **Exhibit G**; (5) a counterpart of the Trail Assignment in the form of **Exhibit H**; and (6) any other documents, instruments, data, records, correspondence or agreements called for hereunder that have not previously been delivered.

7.4 Other Instruments. Seller and Buyer shall each deliver to the Escrow Agent such other instruments and take such other actions as are reasonably required to close and consummate the purchase of the Property in accordance with the terms hereof.

7.5 Prorations.

7.5.1 All expenses of the Property, including, without limitation, real property taxes, special taxes, assessments and utility fees and/or deposits shall be prorated and apportioned between Buyer and Seller as of the Closing Date. Seller and Buyer hereby agree that any of the aforesaid prorations, which cannot be calculated accurately as of the Closing Date, shall be prorated based upon the most recent invoices or bills therefore, or if none, on the basis of the parties' reasonable estimates.

7.5.2 All rents and fees paid by a tenant or licensee of the Property (including rents and fees paid in advance for time periods subsequent to the Closing Date), and other income from the Property attributable to periods prior to the Closing, shall be retained by Seller. Buyer shall have no obligation to collect any rents or other charges due but uncollected prior to such Closing. All tenant security deposits, if any, shall be transferred to Buyer upon the Closing, and Buyer shall execute a document acknowledging receipt of such deposits and agreeing to hold them in accordance with the terms in the applicable Leases and Licenses.

7.6 Special Taxes, Bonds or Assessments. If, at the time of Closing, any portion of the Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment shall be prorated as of the Closing Date. All installments not then yet due whether or not the same have been prepaid shall not be prorated and Buyer shall assume such bonds or assessments. Any prepaid assessments made in advance of its due date shall be credited to Seller.

7.7 Costs and Expenses. Buyer shall pay all Closing costs, including but not limited to, recording fees, title examination charges, title policy costs, and other customary closing charges.

7.8 Delivery of Documents. Upon Closing Title Company shall record the Deed together with the Affidavit of Value in the official records of the Cochise County Recorder, issue the Title Policy to Buyer, disburse funds representing the Purchase Price to Seller, and deliver to the party entitled thereto the documents generated pursuant to this Agreement.

**ARTICLE VIII
REPRESENTATIONS, WARRANTIES AND COVENANTS**

8.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the date of this Agreement, as follows:

8.1.1 Organization. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona.

8.1.2 Authority. Seller has full statutory power and authority to enter into this Agreement and to carry out the obligations of Seller under this Agreement.

8.1.3 Enforceability. This Agreement has been duly authorized, executed and delivered by Seller and is the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by Seller, the consummation by Seller of the transaction contemplated thereby, nor compliance or performance by Seller with any of the provisions thereof, does or will violate any judgment, order, law or regulation applicable to Seller or result in any material breach of, or constitute a material default under, or result in the creation of, any material liens, charge, security interest or other encumbrance upon the Property (other than created by this transaction) pursuant to any note, bond, indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Seller is a party or by which any of the Property is bound.

8.1.4 Condemnation or Violations of Law. Except as set forth on Schedule 5.3 attached hereto, Seller has not received any notice of any existing or threatened condemnation or material violation of law.

8.1.5 Litigation; Judgments. Except as set forth on Schedule 5.3 attached hereto or otherwise disclosed to Buyer in writing, Seller has no knowledge of any pending litigation, administrative action, governmental investigation, examination, claim or demand whatsoever, nor any judgments, orders or decrees entered in any lawsuits or proceedings, affecting the Property.

8.1.6 Senior Rights. Seller has no knowledge that any tenant or other third party has any agreement or right granted by Seller to purchase all or any part of the Property that is senior to Buyer's rights hereunder.

8.1.7 Seller's Pre-Closing Deliveries. Seller represents that, to the best of its knowledge, it has delivered to Buyer true and correct copies of any and all valuation maps, Leases and Licenses, and environmental studies and reports in effect for, or applicable to, the Property as of the date of this Agreement. In the event Seller discovers any additional Leases or Licenses, valuation maps or environmental studies or reports, Seller shall promptly deliver the same to Buyer. Except as otherwise previously disclosed to Buyer by Seller, Seller has no current actual knowledge of (i) any tenancy or other agreements that materially affect Seller's current use of the Property, other than the Leases and Licenses; or (ii) any material defaults under any of the Leases and Licenses by any party thereunder. Seller has no unfulfilled financial obligations to tenants or other parties under any of the Leases or Licenses, or any other agreements.

8.1.8 Cooperation. Seller shall cooperate with Buyer's efforts to remove any encroachments after the Closing, which cooperation shall consist of making Seller's records

reasonably available for Buyer's inspection and making Seller's representatives reasonably available, at Buyer's sole cost and expense, to testify.

8.1.9 Material Change; Survival. On the day of Closing, the representations and warranties of Seller set forth in Section 8.1 shall be true, except for changes in any such representation or warranty disclosed to Buyer by Seller in writing prior to Closing. If any such representation or warranty materially changes, Buyer may elect to terminate this Agreement by giving Seller notice of termination before the date which is five (5) days following the date Buyer is given notice of such change by Seller. In the event of such termination by Buyer, this Agreement shall terminate and be without any force and effect and without further obligation of either party to the other. The foregoing representations and warranties of Seller shall survive the Closing and the delivery of the Deed.

8.2 Representations, Warranties and Covenants of Buyer. Buyer hereby represents, warrants and covenants to Seller as of the date of this Agreement and as of the Closing Date, as follows:

8.2.1 Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

8.2.2 Enforceability. This Agreement has been duly authorized, executed and delivered by Buyer and is the legal, valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by Buyer, the consummation by Buyer of the transaction contemplated thereby, nor compliance or performance by Buyer with any of the provisions thereof does or will violate any judgment, order, law or regulation applicable to Buyer.

8.2.3 Authority. Buyer has full statutory power and authority to enter into this Agreement and to carry out the obligations of Buyer under this Agreement.

ARTICLE IX CONDEMNATION AND RISK OF LOSS

9.1 Condemnation. If, prior to the Closing, any governmental agency, other entity or person commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Buyer shall have the unilateral right, exercisable by giving notice of such decision to Seller within ten (10) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement, and neither party shall have any further rights or obligations under this Agreement (other than the those obligations that expressly survive the termination of this Agreement). If Buyer does not elect to terminate pursuant to this Section 9.1, the net proceeds of condemnation awards payable to Seller by reason of such condemnation shall be paid or assigned to Buyer upon the Closing.

9.2 Casualty. If, prior to Closing, the Seller's improvements on the Property are destroyed or materially damaged, Buyer shall have the unilateral right, exercisable by giving notice of such decision to Seller within ten (10) days after receiving written notice of such destruction or damage, to terminate this Agreement, and neither party shall have any further rights or obligations under this Agreement (other than the those obligations that expressly survive the termination of this Agreement). If Buyer does not elect to terminate pursuant to this Section 9.2, the net insurance proceeds, if any, payable to Seller by reason of such destruction or damage shall be paid or assigned to Buyer upon Closing.

9.3 Risk of Loss. Notwithstanding any other provision in this Agreement contained, until Closing, Seller shall be solely responsible for all risk of casualty or other loss or damage to the Property.

ARTICLE X DEFAULT

10.1 Seller Default. If Seller defaults in Seller's obligation to close the transaction contemplated hereby, Buyer may elect, as its sole remedy, to either (i) terminate Buyer's obligations under this Agreement by written notice to Seller with a copy to Escrow Agent or (ii) close the transaction contemplated hereby, in which event Buyer may pursue a claim for specific performance of Seller's obligation to close the transaction contemplated hereby. If the remedy of specific performance is not available for any reason other than the acts or omissions of Buyer or a default under this Agreement by Buyer, then Buyer may pursue a claim for damages for Seller's default in Seller's obligation to close. The above notwithstanding, as to any obligation of Seller which is a surviving obligation, Buyer shall always have the right to enforce specific performance or pursue damages for those claims, independent of whatever remedy it has elected above for Seller's default in Seller's obligation to Close, however any such claim will be limited to its actual damages only and Buyer waives any rights to pursue a claim for consequential, exemplary or punitive damages or similar claims.

10.2 Buyer Default. IN THE EVENT BUYER DEFAULTS IN ITS OBLIGATION TO CLOSE THE PURCHASE OF THE PROPERTY, BUYER SHALL PAY SELLER THE SUM OF ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) AS LIQUIDATED DAMAGES, IT BEING UNDERSTOOD THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF SUCH DEFAULT ARE DIFFICULT, INCONVENIENT AND UNCERTAIN TO ASCERTAIN AND THAT, AFTER NEGOTIATION, SUCH AMOUNT REPRESENTS THE PARTIES' BEST ESTIMATE OF REASONABLE AND APPROPRIATE DAMAGES. SELLER SHALL HAVE NO OTHER REMEDY, AT LAW OR IN EQUITY, FOR ANY DEFAULT BY BUYER.

Seller: _____

Buyer: _____

The above notwithstanding, as to any obligation of Buyer which is a surviving obligation, Seller shall always have the right to enforce specific performance or pursue damages for those claims.

ARTICLE XI MISCELLANEOUS

11.1 Agreement Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

11.2 Successors and Assigns. Buyer may assign this Agreement to an entity which is owned or controlled, directly or indirectly, by Buyer, without the prior written consent of Seller. Buyer may not assign this Agreement to any other person or entity without the prior written consent of Seller. Buyer shall provide Seller with written evidence of any assignment, which shall include an express assumption of the obligations of Buyer by the assignee. Notwithstanding anything contained herein to the contrary, in connection with any assignment hereunder, the assignor shall continue to be fully liable for all of the obligations hereunder. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

11.3 Parties in Interest. Except as expressly provided in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action over against any party to this Agreement.

11.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties.

11.5 Amendment. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the party to be bound.

11.6 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.7 Timeliness. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

11.8 Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered;

(ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earlier of actual receipt or (i) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If to Seller: San Pedro Railroad Operating Company, LLC
7964 E. Coronado Road
Tucson, Arizona 85750
ATTN: Scott Parkinson
Telephone: (208)676-8724
Facsimile: (208)676-8705

If to Buyer: UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street, Stop 1690
Omaha, NE 68179-1690
ATTN: Greg Brigham, Manager - Acquisitions
Telephone: (402) 544-0794
Facsimile: (402) 501-0340

With copy to: UNION PACIFIC RAILROAD COMPANY
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
ATTN: Gerard Sullivan
Telephone: (402) 271-4468
Facsimile: (402) 271-7107 or 271-5610

With a copy to: BRYAN CAVE LLP
2 North Central Avenue, Suite 220
Phoenix, Arizona 85004
ATTN: Andrew D. Gleason, Esq.
Telephone: (602) 364-7276
Facsimile: (602) 364-7070

If to Escrow Agent: First American Title Insurance Company
National Commercial Services
2425 E. Camelback Road, S-300
Phoenix, Arizona 85016
ATTN: Neil Moffett
Telephone: (602) 567-8118
Facsimile: (866) 524-2116

11.9 Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Arizona, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in Cochise County, Arizona.

11.10 Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

11.11 Invalidity. Any provision of this Agreement which is invalid, void, or illegal, shall not affect, impair, or invalidate any other provision of this Agreement, and such other provisions of this Agreement shall remain in full force and effect.

11.12 Counterparts; Facsimile Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by one party to the other by facsimile, portable document format (.pdf) via electronic mail, or other electronic means shall be deemed original signatures and enforced accordingly.

11.13 Further Assurances. Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

11.14 Execution Date. This Agreement shall become effective only after a fully executed copy of this Agreement is deposited with the Escrow Agent and acknowledged by the Escrow Agent ("Execution Date"). Any reference in this Agreement to "the date hereof", "Execution Date", the "effective date of this Agreement", "the date of this Agreement" or any similar referral shall refer to the date that a fully executed copy of this Agreement is deposited with the Escrow Agent and acknowledged by the Escrow Agent as received.

11.15 Brokers. The negotiations relative to this Agreement have been carried on by both parties without the intervention of any person which would give rise to any valid claim against either of the parties for brokerage commission or other like payment. Each party shall indemnify and hold harmless the other party for, from and against any and all claims for brokerage commission or other like payment arising out of the sale and purchase of the Property and occasioned by the actions of the indemnifying party. This Section 11.15 shall survive and not be merged into the Closing.

11.16 Recitals and Exhibits. The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Agreement.

11.17 Severability. Any provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to

the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

SELLER:

SAN PEDRO RAILROAD COMPANY, LLC, an Arizona limited liability company

By: Arizona Railroad Group, LLC, an Arizona limited liability company

By: _____
Print Name: _____
Title: _____

BUYER:

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation

By: _____
Print Name: _____
Title: _____

ESCROW AGENT

Escrow Agent hereby (i) agrees to be bound by the provisions hereof applicable to Escrow Agent; (ii) agrees to perform its obligations as set forth herein; and (iii) declares that the Execution Date has occurred on the _____ day of _____, 2012.

FIRST AMERICA TITLE INSURANCE COMPANY, a California corporation

By: _____
Title: _____

EXHIBIT A

PRINT OF PROPERTY

[Attached – Following Page]

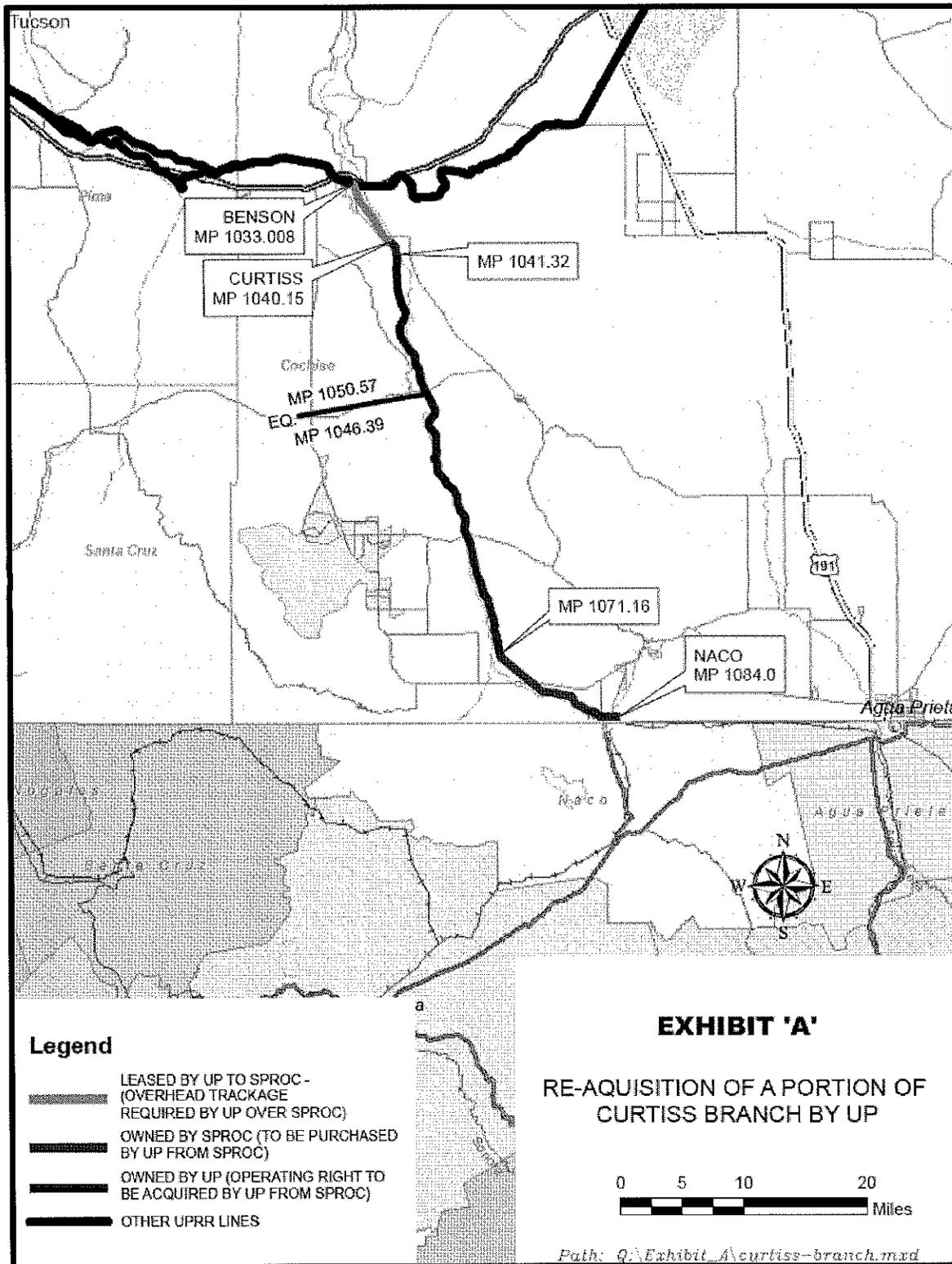


EXHIBIT A

EXHIBIT B

LEGAL DESCRIPTION

[ATTACHED]

EXHIBIT C

**RECORDING REQUESTED BY
AND AFTER RECORDING
RETURN TO:**

Union Pacific Railroad Company
Attn: Assistant Vice President-
Real Estate
1400 Douglas Street
Mail Stop 1690
Omaha, Nebraska 68179

QUIT CLAIM DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration received, SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company Delaware corporation ("**Grantor**"), whose address is _____, does hereby quit claim to UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, whose address is 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, Attn: Assistant Vice-President, Real Estate, the following described real property (the "**Property**") situated in Cochise County, Arizona:

SEE **EXHIBIT A** ATTACHED HERETO AND MADE A PART HEREOF.

IN WITNESS WHEREOF, the Grantor has caused this Special Warranty Deed to be executed as of this ___ day of _____, 2012.

GRANTOR:

**SAN PEDRO RAILROAD OPERATING
COMPANY, LLC**, an Arizona limited
liability company

By: Arizona Railroad Group, LLC, an
Arizona limited liability company

By: _____
Printed Name: _____
Its: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, the _____ of ARIZONA RAILROAD GROUP, LLC, an Arizona limited liability company, the Sole Manager of SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company, on behalf of said limited liability company.

Notary Public

My Commission Expires:

EXHIBIT C

2

EXHIBIT A TO DEED

[TO BE ATTACHED]

EXHIBIT C

3

EXHIBIT D

BILL OF SALE

SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company ("Seller"), for and in consideration of One Dollar (\$1.00) and other valuable consideration does hereby sell, transfer and deliver to UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Buyer"), its successors and assigns, all of Seller's right, title and interest in and to the following described personal property, to wit:

The improvements owned by Seller and fixed upon the real property located in Cochise County in the State of Arizona, as such real property is described in Exhibit A attached hereto and made a part hereof, including without limitation, all tracks, ties, leads, spurs, turnouts, tails, sidings, team tracks, signals, bridges, switches, grade crossing materials, warning devices and any and all other operating and nonoperating appurtenances.

IN WITNESS WHEREOF, Seller has duly executed this instrument as of the _____ day of _____, 2012. The effective date and delivery date of this Bill of Sale shall be deemed to be _____, 2012.

SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company

By: Arizona Railroad Group, LLC, an Arizona limited liability company

By: _____

Printed Name: _____

Its: _____

EXHIBIT A TO BILL OF SALE

[TO BE ATTACHED]

EXHIBIT D

2

EXHIBIT E

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company (“Assignor”), has ASSIGNED AND TRANSFERRED, and by these presents does ASSIGN AND TRANSFER unto the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“Assignee”), all of Assignor’s right, title and interest in and to the tenant leases and licenses (“Leases and Licenses”) now or hereafter affecting the real property (the “Property”) described in **Attachment 1** attached hereto, which Leases and Licenses, and all amendments thereto, are described on **Attachment 2** attached hereto, together with all security deposits and other deposits held by Assignor under the terms of said Leases and Licenses.

TO HAVE AND TO HOLD the Leases and Licenses unto Assignee, its successors and assigns. This Assignment is made and accepted without recourse against Assignor as to the performance by any party under such Lease.

Assignee agrees to perform all of the obligations of Assignor pursuant to the Leases and Licenses accruing after the date hereof.

This Assignment and Assumption Agreement may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Assignment and Assumption Agreement shall be construed in accordance with, and governed by, the laws of the State of Arizona, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in any court having jurisdiction over Cochise County, Arizona.

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

This Assignment and Assumption Agreement shall inure to and be binding upon the parties, their successors and assigns.

Dated the _____ day of _____, 2012.

ASSIGNOR:

SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company

By: Arizona Railroad Group, LLC, an Arizona limited liability company

By: _____

Printed Name: _____

Its: _____

ASSIGNEE:

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation

By: _____

Print Name: _____

Title: _____

ATTACHMENT 1 TO EXHIBIT E

**LEGAL DESCRIPTION OF PROPERTY
TO BE ATTACHED**

EXHIBIT E

3

ATTACHMENT 2 TO EXHIBIT E

LIST OF LEASES AND LICENSES TO BE ASSIGNED

Leases:

Licenses:

Easements:

[TO BE ATTACHED]

EXHIBIT E

4

EXHIBIT F

CERTIFICATION OF NON-FOREIGN STATUS

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, UNION PACIFIC RAILROAD COMPANY, that no withholding is required with respect to the transfer of a U.S. real property interest by SAN PEDRO RAILROAD OPERATING COMPANY, LLC, the undersigned hereby certifies the following on behalf of SAN PEDRO RAILROAD OPERATING COMPANY, LLC:

1. SAN PEDRO RAILROAD OPERATING COMPANY, LLC is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. SAN PEDRO RAILROAD OPERATING COMPANY, LLC's employer identification number is _____; and
3. SAN PEDRO RAILROAD OPERATING COMPANY, LLC'S address is _____, and place of formation is Arizona.
4. SAN PEDRO RAILROAD OPERATING COMPANY, LLC is not a disregarded entity as defined in Treasury Regulation Section 1.1445-2(b)(2)(iii).

SAN PEDRO RAILROAD OPERATING COMPANY, LLC agrees to inform the transferee if it becomes a foreign person at any time during the three (3) year period immediately following the date of this notice.

SAN PEDRO RAILROAD OPERATING COMPANY, LLC understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of SAN PEDRO RAILROAD OPERATING COMPANY, LLC.

**SAN PEDRO RAILROAD OPERATING
COMPANY, LLC**, an Arizona limited liability
company

By: Arizona Railroad Group, LLC, an
Arizona limited liability company

By: _____

Printed Name: _____

Its: _____

EXHIBIT G

ASSIGNMENT AND ASSUMPTION OF OPERATING AND ABANDONMENT AUTHORITY AGREEMENT

FOR VALUE RECEIVED, SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company (“Assignor”), has ASSIGNED AND TRANSFERRED, and by these presents does ASSIGN AND TRANSFER unto the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“Assignee”), all of Assignor’s right, title and interest in and to (i) Assignor’s operating authority with respect to the real property described on **Schedule 1** attached (the “Property”) granted by the United States Surface Transportation Board (“STB”), (ii) Assignor’s abandonment authority with respect to the Property before the STB, and (iii) Seller’s existing extension of time to consummate the pending abandonment pending before STB (collectively, the “Operating and Abandonment Rights”).

TO HAVE AND TO HOLD the Operating and Abandonment Rights unto Assignee, its successors and assigns. This Assignment is made and accepted without recourse against Assignor as to the performance by any party under such Operating and Abandonment Rights.

Assignee agrees to perform all of the obligations of Assignor with respect to the Operating and Abandonment Rights accruing on the last to occur of (1) the date hereof, or (2) the date the STB consents to the assignments contemplated hereby.

This Assignment and Assumption of Operating and Abandonment Authority Agreement may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Assignment and Assumption of Operating and Abandonment Authority Agreement shall be construed in accordance with, and governed by, the laws of the State of Arizona, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in and court having jurisdiction over Cochise County, Arizona. Assignor and Assignee acknowledge and agree that the consummation of the assignment set forth herein is conditioned upon approval by the STB.

All schedules attached to this Assignment and Assumption of Operating and Abandonment Authority Agreement are incorporated herein for all purposes.

This Assignment and Assumption of Operating and Abandonment Authority Agreement shall inure to and be binding upon the parties, their successors and assigns.

Dated the _____ day of _____, 2012.

ASSIGNOR:

SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company

By: Arizona Railroad Group, LLC, an Arizona limited liability company

By: _____
Printed Name: _____
Its: _____

ASSIGNEE:

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation

By: _____
Print Name: _____
Title: _____

SCHEDULE 1 TO EXHIBIT G

**LEGAL DESCRIPTION OF PROPERTY
TO BE ATTACHED**

EXHIBIT G

3

EXHIBIT H

PARTIAL ASSIGNMENT AND ASSUMPTION OF INTERIM TRAIL USE AGREEMENT

FOR VALUE RECEIVED, SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company ("Assignor"), has ASSIGNED AND TRANSFERRED, and by these presents does ASSIGN AND TRANSFER unto the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignee"), all of Assignor's right, title and interest in and to that certain Amended and Restated Interim Trail Use Agreement dated as of August 26, 1996 between Assignor and SWKR Operating Co., Inc., an Arizona corporation ("Trail Use Agreement"), with respect only to the real property (the "Property") described on Schedule 1 attached hereto (the "Trail Rights").

TO HAVE AND TO HOLD the Trail Rights unto Assignee, its successors and assigns. This Partial Assignment is made and accepted without recourse against Assignor as to the performance by any party under such Trail Rights. Assignor and Assignee acknowledge and agree that Assignor shall retain all rights under the Trail Use Agreement with respect to any real property described in the Trail Use Agreement other than the Property.

Assignee agrees to perform all of the obligations of Assignor with respect to the Trail Rights accruing on the last to occur of (1) the date hereof, or (2) the date the STB consents to the assignment contemplated hereby.

This Partial Assignment and Assumption of Interim Trail Use Agreement may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Partial Assignment and Assumption of Interim Trail Use Agreement shall be construed in accordance with, and governed by, the laws of the State of Arizona, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in any court having jurisdiction over Cochise County, Arizona. Assignor and Assignee acknowledge and agree that the consummation of the assignment set forth herein is conditioned upon approval by the STB.

All schedules attached to this Partial Assignment and Assumption of Interim Trail Use Agreement are incorporated herein for all purposes.

This Partial Assignment and Assumption of Interim Trail Use Agreement shall inure to and be binding upon the parties, their successors and assigns.

Dated the _____ day of _____, 2012.

ASSIGNOR:

SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona limited liability company

By: Arizona Railroad Group, LLC, an Arizona limited liability company

By: _____
Printed Name: _____
Its: _____

ASSIGNEE:

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation

By: _____
Print Name: _____
Title: _____

SCHEDULE 1 TO EXHIBIT H

**LEGAL DESCRIPTION OF PROPERTY
TO BE ATTACHED**

EXHIBIT H

3

SCHEDULE 5.3

PENDING LITIGATION

The only current litigation involving this property is *Jack Ladd, Jobeth Ladd, John Ladd, Marie Ladd, Gail A. Lanham, James A. Lindsey, Michael A. Lindsey, William Lindsey, Charlie Miller, Pauline Miller, and Raymond Miller v. United States*, 07-271L, filed in the United States Court of Federal Claims. After the trial court ruled in favor of the Defendant United States, Plaintiffs Ladd, et al, filed an appeal with the United States Court of Appeals for the Federal Circuit which reversed and remanded that ruling back to the trial court for a determination of the compensation owed Plaintiffs by the United States for the taking of their property.

Redacted

TRACKAGE RIGHTS AGREEMENT
BETWEEN BENSON, ARIZONA AND CURTISS, ARIZONA

THIS AGREEMENT, made and entered into this __ day of August, 2012 (the “Execution Date”), by and between **SAN PEDRO RAILROAD OPERATING COMPANY, LLC**, an Arizona corporation (hereinafter referred to as “SPROC” or “Owner”), and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter referred to as “UP” or “User”).

W I T N E S S E T H:

WHEREAS, SPROC is the leasee and operator of a certain line of railroad between MP 1033.01 at Benson, Arizona and MP 1040.15 near Curtiss, Arizona, which shall be referred to herein as the “Joint Trackage”, and as depicted by the green line on Exhibit A attached hereto; and

WHEREAS, the Joint Trackage was subject of a January 31, 1995 lease wherein the San Pedro and Southwestern Railway (predecessor to the SPROC) leased the Joint Trackage from the Southern Pacific Railroad (predecessor to the UP); and

WHEREAS, the UP now desires use the Joint Trackage for the purpose of preserving access to a line of railroad owned by UP south of Curtiss and extending southerly to Naco, Arizona; and

WHEREAS, Owner is willing to grant User trackage rights upon Owner’s railroad lines subject to the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the parties.

Section 1. General Conditions; Conflicts Between Provisions:

The General Conditions set forth in Exhibit B attached hereto are hereby made a part of this Agreement. Each capitalized term used and not otherwise defined in this Agreement shall have the meaning ascribed to it in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

Section 2. User’s Rights:

(a) Subject to the terms and conditions contained herein, Owner grants to User the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in User’s

account over the Joint Trackage in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered Owner for the purposes of this Agreement, it being understood and agreed that User shall not have the right to:

- (i) Switch industries upon the Joint Trackage, except as hereinafter provided;
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in this Section 2 and in Sections 2.12, 2.13 and 2.14 of Exhibit B;
- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage, except as otherwise provided in this Section 2;
- (iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of User; provided, however, that the foregoing shall not prevent User, pursuant to a runthrough agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement; or
- (v) Connect with or interchange with any other railroad or perform haulage for any other railroad along the Joint Trackage.

(b) The rights granted in Section 2 (a), above, shall be for rail freight traffic, carload and intermodal, of all commodities.

(c) User agrees that when entering, exiting, setting out or picking up from its existing lines of railroad or trackage rights lines, it shall do so without unreasonable interference or impairment of the Joint Trackage.

(d) Owner will make best efforts, consistent with reasonable operating practices, to maintain clear route access over the Joint Trackage.

Section 3. Liability

Any liability for loss, damage, injury or death which arises from operations under this Agreement shall be assumed, settled and paid as provided by Exhibit "B".

Section 4. Compensation:

(a) In addition to other payments to be made under this Agreement, User shall pay to Owner _____ (the "Usage Fee"). The Usage Fee shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes.

(b) The Usage Fee set forth in Section 3 (a) of this Agreement shall be subject to adjustment annually, commencing as of July 1, 2013, during the term of this Agreement to reflect seventy-five percent (75%) of increases or decreases in the Rail Cost Adjustment Factor ("RCAF-U" or "Index") published by the Surface Transportation Board ("STB") or successor agency or other organization. The RCAF-U will not be adjusted for changes in productivity. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and, failing to agree on such an index, the matter shall be referred to binding arbitration.

Section 5. Additions

SPROC may make any Changes In and/or Additions to the Joint Trackage which SPROC deems necessary or desirable at its sole discretion and cost provided such Changes In and/or Additions to the Joint Trackage shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement. UP may request Changes In and/or Additions to the Joint Trackage which UP shall deem necessary or desirable, and SPROC shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon by the parties.

Section 6. Effective Date, Term and Termination:

Subject to and conditioned upon approval of the U.S. Department of Transportation Surface Transportation Board ("STB"), this Agreement shall be effective as of the date STB approval is effective ("Effective Date"), and shall remain in effect for ninety-nine (99) years and then year to year thereafter until terminated by either UP or SPROC upon one (1) year written notice to the other party. Termination shall be subject to the conditions stated in Exhibit "B". Liabilities created under this Agreement shall survive any such termination.

Section 7. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UP:

General Manager Joint Facilities
Union Pacific Railroad
Mail Stop 1180
1400 Douglas Street
Omaha, Nebraska 68179

If intended for SPROC:

General Manager
San Pedro and Southwestern Railroad
P.O. Box 1420
Benson, Arizona 85602

Notice of address change may be given any time pursuant to the provisions of this Section 6.

Section 8. Applicable Law

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

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

UNION PACIFIC RAILROAD COMPANY

**SAN PEDRO RAILROAD OPERATING
COMPANY**

By: _____

By: _____

Printed: _____

Printed: _____

Its: _____

Its: _____

GENERAL CONDITIONS

EXHIBIT "B"

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement dated August __, 2012, to which this Exhibit "B" is appended.

1.2 "Annual" shall mean a calendar year.

1.3 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.

1.4 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement.

1.5 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance or repair of such railroad tracks.

1.6 "Joint Trackage" shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.7 "Owner" shall have the meaning given to it in the Agreement.

1.8 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.9 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.10 "User" shall have the meaning given to it in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make

such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same.

2.3 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize.

2.4 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.5 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.6 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, train supplies and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.7 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to

change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.8 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage.

2.9 (a) If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses arising from such withdrawal.

(b) If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.10 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be

considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.11 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to re-rail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.12 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.10), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.10), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.13 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of

User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.14 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under this Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

Section 4. COMPLIANCE WITH LAWS

4.1 Each of the Parties undertakes and agrees, in respect to its use of the Joint Trackage and the operation of Equipment thereon and thereover, to comply with all applicable laws, rules, regulations, and orders (collectively, "Laws") promulgated by any municipality, board or commission for the protection of persons or otherwise. Any action which may be brought against a Party on account of the failure of the other Party to comply with any Law shall, upon notice thereof being given to such other Party, be defended by such other Party free of cost, charge, or expense (including attorneys' fees) to the Party against which the action is brought. If any failure on the part of a Party to comply with any Law shall result in any fine, penalty, cost or charge being imposed on or assessed against the other Party, such fine, penalty, cost or charge shall be the responsibility (through direct payment or reimbursement) of the Party who failed to so comply.

4.2 Neither Party shall treat, store or dispose of petroleum products or hazardous waste or hazardous substances, as defined in (i) the Resource Conservation and Recovery Act, as amended, or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage.

4.3 Responsibility for Environmental Claims (as defined below) as between the parties shall be borne as follows:

a. Each Party shall be responsible for Environmental Claims to the extent they result from (i) its use of, or the presence of it or its contractors or invitees upon, the Joint Trackage, or (ii) the negligence or willful misconduct of its employees, contractors, invitees or customers in operations on or over the Joint Trackage.

b. Each Party shall release the other Party to the extent it is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other Party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, attorneys' fees and third party claims.

4.4 In the event of any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereinafter "Derailment") operated by a Party hereto carrying (i) hazardous materials, substances or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "Hazardous Materials") shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of the operating Party at its sole cost and expense. Each Party shall advise the other Party immediately

of the occurrence of a Derailment involving Hazardous Materials and Equipment operated by that Party.

4.5 Unless otherwise agreed by the parties, Owner shall undertake, or cause to be undertaken, any Response Action (as defined below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right-of-way underlying the Joint Trackage from Equipment operated by either Party hereto upon the occurrence of a Derailment. The Party in whose account the Equipment is moving shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

4.6 If, following a Derailment upon the Joint Trackage, Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the Parties, the Party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars that are blocking the Joint Trackage, the Owner shall transfer, or caused to be transferred, the Hazardous Materials; provided further that transfers of Hazardous Materials by the User shall only be conducted after being authorized by the Owner.

4.7 In the event any cleanup, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively referred to herein as "Response Action"), neither Party shall be entitled to any damages, actual, punitive, exemplary or consequential, by reason of the Response Action's interference with the other Party's use of the Joint Trackage. The User and its contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action. The User shall provide the Owner with all information requested by Owner regarding any Environmental Claims for which the User is responsible.

4.8 The term "Environmental Claim" means the direct costs of any cleanup, response, removal, remediation, natural resource damage, closure and/or post-closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with the Agreement.

4.9 The total cost of clearing a Derailment, performing any Response Action, transferring any Hazardous Materials, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the Party or Parties liable therefor pursuant to the allocation of liability in Sections 4 and 5 of this Exhibit A.

Section 5. LIABILITY

(a) "Loss or Damage" shall mean all damage to any property and injury to or death of any person and all liability therefor, and shall embrace all payments made on account thereof, including, without limitation, expense of rerailling Equipment and clearing wrecks, Environmental Claims, fines or penalties, amounts paid or payable under all applicable laws and

shall also embrace all cost and expense incident to any such injury, death, loss or damage arising in connection with operations under the Agreement. Loss or Damage shall also include attorneys' fees and costs in defending against all such claims or alleged claims or in enforcing any indemnity rights hereunder.

(b) (i) It is understood and agreed that the Owner shall maintain the Joint Trackage in a state of reasonable repair which is reasonably suited for the combined requirements of the Parties hereof, but the User shall accept such trackage as it finds it and shall not, by reason of any failure, deficiency or defect therein or failure or neglect in the maintenance or dispatching of the Joint Track, have or make against the Owner any claim or demand for any Loss or Damage whatsoever, nor shall Loss or Damage be allocated to the Owner under Section 5(c) arising from or incident to such deficiency, defect, failure or neglect.

(ii) It is understood and agreed that a number of vehicular and pedestrian crossings ("Crossings") of the Joint Trackage to be used for operations hereunder presently exist or may in the future be constructed. The User agrees to accept all Crossings in whatever condition they may be during the term of the Agreement and shall not assert any claim, demand, or cause of action against the Owner and shall hold the Owner harmless from any claim, demand, or cause of action arising out of any Crossing accident on the Joint Trackage involving the User.

(c) Except as provided in Section 5(b), liability for Loss or Damage shall be fixed between the Parties as follows:

(i) When caused by the acts or omissions of the employees of only one Party or the defective property of only one Party (other than Joint Trackage), whether or not in conjunction with the acts or omissions or defective property of a third party, such Loss or Damage, including Loss or Damage to the Joint Trackage, shall be borne solely by such Party.

(ii) When caused by the acts or omissions of the employees of one Party or defective property (other than Joint Trackage) of one Party in combination with the acts or omissions of the employees of the other Party or the defective property (other than Joint Trackage) of the other Party, then, whether or not in conjunction with the acts or omissions or defective property of a third party, such Loss or Damage shall be borne solely by each Party as to its own employees, contractors, agents, invitees, and property, other than real property owned by it, and property of third parties in its possession, care, custody or control. Loss or Damage to real property of the Owning Party underlying or surrounding the Joint Trackage, Loss or Damage to the Joint Trackage, as well as Loss or

Damage to third parties and their property shall be borne equally between the Parties.

(iii) Environmental Claims shall be borne in accordance with Section 4 hereof.

(iv) Loss or Damage due to any other cause shall be borne solely by each party as to its own employees, invitees and Equipment (including lading) in its custody, and equally as to damage to trackage and damage suffered by the third parties and their property.

(d) It is the express intention of the Parties hereto, that where an indemnity provided for in this Agreement is applicable as provided herein, that such indemnity includes the negligence of the indemnified Party whether that negligence is active or passive, or is a sole or concurring cause of the Loss or Damage; provided that said indemnity shall not protect the indemnified Party from liability for Loss or Damage arising solely from the criminal actions of the indemnified Party, its officers, agents or employees.

(e) The foregoing notwithstanding, if such Loss or Damage involves the Equipment of only one Party, or in the possession or custody of only one Party, that Party shall bear all Loss or Damage.

(f) The foregoing notwithstanding, neither Party shall have any claim against the other Party for its acts or omissions giving rise to Loss or Damage caused by or resulting from interruption of or delay to such Party's business or for special, indirect or consequential damages or for loss of profit or income.

(g) Each Party hereto covenants and agrees that it shall forever release, defend, indemnify and save harmless the other Party, its successors and assigns, from and against any and all liability or claims for damages, costs and expenses herein assumed by it, whether or not such liability or claims arise during the time that the Agreement is in effect or thereafter or are occasioned by or incident to or the result of any acts or omissions of the other Party, its successors and assigns, and regardless of the acts or omissions or alleged acts or omissions of the other Party; provided, however, that the Party liable, in whole or in part, as to any claim or suit filed against the other Party, shall be given prompt written notice thereof and an opportunity to join in or take over, as may be appropriate, the defense and settlement of such claim or suit.

(h) Each Party hereto may make settlement of any claim for Loss or Damage for which it and the other Party may be jointly liable hereunder, but no payment in excess of Twenty-five Thousand Dollars (\$25,000) shall be voluntarily made by any Party in settlement of any such claim without first having obtained in writing consent of the other Party, which consent shall not be unreasonably withheld, and giving of such consent shall not be deemed an admission that such claim involves joint liability. The Party against which a claim in excess of Twenty-five Thousand Dollars (\$25,000) is made for which the other Party hereto may be jointly liable hereunder shall give written notice thereof to such other Party.

(i) All releases taken pursuant to the settlement of claims or suits involving joint liability shall include both Parties hereto involved, and copies thereof shall be furnished each of them.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for Arizona upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery

of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

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

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 (a) To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

(b) Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned, at the Net Liquidation Value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less the estimated cost of removal. User shall have three (3) months from the date of receipt of Owners notice to exercise its option and shall evidence the exercise of its option by giving owner written notice thereof. Thereafter

User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instrument, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

(c) If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to, make appropriate application to secure all necessary governmental authority for such abandonment. User agrees that at such time it will concurrently make application for all necessary governmental authority for abandonment of its right to operate over the Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. TERMINATION

Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 9. ASSIGNMENT

This Agreement is exclusively for the benefit of the Parties hereto and not for the benefit of any third party. This Agreement shall inure to the benefit of and shall be binding upon the parties, their successors and assigns subject to the limitations set forth herein. Except as provided in Section 3.5 the Agreement and any rights granted hereunder may not be assigned in whole or in part by Owner or User without the prior written consent of the other, except no such consent shall be required for an assignment that is (i) the result of a merger, corporate reorganization, consolidation, change in control or sale of substantially all of a parties assets, or (ii) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled, controlling or under common control with the assigning party.

Section 10. DEFAULT

10.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

10.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Agreement, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

10.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 11. OTHER CONSIDERATIONS

11.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

11.2 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No

controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

11.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

11.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

11.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

End of Exhibit "B".

SALE AGREEMENT -- DOUGLAS AND BISBEE BRANCHES

AGREEMENT, made this 31st day of January, 1995, by and between SWKR OPERATING CO., INC., an Arizona corporation ("Buyer") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("Seller").

WHEREAS, Seller owns three lines of railroad in Arizona known as: (1) the Curtiss portion of Douglas Branch from milepost N 1033.008 at or near Benson, AZ (and certain yard tracks at Benson) to milepost N 1040.15 at or near Curtiss, AZ ("Curtiss Premises"); (2) the Douglas Branch from milepost N 1040.15 at or near Curtiss, AZ to milepost NA 1108.11 at or near Douglas, AZ; (3) the Bisbee Branch from milepost NB 1085.13 at or near Bisbee Junction, AZ to milepost NB 1090.40 at or near Bisbee, AZ, collectively, (1), (2) and (3) are "the Arizona Branches" and (2) and (3) are the Sale Branches.

WHEREAS, Buyer is desirous of leasing the Curtiss Premises, buying said Douglas Branch, and Bisbee Branch to continue to provide common carrier service thereon:

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

1. Definitions:

"Allocation" shall mean the portion of the Purchase Price represented by each component of the Properties.

April 18, 1995

Mr. D. C. Lowe:

Re: Closing Documents -- Douglas, Bisbee Sale

Enclosed for your processing to document custody are the following documents from the sale; lease and option with SWKR Operating Company:

- 1. Sale Agreement
 - Exhibit A - Map (missing)
 - Exhibit B - Parcels Retained by Seller (missing)
 - Exhibit C - Curtiss Premises Lease
 - Exhibit 1 - Map (missing)
 - Exhibit 2 - Assignment, Assumption and Indemnification
 - Exhibit 3 - Form for Lease of Parcels
 - Exhibit 4 - Agreement Covering the Handling of Agreement Matters
 - Exhibit 5 - License for Interchange
 - Exhibit 6 - Track Standard
 - Exhibit D - Cooperative Marketing Agreement
 - Exhibit E - Interchange Agreement
 - Exhibit F - Assignment, Assumption and Indemnification Agreement
 - Exhibit F-1 - Assignment List for Easement
 - Exhibit G - Railroad Easement
 - Exhibit H - Deed of Trust
 - Exhibit I - Promissory Note
 - Exhibit J - Naco Parcel Description (missing)
 - Exhibit K - Option Agreement
 - Exhibit L - Non-Foreign Affidavit (missing)
 - Exhibit M - Quitclaim Deed
 - Exhibit N - Grant Deed
 - Exhibit O - Bill of Sale

I am asking Mr. Joe Jubilado and Mr. W. G. Claytor to provide copies on the missing exhibits.

Please advise of the document custody number for these filings.

✓ These documents terminate the prior lease to San Pedro Southwestern. *Lease audit no. 715521*

Gary A. Laakso
Gary A. Laakso

Attachments

cc: Mr. Joe Jubilado
Mr. W. G. Claytor
Mr. J. R. Nelson

Lease audit no. 713159

"Arizona Branches" shall mean the Bisbee Branch, Douglas Branch and the Curtiss Premises, together.

"Bisbee Branch" shall mean all of the properties comprising the line of railroad from milepost NB 1085.13 at or near Bisbee Junction, AZ to end of track at or near milepost NB 1090.39, near Bisbee, AZ including the main line, passing track, switches and spurs, as shown on Exhibit A hereto.

"Closing Date" shall be after the effective date of the Interstate Commerce Commission ("ICC") authorization or exemption of this transaction but no later than January 31, 1995.

"Curtiss Premises" shall be the Property, Track, Track Support Structures, and such Incidental Interests, as shown on Exhibit 4 to Exhibit C, and Improvements leased by Seller to Buyer between milepost N 1033.008 and milepost N 1040.15, as shown on Exhibit A hereto.

"Douglas Branch" shall mean all of the properties, excluding the Easement, comprising the line of railroad from milepost N 1040.15 at or near Curtiss, AZ to milepost N 1050.57 at or near Fairbank, AZ and from milepost NA 1046.39 at or near Fairbank, AZ (a mileage equation) to milepost NA 1108.11 at or near Douglas, AZ, including the main line, passing track, switches and spurs, as shown on Exhibit A hereto.

"Easement" shall mean an easement for railroad purposes on the Douglas Branch at or near Curtiss between milepost N 1041.32 and milepost NA 1071.16 attached as Exhibit G.

"Improvements" shall mean all building, structures, fixtures, equipment - excluding rolling stock (which is retained by Seller) and Track and Track Support Structures now owned by Seller and located on or within the Real Property on the Sale Branches and on the Easement. It is understood and agreed that the Seller does not sell and the Buyer does not purchase from Seller any personal property on the Sale Branches or the Easement owned by the prior lessee, San Pedro and Southwestern Railroad Company.

"Incidental Interests" shall include all leases, licenses, easements and permits involving the Real Property and Track, including the Easement, located on the Properties on the Closing Date and are listed on Exhibit F on the Sale Branches.

"Interchange Trackage" shall include the Track to be leased to Buyer shown on Exhibit E, whose underlying real property shall be retained by Seller with an easement for railroad purposes granted to Buyer.

"Naco Parcel" shall mean approximately 9.637 acres of land at Naco, AZ, as identified on Exhibit J.

"Option" shall mean the rights granted to the Seller to reacquire from the Buyer after the Closing Date for a purchase price of one dollar (\$1.00) the Track Support Structures on the Easement pursuant to the Option Agreement which is attached as Exhibit K.

"Properties" shall include the "Real Property," "Track," "Track Support Structures," "Improvements," and "Incidental

Interests" and exclude the parcels to be retained by Seller as shown or described in Exhibit B on the Sale Branches.

"Purchase Price" shall mean [REDACTED] [REDACTED] [REDACTED] in lawful currency of the United States. Seller shall execute a Promissory Note secured by a Deed of Trust (Exhibit H) for that portion of the Purchase Price not paid on the Closing Date.

"Real Property" shall mean that part of the Sale Branches, which comprise land and excepting and reserving unto Seller, its successors and assigns, all those interests shown on Exhibits M and N.

"Sale Branches" shall mean that portion of the Douglas Branch from N 1040.15 at or near Curtiss, AZ, to milepost NA 1108.11 at or near Douglas, AZ and the Bisbee Branch.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete, bumpers, and ties, on the Sale Branches and on the Easement.

"Track Support Structures" shall mean those properties necessary for use or support of Track including bridges, culverts and other structures, grading, embankments, dikes, pavements, ballast and drainage facilities on the Sale Branches and on the Easement.

2. Properties to be Conveyed:

Seller hereby agrees to sell, assign, transfer and convey to Buyer on the Closing Date and Buyer hereby agrees to purchase from

Seller the Sale Branches and the Naco Parcel, including the Real Property, Improvements, Track, Track Support Structures and Incidental Interests, excluding the parcels listed in Exhibit B and excluding the Real Property within the Easement area as identified in Exhibit G. Seller agrees to lease the Curtiss Premises to Buyer under the terms of a lease in the form of Exhibit C attached hereto and made part hereof. Upon close of escrow, Seller shall convey its interests in Real Property by Quitclaim Deed in the form of Exhibit M and the Improvements shall be deemed conveyed thereby. Seller's interest in the Naco Parcel will be conveyed separately by Grant Deed (in the form of Exhibit N) and will not be encumbered by the Deed of Trust. Seller shall convey its interests in the Track and Track Support Structures on the Easement and Sale Branches by a bill of sale in the form of Exhibit O, without warranty and shall assign the Incidental Interests by an Assignment, Assumption and Indemnification Agreement in the form of Exhibit F. The Easement Incidental interests shall be assigned by Buyer to Seller by Exhibit F-1. Seller shall convey the Easement by a Railroad Easement in the form of Exhibit G.

3. Payment

The Purchase Price for the Properties shall be [REDACTED] payable as follows:

- (a) [REDACTED] of the Purchase Price shall be paid on the Closing

Date in federal funds to Bank of America, San Francisco Main Office, 345 Montgomery Street, ABA 121000358, for credit to the account of Southern Pacific Transportation Company, Account No. 00331-12140.

(b) The other component of [REDACTED] shall be evidenced by a promissory note in the form of Exhibit I in favor of Seller and secured by a deed of trust in the form of Exhibit H.

(c) Should Buyer abandon and liquidate any portion of the Track on the Arizona Branches prior to payment of the Promissory Note, Buyer shall pay to Seller thirty percent (30%) of the net sale price (calculated after actual removal costs), if sold to a third party, and/or thirty percent (30%) of the net retained value of the Track if Buyer elects to retain any or all of the Track calculated after actual removal costs. Payment to Seller shall be made no later than the earlier of thirty (30) days from (1) the date of sale or (2) Track removal date. Payment under this Section will be applied to reduce the outstanding principal balance of the Promissory Note and, at the request of Buyer, Seller shall release a proportional amount of real estate from the Deed of Trust. Any expenses relating to the title changes are to be paid by Buyer.

(d) An "Escrow" shall be opened at the office of Title Security Agency of Arizona, 3690 East Tanque Verde Road, Tucson, Arizona 85718 ("Escrow Holder").

(e) The parties shall submit joint escrow instructions and they shall not modify or amend the provisions of this Agreement, unless agreed upon in writing by both Seller and Buyer.

(f) As indicated heretofore, the closing of this Agreement (the "Closing") shall occur after the effective date of the ICC authorization or exemption, but in no event later than January 31, 1995 ("Closing Date").

(g) At the Closing:

(i) Seller shall deliver to Escrow Holder all necessary deeds/documents for the conveyance of the Properties as set forth in Section 2 heretofore;

(ii) Buyer shall deliver to Escrow Holder the cash portion of the Purchase Price and the executed Promissory Note and Deed of Trust as set forth in Section 3 hereinafter;

(iii) Seller and Buyer shall execute the agreements listed in Section 6 hereinafter.

(iv) At such time as:

- Escrow Holder holds the cash portion of the Purchase Price for the account of Seller and is in a position to wire transfer to the Bank of America; and

- Buyer has confirmed in writing to Escrow Holder that ICC authorization or exemption has occurred; and

- Seller has confirmed to Escrow Holder that all agreements listed in Section 6 have been satisfactorily executed, Escrow Holder may proceed to record the deeds and the deed of trust.

4. LEFT INTENTIONALLY BLANK

5. Condition of Properties and Buyer's Intended Use:

(a) SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF THE PROPERTIES, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF THE SOIL, PRESENCE OF HAZARDOUS MATERIALS OR CONTAMINANTS, AND OTHER PHYSICAL CHARACTERISTICS, THE PROPERTIES MERCHANTABILITY OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PROPERTIES OR CONFORMITY OF THE PROPERTY TO THEIR INTENDED USE NOR SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) AND SELLER OFFERS, AND BUYER ACCEPTS, THE PROPERTIES IN AS IS, WHERE IS CONDITION. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE EXISTENCE, CONDITION, FITNESS, SAFETY OR MERCHANTABILITY OF THE PROPERTIES. BUYER SHALL PERFORM AND RELY SOLELY UPON ITS OWN INDEPENDENT INVESTIGATION CONCERNING THE PHYSICAL CONDITION OF THE PROPERTY.

(b) Except as provided in paragraph 5(d) below, Seller has not and does not hereby make any representation or warranty to Buyer concerning the Properties or its compliance with any statutes, ordinance or regulation. Buyer has performed and relied solely upon its own independent investigation concerning the Properties' compliance with any applicable law.

(c) Buyer represents that its intended use of the Properties is as a railroad. Buyer shall perform and rely solely upon its own investigation concerning Buyer's intended use of the Properties,

the Properties' fitness therefor, and the availability of such intended use under applicable statutes, ordinances and regulations.

(d) Seller represents and warrants to the Buyer as of the date of this Agreement: (i) Seller has no actual knowledge of any violation of a statute, ordinance, regulation or administrative or judicial order or holding with respect to the Properties (excluding, however, FRA track regulations) that would materially and adversely affect the Property's use for rail operations; (ii) Seller has no actual knowledge of any order or directive of any city, county, state or federal authority that any material work of repair, maintenance, or improvement be performed on the Properties and Seller has received no notice from any such authority (excluding, however, FRA track regulations); and (iii) there is no litigation or condemnation proceeding pending, or to the best of Seller's information and belief, threatened respecting the material use of the Properties for rail freight operations. The representations and warranties of Seller set forth herein survive the closing and the recordation of the Quitclaim Deed for a period of three years from and after the Closing Date.

6. Related Agreements and Exhibits:

(a) Seller shall enter into the following Related Agreements attached hereto as exhibits and incorporated by reference with the Buyer on the Closing Date:

Exhibit C, "Curtiss Premises Lease and the exhibits thereto

Exhibit D, "Cooperative Marketing Agreement"

Exhibit E, "Interchange Agreement"

Exhibit F, "Assignment, Assumption and Indemnification Agreements"

Exhibit G, "Easement Agreement"

Exhibit H, "Deed of Trust"

Exhibit I, "Promissory Note"

Exhibit K, "Option Agreement"

(b) The exhibits to this Agreement are:

- (i) Exhibit A map
- (ii) Exhibit B Parcels Retained by Seller
- (iii) Exhibit C Curtiss Premises Lease
- (iv) Exhibit D Cooperative Marketing Agreement
- (v) Exhibit E Interchange Agreement
- (vi) Exhibit F Assignment, Assumption and Indemnification Agreement
Exhibit F-1 Assignment List for Easement
- (vii) Exhibit G Railroad Easement
- (viii) Exhibit H Deed of Trust
- (ix) Exhibit I Promissory Note
- (x) Exhibit J Naco Parcel Description
- (xi) Exhibit K Option Agreement
- (xii) Exhibit L Non-Foreign Affidavit
- (xiii) Exhibit M Quitclaim Deed
- (xiv) Exhibit N Grant Deed
- (xv) Exhibit O Bill of Sale

7. Duty to Support Transaction:

Buyer and Seller shall fully and diligently support the transactions contemplated herein before the ICC, courts and all public bodies, each bearing its own cost and expense.

8. Prorations and Expenses:

(a) Real property taxes and assessments of record shall be prorated as of the Closing Date, based upon the latest tax bill available. Rentals shall be prorated as of the Closing Date.

(b) All recording fees, documentary transfer taxes, sales taxes, if any, Escrow fees and any costs connected with the closing of this sale shall be charged to the Seller.

9. Conditions:

The closing is contingent upon the happening of the following events:

(a) Timely filing of an exemption with the Interstate Commerce Commission to authorize the transfer of the Properties to Buyer, without a stay being issued.

(b) At the Closing Date, Buyer not being subject to the terms of the collective bargaining agreements covering employees of Seller and neither party being subject to labor protective conditions.

(c) At the Closing Date neither a court, agency or the Commission has imposed a condition or requirement which is a material, adverse condition. If such a material, adverse condition

is imposed which affects both parties in such manner, either party at its sole option may terminate this Agreement without liability hereunder if written notice is provided to the other party within five (5) days after receiving notice of the imposition of the material, adverse condition. However, if only one party is adversely and materially affected, only that party shall have the right to terminate this Agreement in the manner and within the time limit provided above.

10. Warranties of Buyer:

The Buyer warrants effective as of the Closing Date that:

(a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Arizona and doing business in the State of Arizona.

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

(c) This Agreement and the Related Agreements have been duly authorized, executed and delivered by Buyer and are the legal, valid and binding agreements of Buyer, enforceable against Buyer, in accordance with their terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by

Buyer, and consummation by Buyer of the transaction contemplated hereby, nor compliance or performance by Buyer with any of the provisions hereof does or will violate any judgment, order, law or regulation applicable to Buyer or any provisions of Buyer's certificate of incorporation or by-laws or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Buyer.

(d) Buyer has satisfied itself as to the state of title to the Properties, the physical condition of the Properties and their suitability for the uses proposed by Buyer. In so doing, Buyer has relied solely upon its own inspection and investigation and not upon any representation or warranty made or furnished by Seller or any of its agents or other representatives, except as expressly stated in any representation or warranty contained in this Agreement.

(e) There are no actions, suits or proceedings pending, or to Buyer's knowledge threatened, against Buyer or any of its property in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to Buyer, would prohibit the execution and delivery by Buyer of this Agreement, or the consummation by Buyer of the transactions contemplated hereby.

(f) There are no judgments, orders or decrees entered in any lawsuit or proceeding that affect, or could reasonably be expected to prohibit the execution and deliver by Buyer of this Agreement,

or the consummation by Buyer of the transaction contemplated hereby.

11. Warranties of Seller:

The Seller warrants effective as of the Closing that:

(a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and doing business in the State of Arizona.

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

(c) This Agreement and the Related Agreements have been duly authorized, executed and delivered by Seller and are the legal, valid and binding agreements of Seller, enforceable against Seller in accordance with their terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by Seller, the consummation by Seller of the transactions contemplated hereby, nor compliance or performance by Seller with any of the provisions hereof does or will violate any judgment, order, law or regulation applicable to Seller or any provisions of Seller's certificate of incorporation or by-laws or result in any breach of, or constitute a default under, or result in the creation of any

lien, charge, security interest or other encumbrance upon any assets of Seller or the Properties (other than created by this transaction).

(d) Seller's execution of and performance under this Agreement does not violate any rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or any contract to which Seller is party.

12. Indemnification for Non-Income Taxes:

Buyer agrees to indemnify and hold the Seller harmless from all taxes imposed by any Federal, State or local government or governmental subdivision in the United States, upon or with respect to any aspect of the transfer of property governed by this Agreement, excluding, however: the documentary stamp tax transfer, sales tax, if any, and taxes of the United States or of any state or political subdivision thereof to the extent imposed on or measured by the net income or excess profits of Seller, or franchise taxes, to the extent imposed in lieu of any such taxes, imposed on or measured by the net income.

13. Applicable Law:

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

14. Notices:

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

Managing Director-Plant Rationalization
Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105

with copies to:

Director Real Estate
Southern Pacific Transportation Company
1200 Corporate Center Drive
Monterey Park, CA 91754

To the SWKR Operating Co., Inc.:

SWKR Operating Co., Inc.
Attention: Mr. Lynn T. Cecil
8687 East Via de Ventura, #310
Scottsdale, AZ 85258

15. Entire Agreement, Severability:

This instrument, including the Exhibits appended, is the entire Agreement between the parties and supersedes any oral or other understanding or representation of the parties. 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. The existing Interim Lease between the parties dated as of the 15th day of June, 1992, which was assigned to and assumed by the Buyer effective as of December 2, 1994 and all the other Related Agreements defined therein shall terminate effective as of the Closing Date; however, the obligations thereunder arising prior to the termination remain.

16. 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.

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

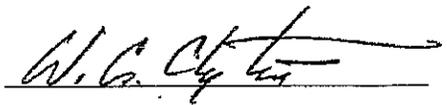
WITNESS:



SWKR OPERATING CO., INC.


(Title) *President*

WITNESS:



SOUTHERN PACIFIC TRANSPORTATION COMPANY


(Title) *Vice President - Strategic Development*

WHEN RECORDED MAIL TO:
TITLE SECURITY AGENCY
6390 E. Tanque Verde
Tucson, AZ 85715
ATTN: KRISTEN MUSGROVE
141249-CS

FEB 01 1995 4P3

17P.2

DEED AUDIT 70442 8
LEASE AUDIT 715216



RAILROAD EASEMENT

COURTESY RECORDING
NO LIABILITY

STATE OF ARIZONA)
COUNTY OF COCHISE) KNOW ALL MEN BY THESE PRESENTS:

THAT SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, Grantor, for TEN DOLLARS (\$10.00) and other good and valuable considerations to it in hand paid by SWKR OPERATING CO., INC., an Arizona corporation, Grantee, the receipt and sufficiency of which is hereby acknowledged, has granted, and by these presents does grant, unto Grantee, an easement for railroad purposes only over, across and along that certain real property situated in Cochise County, Arizona and more particularly described in the Exhibit "A" and "B" attached and hereby made a part hereof (the "Property").

Should Grantee, its successors or assigns, at any time abandon the use of said Property or any part thereof, or fail at any time to use the same for the purpose contemplated herein, for a continuous period of two (2) years, the right hereby given shall cease to the extent of the use so abandoned or discontinued, and Grantor shall at once have the right to resume exclusive possession of said Property, or the part thereof the use of which is so discontinued or abandoned.

Upon termination of the rights and privileges hereby granted, Grantee, at its own cost and expense and within 120 days from such termination, agrees to remove its trackage, and if so requested by Grantor all track support structures conveyed to Grantee in that certain Bill of Sale dated January 30, 1995. Should Grantee fail to remove such improvements, Grantor may perform such removal, at expense of Grantee, which expense Grantee agrees to pay Grantor upon demand.

No permanent building, structure or fence shall be erected or maintained by Grantee on or over the Property, and no material or obstruction of any kind or character shall be stored or maintained on said Property which would obstruct or interfere with Grantor's or its licensees or lessees use of the subsurface.

Grantee shall have no right to enter into any agreements with third parties, other than agreements for crossings, with respect to the Property.

Without limiting the foregoing, this grant is subject to, and the communications easement reserved herein allows Grantor to honor its grant and fulfill its other obligations as Grantor under, that

certain Fiber Optic Easement dated September 30, 1991, between Grantor and SP Telecom.

This Grant is subject to all covenants, conditions, restrictions, exceptions, easements, rights of way, rights of access, agreements, reservations, liens, encumbrances and other matters as the same may be of record, including without limitation the 1875 Act of Congress; any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien or encumbrance against the property.

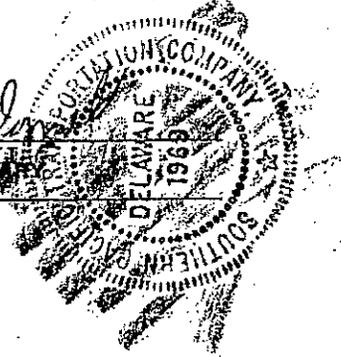
IN TESTIMONY WHEREOF, Grantor has caused these presents to be executed on the 30th day of January, 1995.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By J.A. Holm
J.A. HOLM
Title US Vice President

ATTEST:

By T.F. O'Donnell
T.F. O'DONNELL
Title SECRETARY



FEE # 950202807
OFFICIAL RECORDS
COCHISE COUNTY
DATE 2/01/95 HOUR 4

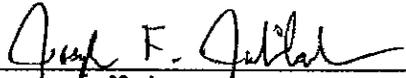
REQUEST OF
PIONEER TITLE AGENCY
CHRISTINE RHODES-RECORDER
FEE : 22.00 PAGES : 17

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

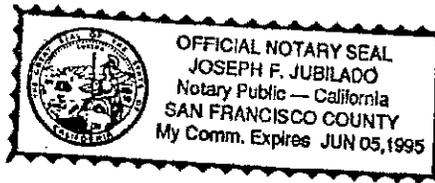
ss.

On JANUARY 30, 1995, before me, JOSEPH F. JUBILADO,
Notary Public, personally appeared J. A. HOLM AND T. F. O'DONNELL,
personally known to me OR proved to me on the basis of satisfactory
evidence to be the person whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his
authorized capacity, and that by this signature on the instrument
the entity upon behalf of which the person acted, executed the
instrument.

WITNESS my hand and official seal.



Signature of Notary



ACT OF CONGRESS — 50 FT. WIDE EASEMENT TO SWKR — DOUGLAS BR.

PK
10-30-92

EXHIBIT "A"

Those certain strips of land 50 feet wide situated in the County of Cochise, State of Arizona, being portions of the 200 foot wide strips of land acquired by virtue of an Act of Congress of March 3, 1875, as amended, to Arizona and South Eastern Railroad Company, and El Paso and Southwestern Railroad Company, now Southern Pacific Transportation Company, shown on map filed September 30, 1895, approved December 10, 1896 and on map filed December 5, 1904, approved March 10, 1905 and on map filed December 28, 1911, approved December 6, 1912, by the Secretary of Interior of the United States of America, described as follows:

Parcel 1

A strip of land 50 feet wide, lying equally 25 feet on each side of the original located center line of said Arizona and South Eastern Railroad Company, more particularly described as follows:

Beginning at the intersection of the northerly line of the northwest quarter of Section 20, Township 18 South, Range 21 East, Gila and Salt River Base and Meridian, with said center line at Engineer's Station 446+55, Mile Post 1041.32, near the Station of LAND; thence in a southerly and southeasterly direction following the courses and curvatures of said center line, through the westerly halves of Section 20 and Section 29, and through Lot 3 and Lot 6 of Section 32, Township 18 South, Range 21 East, G.&S.R.B.&M., to the northerly boundary line of San Juan de las Boquillas y Nogales Grant at Engineer's Station 572+97.

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- 2 -

The side lines of the above described 50 foot wide strip of land terminate in the northerly line of the northwest quarter of said Section 20 and in the northerly line of said San Juan de las Boquillas y Nogales Grant.

Parcel 2

Those certain strips of land 50 feet wide, lying equally 25 feet on each side of the relocated center line of said El Paso and Southwestern Railroad Company, more particularly described as follows:

Beginning at the northwesterly corner of Section 12, Township 21 South, Range 21 East, G.&S.R.B.&M., said Section corner being on said center line at Engineer's Station 221+86 between the Stations of Fairbanks and Lewis Springs; thence in a southeasterly and southerly direction following the curvatures and courses of said center line, passing through and across the following Sections, Townships and Ranges:

- (a) Northwest Quarter and Southeast Quarter of the Northwest Quarter of Section 12, Township 21 South, Range 21 East, G.&S.R.B.&M., extending from aforesaid northwesterly corner to the southerly line of first said Northwest Quarter and from the westerly line to the southerly line of said Southeast Quarter.
- (b) West Half of the Southeast Quarter of Section 12 and the North Half of the Northeast Quarter of Section 13, Township 21 South, Range 21 East, G.&S.R.B.&M., extending from the westerly line of said Southeast Quarter of Section 12 to the southerly line of said North Half of the Northeast Quarter of Section 13.
- (c) Northeast Quarter of the Southwest Quarter of Section 18, Township 21 South, Range 22 East, G.&S.R.B.&M., extending from the westerly line to the southerly line of said Northeast Quarter.

- 3 -

- (d) West Half of the Northeast Quarter and the Northwest Quarter of the Southeast Quarter of Section 19, Township 21 South, Range 22 East, G.&S.R.B.&M., extending from the westerly line of said Northeast Quarter to the southerly line of said Northwest Quarter.

Parcel 3

A strip of land 50 feet wide, lying equally 25 feet on each side of the original located center line of said El Paso and Southwestern Railroad Company, situated in the East Half of Section 22, Township 23 South, Range 22 East, G.&S.R.B.&M., extending from the northerly line, in a southerly and southeasterly direction, to the southerly line of said Section 22 at Engineer's Station 555+52, Mile Post 1071.15.

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OTHER THAN A/C-50 FT. WIDE EASEMENT TO SWKR - DOUGLAS BR.

4
10-19-92

EXHIBIT "B"

Those certain strips of land 50 feet wide situated in the County of Cochise, State of Arizona, described as follows:

Parcel 1

A strip of land 50 feet wide lying equally 25 feet on each side of the centerline of the El Paso & Southwestern Railroad Company, formerly Arizona and South Eastern Railroad Company, now Southern Pacific Transportation Company, being portions of those parcels or strips of land described in the following deeds, between Boquillas Land and Cattle Company and El Paso Southwestern Railroad Company, dated October 18, 1909, recorded October 26, 1909 in Book 50 of Deeds, Page 69, and in deed dated November 18, 1914, recorded January 8, 1915 in Book 60 of Deeds, Page 352, and in deed dated July 8, 1919 recorded August 1, 1919 in Book 77 of Deeds, Page 91, and all that strip of land 50 feet wide, described in deed dated August 30, 1894, between L. Larrieu and The Arizona and South Eastern Railroad Company, recorded September 14, 1894 in Book 12 of Deeds, Page 14, all Records of Cochise County, said centerline are more particularly described as follows:

Beginning at a point of intersection of said centerline at Engineer's Station 572+97 with the northerly boundary line of the San Juan de las Boquillas y Nogales Grant, said point being distant 2074.3 feet from the northwesterly corner of said Grant; thence South 16°41' East, 1271.2 feet (E.S. 585+68.2); thence on a curve to the left of 4°00', a central angle of 20°43', an arc length of

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517.8 feet (E.S. 590+86); thence South $37^{\circ}24'$ East, 514.0 feet (E.S. 596+00); thence on a curve to the right of $2^{\circ}00'$, a central angle of $8^{\circ}00'$, an arc length of 400 feet (E.S. 600+00); thence South $29^{\circ}24'$ East, 1192 feet (E.S. 611+92); thence on a curve to the right of $6^{\circ}00'$, a central angle of $25^{\circ}45'$, an arc length of 429.2 feet (E.S. 616+21.2); thence South $3^{\circ}39'$ East, 649.1 feet (E.S. 622+70.3); thence on a curve to the right of $3^{\circ}00'$, a central angle of $18^{\circ}15'30''$, an arc length of 608.3 feet at Eng. Sta. 628+78.6 equivalent to 0+00 and the beginning of line change; thence South $14^{\circ}36'30''$ West, 2161.9 feet (E.S. 21+61.9); thence on a curve to the right of $4^{\circ}00'$, a central angle of $18^{\circ}25'52''$, an arc length 460.8 feet (E.S. 26+22.7); thence South $33^{\circ}02'30''$ West, 1124 feet (E.S. 37+46.7); thence on a curve to the left of $2^{\circ}00'$, a central angle of $5^{\circ}42'29''$, an arc length of 285.4 feet at Eng. Sta. 40+32.1 the end of line change and equivalent to Eng. Sta. 668+70 of the old line; thence South $27^{\circ}35'$ West, 1700 feet (E.S. 685+70); thence on a curve to the left of $6^{\circ}00'$, a central angle of $28^{\circ}48'$, an arc length of 480 feet (E.S. 690+50); thence South $1^{\circ}13'$ East, 3104.5 feet (E.S. 721+54.5); thence on a curve to the left of $6^{\circ}00'$, a central angle of $31^{\circ}56'$, an arc length of 532.2 feet (E.S. 726+86.7); thence South $33^{\circ}09'$ East, 7784.2 feet (E.S. 804+70.9); thence on a curve to the left of $4^{\circ}00'$, a central angle of $15^{\circ}04'$, an arc length of 376.7 feet (E.S. 808+47.6); thence South $48^{\circ}13'$ East, 1077.4 feet (E.S. 819+25); thence on a curve to the right of $2^{\circ}00'$, a central angle of $9^{\circ}00'$, an arc length of 450 feet (E.S. 823+75); thence South $39^{\circ}13'$ East, 376.3 feet (E.S. 827+42.3);

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thence on a curve to the right of $4^{\circ}00'$, a central angle of $32^{\circ}41'$, an arc length of 817 feet (E.S. 835+59.3); thence South $6^{\circ}32'$ East, 3440.7 feet (E.S. 870+00 equivalent to 870+25.4); thence on a curve to the left of $8^{\circ}00'$, a central angle of $38^{\circ}21'$, an arc length of 479.4 feet (E.S. 875+04.8); thence South $44^{\circ}53'$ East, 782.9 feet (E.S. 882+87.7); thence on a curve to the right of $8^{\circ}00'$, a central angle of $24^{\circ}46'$, an arc length of 309.6 feet (E.S. 885+97.3); thence South $20^{\circ}07'$ East, 464.9 feet (E.S. 890+62.2); thence on a curve to the left of $8^{\circ}00'$, a central angle of $29^{\circ}59'38''$, an arc length of 375 feet (E.S. 894+37.2); thence South $50^{\circ}06'38''$ East, 13.5 feet (E.S. 894+50.7); thence along a series of compound curves to the right of:

<u>Curve</u>	<u>Central Angle</u>	<u>Arc Length</u>
$4^{\circ}35'$	$21^{\circ}59'55''$	480 feet (E.S. 899+30.7 equivalent to E.S. 899+22.8)
$2^{\circ}00'$	$2^{\circ}13'55''$	111.6 feet (E.S. 900+34.4 equivalent to E.S. 33+22.6)
$5^{\circ}55'$	$23^{\circ}04'42''$	390.1 feet (E.S. 29+32.5);

thence South $3^{\circ}14'$ East, 2702 feet (E.S. 2+30.5); thence on a curve to the left of $2^{\circ}00'$, a central angle of $2^{\circ}20'$, an arc length 116.6 feet (E.S. 1+13.9); thence South $5^{\circ}34'$ East, 21.2 feet (E.S. 0+92.7); thence on a curve to the left of $5^{\circ}8'$, a central angle of $4^{\circ}46'$, an arc length of 92.7 feet to Eng. Sta. 116+99.3 on the centerline of the Main Line track of the Tucson Extension of the El Paso & Southwestern Railroad Company and the Benson Branch of said Company.

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The side lines of the above described 50-foot wide strip of land terminate on said northerly boundary line of the San Juan de las Boquillas y Nogales Grant and to Engineer's Station 116+99.3 on the centerline of said Tucson Extension.

Parcel 2

A strip of land 50 feet wide lying equally 25 feet on each side of the centerline of the El Paso & Southwestern Railroad Company, formerly Arizona and South Eastern Railroad Company, now Southern Pacific Transportation Company, being a portion of that parcel of land described in deed dated September 20, 1911, between Boquillas Land and Cattle Company and El Paso Southwestern Railroad Company, recorded November 15, 1911 in Book 53 of Deeds, Page 252 and a portion of that strip of land 50 feet in width described in deed dated April 4, 1893 between Phebe A. Hearst and The Arizona & South Eastern Railroad Company, recorded February 10, 1899 in Volume 14 of Deeds, Page 38, All Records of Cochise County, said centerline are more particularly described, as follows:

Beginning at the intersection of the relocated centerline of said railroad with the south boundary line of the San Juan de las Boquillas y Nogales Grant, said intersection being at Engineer's Station 221+86 of said centerline and being distant South 79°48' West, 4886 feet from corner No. 8, also the southeasterly corner of said Grant; thence northerly along the east bank of the San Pedro River, following the courses and curvatures of said relocated centerline a distance of 33271 feet to Engineer's Station 554+56.9,

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equivalent to Eng. Sta. 0+00, from which, corner No. 1 of the aforesaid Grant bear North 24°59' East, 4534.4 feet; thence North 27°28' West, 9205 feet, crossing the San Pablo River; thence on a curve to the right of 1°00' included angle 17°07', arc distance of 1711.2 feet; thence North 10°20' West 775 feet to Engineer's Station 116+99.3 of the Main Line - Tucson Extension and the connection of the Benson Branch.

The side lines of the above described 50-foot wide strip of land terminate at Engineer's Station 116+99.3 of said Benson Branch connection and said south boundary of said San Juan de las Boquillas y Nogales Grant.

Parcel 3

That portion lying within the bounds of the 200-foot wide strip of land described in deed dated October 30, 1911 from C. L. Cummings to El Paso & Southwestern Railroad Company, recorded November 15, 1911 in Book 53 of Deeds, Page 247, Records of Cochise County, Arizona, and described as follows:

A strip of land on the east side of the San Pedro River, 50 feet in width lying 25 feet on each side of the relocated centerline of said Company between the Stations of Lewis Springs and Fairbank, over, through, across and upon the southwest quarter of the northwest quarter of Section 12 and the extreme northeast corner of Section 11, Township 21 South, Range 21 East, Gila and Salt River, Base and Meridian.

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Parcel 4

That portion lying within the bounds of the 200-foot wide strip of land described in deed dated October 23, 1911 from Carrie E. Haviland to El Paso & Southwestern Railroad Company, recorded November 6, 1911 in Book 53 of Deeds, Page 220, Records of Cochise County, Arizona, and described as follows:

A strip of land on the east side of the San Pedro River, 50 feet in width lying 25 feet on each side of the relocated centerline of said Company between the station of Lewis Springs and Fairbank, over, through, across and upon the northeast quarter of the southwest quarter of Section 12, Township 21 South, Range 21 East, Gila and Salt River, Base and Meridian, extending northwesterly approximately from Engineer's Station "L" 179+70 to "L" 192+10 of said centerline.

Parcel 5

That portion lying within the bounds of the 250-foot wide strip of land described in deed dated October 23, 1911 from James G. Wolf to El Paso & Southwestern Railroad Company, recorded November 6, 1911 in Book 53 of Deeds, Page 221, Records of Cochise County, Arizona, and described as follows:

A strip of land 50 feet wide lying 25 feet on each side of the relocated centerline of said Company between the stations of Lewis Springs and Fairbank, over, through, across and upon the southwest quarter of the northwest quarter and the northwest quarter of the southwest of Section 18, Township 21 South, Range 22 East, and the

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southeast quarter of the northeast quarter of Section 13, Township 21 South, Range 21 East, Gila and Salt River, Base and Meridian, extending northwesterly approximate from Engineer's Station "L" 115+60 to "L" 140+70 of said centerline.

Parcel 6

Being a portion of that certain 150-foot wide strip of land described in deed dated October 23, 1911 from Henry W. Hasselgren to El Paso & Southwestern Railroad Company, recorded November 6, 1911 in Book 53 of Deeds, Page 221, Records of Cochise County, State of Arizona, and described as follows:

A strip of land 50 feet wide lying 25 feet on each side of the relocated centerline of said Company between the stations of Lewis Springs and Fairbank, over, through, across and upon Lot No. 1, Section 30, and the southwest quarter of the southeast quarter of Section 19, Township 21 South, Range 22 East, Gila and Salt River, Base and Meridian, extending northwesterly approximately from Engineer's Station "L" 28+39 to "L" 50+02 of said centerline.

Parcel 7

Being a portion of that certain 100-foot wide strip of land described in deed dated November 6, 1911 from John E. Logan, et ux, to El Paso & Southwestern Railroad Company, recorded November 9, 1911 in Book 53 of Deeds, Page 232, Records of Cochise County, State of Arizona, and described as follows:

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A strip of land 50 feet wide lying 25 feet on each side of the relocated centerline of said Company between the stations of Lewis Springs and Fairbank, over, through, across and upon the southeast quarter of the southwest quarter of Section 18 and the northeast quarter of the northwest quarter of Section 19, Township 21 South, Range 22 East, Gila & Salt River, Base & Meridian, extending southeasterly from the northerly line of said southeast quarter of the southwest quarter and the easterly line of said northeast quarter of the northwest quarter.

Parcel 8

Being a portion of that certain strip of land described in deed dated April 15, 1911 from Green Cattle Company to El Paso & Southwestern Railroad Company, recorded May 13, 1911 in Book 52 of Deeds, Page 351, Records of Cochise County, State of Arizona, described as follows:

A strip of land 50 feet wide lying 25 feet on each side of the relocated centerline of said railroad, over, through, across and upon the San Rafael del Valle Grant, situated in said county, said centerline is more particularly described as follows:

Beginning at a point of intersection of said centerline at Eng. Sta. 653+67.6 with the southerly boundary line of said grant, said point being distant South $76^{\circ}28'30''$ West, 3506 feet from the southeasterly corner of said grant; thence North $26^{\circ}10'$ West along said centerline to Eng. Sta. 675+00.2 a point of curve to the right; thence with curve of $4^{\circ}30'$, radius of 1274 feet, central

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angle of $44^{\circ}06'$, to Eng. Sta. 684+80.2, a point of tangent; thence North $17^{\circ}56'$ West to Eng. Sta. 692+24.1 a point of curve to the left; thence with curve of $3^{\circ}30'$, radius of 1637 feet, central angle of $32^{\circ}36'$, to Eng. Sta. 701+55.5 a point of tangent; thence North $14^{\circ}40'$ West to Eng. Sta. 789+59.8 a point of curve to the right; thence with curve of $1^{\circ}00'$, radius of 5730 feet, central angle of $5^{\circ}48'$, to Eng. Sta. 795+39.8 a point of tangent; thence North $8^{\circ}52'$ West to Eng. Sta. 810+99.4 a point of curve to the left; thence with curve of $4^{\circ}00'$, radius of 1433 feet, central angle of $31^{\circ}15'$, to Eng. Sta. 818+80.6 a point of tangent; thence North $40^{\circ}07'$ West to Eng. Sta. 834+53.9 a point of curve to the right; thence with curve of $2^{\circ}00'$, radius of 2865 feet, central angle of $19^{\circ}36'$, to Eng. Sta. 844+33.9 a point of tangent; thence North $20^{\circ}31'$ West to Eng. Sta. 929+61.7 a point of curve to the right; thence with curve of $2^{\circ}30'$, radius of 2292 feet, central angle of $17^{\circ}50'$, to Eng. Sta. 936+75 a point of tangent; thence North $2^{\circ}41'$ West to Eng. Sta. 950+12.2 a point of curve to the left; thence with curve of $1^{\circ}30'$, radius of 3820 feet, central angle of $12^{\circ}51'$, to Eng. Sta. 958+68.8 a point of tangent; thence North $15^{\circ}32'$ West to Eng. Sta. 983+99.1 a point of curve to the right; thence with curve of $0^{\circ}30'$, radius of 11459 feet, central angle of $5^{\circ}05'$ to Eng. Sta. 994+15.8 a point of tangent; thence North $10^{\circ}27'$ West to Eng. Sta. 1067+42.9 a point of curve to the left; thence with curve of $1^{\circ}30'$, radius of 3820 feet, central angle of $14^{\circ}22'$, to Eng. Sta. 1077+00.7 a point of tangent; thence North $24^{\circ}49'$ West to Eng. Sta. 1125+73.2 a point of curve to the

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right; thence with curve of $4^{\circ}00'$, radius of 1433 feet, central angle of $38^{\circ}58'$, to Eng. Sta. 1135+47.4 a point of tangent; thence North $14^{\circ}09'$ West to Eng. Sta. 1151+12.4 a point of curve to the left; thence with curve of $1^{\circ}30'$, radius of 3820 feet, central angle of $10^{\circ}59'$, to Eng. Sta. 1158+44.5 a point of tangent; thence North $3^{\circ}10'$ West to Eng. Sta. 1173+38.1 a point of curve to left; thence with curve of $3^{\circ}00'$, radius of 1910 feet, central angle of $37^{\circ}46'$, to Eng. Sta. 1185+71.4 a point of tangent and equivalent to Eng. Sta. 602+56.2 of former Arizona & South Eastern Railroad; thence North $34^{\circ}36'$ West to Eng. Sta. 574+07.9 a point of curve to right; thence with curve of $2^{\circ}00'$, radius of 2865 feet to Eng. Sta. 568+00.5 a point in the northerly boundary line of said San Rafael del Valle Grant, said point being distant South $46^{\circ}28'30''$ West, 5502 feet from the northeasterly corner of said grant.

The side lines of the above described 50-foot wide strip of land terminate on said northerly and southerly boundary lines of said San Rafael del Valle Grant.

Parcel 9

Being a portion of that certain 200 foot-wide strip of land described in deed dated February 9, 1904 from John L. Hunter, et ux, to El Paso & Southwestern Railroad Company, recorded March 7, 1904 in Book 23 of Deeds, Page 527, Records of Cochise County, State of Arizona and described as follows:

A strip of land 50 feet wide, lying 25 feet on each side of the relocated centerline of said railroad, over, through, across

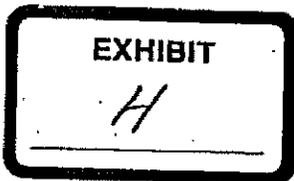
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and upon the easterly half of Section 15, Township 23 South, Range 22 East, Gila & Salt River, Base and Meridian, extending northwesterly from the intersection of the southerly line of said Section 15 with said centerline of said railroad at Eng. Sta. 611+75 to the intersection of said centerline at Eng. Sta. 653+67.6 with the southerly boundary line of San Rafael del Valle Grant.

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WHEN RECORDED MAIL TO:
TITLE SECURITY AGENCY
6390 E. Tanque Verde
Tucson, AZ 85715
ATTN: KRISTEN MUSGROVE
141249-CS



FEB 01 1995 4P
\$36P.2

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~C. Scott Behm
Southern Pacific Transportation Company
1200 Corporate Center Drive, Suite 100
Monterey Park, CA 91754~~

COURTESY RECORDING
NO LIABILITY

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
AND FIXTURE FILING

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING AND SECURITY AGREEMENT ("Deed of Trust") dated as of January 31, 1995, is made among SWKR OPERATING CO., INC., an Arizona corporation ("Borrower"), whose address is 8687 East Via de Ventura, #310, Scottsdale, AZ 85258, as Trustor, TITLE SECURITY AGENCY OF ARIZONA, an Arizona corporation ("Trustee"), as Trustee, whose address is 3690 East Tanque Verde Road, Tucson, AZ 85718 and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("Lender"), as Beneficiary, whose address is Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

WITNESSETH:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BORROWER IRREVOCABLY GRANTS, BARGAINS, SELLS AND CONVEYS TO TRUSTEE, ITS SUCCESSORS AND ASSIGNS, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of that certain real property (the "Real Property") located in the County of Cochise, State of Arizona, which is more particularly described on the attached Exhibits "A", "B", and "C," which are made a part of and incorporated into this Deed of Trust by this reference as though fully set forth herein.

TOGETHER WITH all of the following, whether now owned or hereafter acquired:

a. all buildings and other improvements (other than track and track support structures) erected or hereafter erected thereon (collectively, the "Improvements"); and

b. all building materials and fixtures, owned by Borrower and delivered on-site to the Real Property during the course of, or in connection with, construction of, or reconstruction of, or remodeling of any buildings and improvement from time to time during the term hereof; and

Lessee 0033760

LEASE

AUDIT No. 715521

EXHIBIT ~~C~~

CURTISS PREMISES LEASE

THIS LEASE AGREEMENT, dated as of the 31 day of Jan, 1995, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, hereinafter called "Lessor," and SWKR OPERATING CO., INC., an Arizona corporation, hereinafter called "Lessee";

RECITAL:

The parties have entered into a Sale Agreement - Douglas and Bisbee Branches dated January 31, 1995 ("Sale Agreement") and this Lease Agreement is to be implemented as part of the Sale Agreement transaction.

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

SECTION I

LEASED PREMISES

SECTION 1.01 -- Lease of Leased Premises -- Lessor does hereby lease to Lessee and Lessee does hereby lease from Lessor the real property together with the Track and Track Support Structures described in Section 1.02 (hereinafter called the "Leased Premises").

SECTION 1.02 -- Leased Premises -- The Leased Premises includes all of Lessor's right, title and interest in that part of the Rail Lines and Additional Facilities listed below which comprise (1) land and interests in the land (subject to the exclusions and reservations in Attachment A hereto); (2) "Track" meaning rail and fastenings, switches and frogs complete, ties, ballast and signals; (3) "Track Support Structures" meaning all appurtenances to the Track, including without limitation, bumpers, roadbed, embankment, bridges, trestles, tunnels, culverts or any other structures or things necessary for support of and entering into construction thereof, and, if any portion thereof is located in a thoroughfare, the term shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of

tracks, culverts, drainage facilities, crossing warning devices, and any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of said Track Support Structures and all appurtenances thereof and Additions thereto now or in the future.

The Rail Lines shall mean the portion of the Douglas Branch from milepost N 1033.008 to milepost N 1040.15, shown on Exhibit 1.

RESERVING unto Lessor the rights specified in Section XV hereof.

SECTION 1.03 -- "As is Where is" -- EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, LESSEE SHALL LEASE THE Leased Premises IN "AS IS, WHERE IS" CONDITION AND WITHOUT ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE DESIGN OR CONDITION OF THE Leased Premises, ITS MERCHANTABILITY OR ITS FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE Leased Premises OR CONFORMITY OF THE Leased Premises TO ITS INTENDED USE. LESSEE ALSO AGREES TO LEASE THE Leased Premises SUBJECT TO ALL:

(a) reservations or exceptions of minerals or mineral rights, and all private and public easements and rights-of-way, however created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other purposes;

(b) existing and future building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations;

(c) encroachments or other conditions that may be revealed by a survey, title search or inspection; and

(d) ways, alleys, privileges, rights, appurtenances and servitudes, agreements and matters of record however created, liens of mortgage or deeds of trust, and Lessor's exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Leased Premises, or any portion thereof, so long as such future easements, leases, licenses or rights of occupancy do not unreasonably interfere with Lessee's rail operations.

SECTION 1.04 -- Related Agreements -- Lessor and Lessee have entered into the following related agreements (the "Related Agreements") attached hereto:

- Exhibit 1 -- MAP
- Exhibit 2 -- Assignment, Assumption and Indemnification of Agreements
- Exhibit 3 -- Form for release of parcels from the Leased Premises
- Exhibit 4 -- Agreement for the Handling of Agreement Matters
- Exhibit 5 -- License for Interchange Tracks
- Exhibit 6 -- Track Standard

SECTION II

LEASE TERM

SECTION 2.01 -- Term -- The initial term for this Lease Agreement shall commence on the Closing of the Sale Agreement (the "Commencement Date") and shall end on December 31, 2005.

SECTION 2.02 -- Extension -- This Lease Agreement shall automatically be extended for two (2) successive ten (10) year extended terms, unless Lessee notifies Lessor that this Lease Agreement shall not be so extended at least six (6) months prior to the next commencement date for an extended term.

SECTION 2.03 -- Holdover -- If, subject to the right of Lessor to evict or remove Lessee from the Leased Premises by all available legal means, Lessee holds over and remains in possession of the Leased Premises following expiration of the initial or any extended term, or following termination of this Lease Agreement pursuant to Section XIV, such holding over will create a month-to-month tenancy only. If Lessee holds over after having obtained an appropriate Interstate Commerce Commission ("ICC") discontinuance of service order, then Lessee agrees to pay to Lessor as rent, a sum equal to one twelfth of the Full Rent, paid monthly as defined and as required pursuant to Section 4.01. If Lessee holds over, and has not yet obtained an appropriate ICC discontinuance of service order, then Lessee agrees to pay Lessor, as rent, a sum equal to two times the Full Rent as defined and as required pursuant to Section 4.01. All hold-over monthly payments shall be payable in advance on the first day of each calendar month. Any profits or losses from Lessee's railroad operations during the term hereof and any hold over period shall enure and accrue to Lessee.

SECTION III

MAINTENANCE/COMPLIANCE WITH LAW

SECTION 3.01 -- Compliance -- Lessee shall comply with all laws affecting the Leased Premises or requiring any alterations or improvements to be made thereon; shall not commit or permit waste thereof; shall not commit, suffer, or permit any act upon the

Leased Premises in violation of law and shall do all other acts which from the character or use of the Leased Premises may be reasonably necessary, the specific enumeration herein not excluding the general. Without limiting the generality of the foregoing, Lessee expressly agrees that it shall perform all trash and weed abatement required by law or as reasonably necessary in connection with the Leased Premises.

SECTION 3.02 -- Inspection -- Lessor shall have the right at any time upon reasonable notice and from time to time to inspect the Leased Premises.

SECTION 3.03 -- Free From Liens -- Lessee shall pay for all labor and services performed for, and all materials used by or furnished to, Lessee or its agents with respect to the Leased Premises. Lessee shall indemnify and hold Lessor harmless from and keep the Leased Premises free from any liens, claims, demands, encumbrances or judgments, including all costs, liabilities and attorneys' fees with respect thereto, created or suffered by reason of any labor or services performed for, or materials used by or furnished to, Lessee or its agents with respect to the Leased Premises. The foregoing obligation of Lessee shall survive the termination of this Lease. Lessor shall have the right, at all times, to post and keep posted on the Leased Premises any notices permitted or required by law, or which Lessor may deem proper, for the protection of Lessor and the Leased Premises, and any other party having an interest therein, from mechanics' and materialmen's liens, including, without limitation, a notice of nonresponsibility. In the event Lessee is required to post an improvement bond with a public agency in connection with any work performed by Lessee on or to the Leased Premises, Lessee shall include Lessor as an additional obligee.

SECTION 3.04 -- Removal of Liens -- Should any liens be filed against, or any action be commenced affecting, the Leased Premises or Lessee's interest in the Leased Premises, Lessee shall give Lessor notice of such lien or action within ten (10) days after Lessee receives notice of the filing of the lien or the commencement of the action. In the event that Lessee shall not, within thirty (30) days following the imposition of such lien, cause such lien to be released of record by payment or posting of a proper bond, Lessor shall have, in addition to all of the remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as Lessor shall deem proper, including payment of the claim giving rise to such lien or posting of a proper bond. All such sums paid by Lessor and all expenses incurred by Lessor in connection therewith, including attorneys' fees and costs, shall be payable to Lessor by Lessee as Additional Rent on demand.

SECTION 3.05 -- FRA Application -- Lessee shall apply and diligently pursue thereafter with the Federal Railroad Administration under 49 C.F.R. 213.5(c) for the assignment of maintenance responsibility for leased track no later than March 30, 1995.

SECTION 3.06 -- Maintenance Standard -- Lessee shall maintain the Track and Track Support Structures at their condition existing on the Commencement Date as shown on Lessor's Timetables, General Orders and Track Bulletins and other information attached hereto as Exhibit 6. Lessor shall own all material replaced or discarded from the Track and Track Support Structures unless otherwise agreed to in writing by the parties. All materials added to the Leased Premises shall become the property of Lessor progressively as they are added.

SECTION 3.07 -- Records maintained -- Lessee shall maintain such full and complete records of all maintenance, rehabilitation, track relocation or removal performed on the Leased Premises as shall reasonably be required by Lessor and established by Lessor upon commencement of this Lease Agreement and shall keep all track profiles, bridge and tunnel records, and track charts up to date so as to show all program maintenance and rehabilitation performed on the Track and Track Support Structures. Copies of updated records and track charts shall be provided by Lessee to Lessor annually not later than September 30th of each calendar year and promptly upon any other request of Lessor.

SECTION 3.08 -- Copies of reports -- Lessee shall provide a copy of all reports of track inspections by Federal Railroad Administration ("FRA") or Arizona Corporations Commission ("ACC") inspectors to Lessor promptly upon receipt of said reports; the term "reports" shall include any notices or citations alleging deficiencies from FRA track standards.

SECTION IV

RENT

SECTION 4.01 -- Full Rent -- Lessee agrees to pay Lessor rent for the Leased Premises in the amount of [REDACTED] per annum, payable annually within ten (10) days of the last day of February each year ("Full Rent"), beginning on the last calendar day of the year in which the Commencement Date occurred, without deduction counterclaim or offset of any kind.

So long as Lessee continues to interchange revenue freight cars originating or terminating on the Leased Premises with Lessor, Lessor will grant an annual credit ("Annual Credit") of [REDACTED] per revenue carload of freight. Such Annual Credit shall not exceed the Full Rent, as adjusted. Lessee shall submit certification that such revenue freight cars were interchanged with Lessor, except as otherwise provided and originated or terminated on the Leased Premises together with Lessee's rent payments (if any) and claim for Annual Credit. Certification shall include the total number of revenue carloads handled by Lessee during each month. In addition, Lessee shall

claim no credit for empty cars moving on a revenue basis, or for repair cars moving on a mileage or other revenue basis, or for any equipment not interchanged with Lessor, except as otherwise provided. Annual Credit and Rent will be calculated and reported during the first partial calendar year, but will not be assessed. Annual Credit will also be calculated and reported during the first full calendar year but will not be assessed until after the second full calendar year.

Annual Rent will be waived during that period of time that Lessee has applied to the ICC or appropriate regulatory agency for permission to abandon common carrier operation, however should such abandonment not be granted, Full Rent is due and payable within one hundred eighty days (180) days of the decision date, unless an appeal or refiling has occurred, and it is understood and agreed that this may occur repeatedly.

SECTION 4.02 -- Rental Adjustment -- Upon abandonment and release of the real property to Lessor, the Full Rent shall be adjusted on a pro rata mileage basis and the abandoned portion shall be removed from the Leased Premises from the abandonment date forward.

SECTION 4.03 -- Rental Payment -- Lessee shall pay all due rent payments, and all other payments required by this Lease Agreement to Lessor at the following mail address, or at such other location or individual as may be designated by Lessor in writing from time to time:

Southern Pacific Transportation Company
P. O. Box 60,000, File 61860
One Market Plaza
San Francisco, CA 94160-1860

with a copy to:

Managing Director
Plant Rationalization
Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105

SECTION 4.04 -- Failure to Make Payment -- If Lessee fails to pay any installment of rent when due, and such failure continues for thirty (30) days, Lessee shall pay interest at the lower rate of 2% over the prime rate of BANK OF AMERICA, N. A. or the highest allowed by law, in effect on the day the rent was due, which interest shall accrue from the date it was due until the date of payment.

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

SECTION 4.06 -- Additional Security -- As additional security for the payment by Lessee to Lessor of any sums of money required hereunder to be paid by Lessee, it is agreed that in the event Lessee fails, neglects or refuses to timely pay any sum due and owing to Lessor hereunder, Lessor may use any and all sums which it may collect from any third party and which may, in whole or in part, be payable to Lessee, as an offset against any and all payments for which Lessee is delinquent. In addition, any sums at any time due and payable to Lessee by Lessor may also be used by Lessor and credited to Lessor's account to the extent of any delinquent payment owed by Lessee to Lessor. Lessee does hereby waive any and all claims, demands and causes of action against Lessor which it may have or claim to have as a result of Lessor's use or implementation of the provisions of this Section 4.06 and/or any offset. Lessor shall provide written notice to Lessee of any actions taken under this section.

SECTION 4.07 -- Adjustment -- Full Rent and the Annual Credit shall be adjusted upwards or downwards, on the same percentage basis as any adjustment made to the Switch Charge in the Cooperative Marketing Agreement. Such adjustment affects the dollar charge for rental and not the number of revenue carloads required for credit. Lessor shall advise Lessee in writing of adjustments.

SECTION V

CONDITIONS PRECEDENT

The following are conditions precedent to each party's obligations hereunder.

SECTION 5.01 -- Conditions Precedent -- The following are conditions precedent to each party's obligations hereunder: (1) the parties have closed under the Sale Agreement, (2) Lessee shall have provided satisfactory documentation showing its compliance with the insurance requirements of Section 11.02, (3) Lessee shall not have discovered any contract, agreement, award, judgment, title defect or condition of the Leased Premises which would prevent Lessee from operating a rail freight operation on the Leased Premises in substantially the same manner as presently conducted by Lessor, and (d) prior to the Commencement Date there has not been any material adverse change to the physical condition of or in the business relating to the Leased Premises that would preclude Lessee from conducting rail freight business.

SECTION VI

ACCOUNTING AND REPORTING

SECTION 6.01 -- Right to Audit -- No more than once during any consecutive twelve month period, Lessor and its agents shall have the right at any time upon reasonable notice to audit Lessee's books, records, financial statements or any other reports or supporting documents or materials necessary to determine compliance with any provisions of this Lease Agreement. Such audit shall be conducted during normal business hours and Lessee shall make its facilities available to Lessor's auditors to permit such audit at such times.

SECTION VII

MODIFICATIONS/IMPROVEMENTS/SALE OF IMPROVEMENTS

SECTION 7.01 -- Proper Uses of Leased Premises -- Lessee shall not use nor permit the use of the Leased Premises in any manner that will tend to create waste or a nuisance or would interfere with the continued commercial, industrial or transportation corridor uses of the Leased Premises. In using the Leased Premises, and in constructing, maintaining operating and using the Track and Track Support Structures, Lessee shall comply with any and all requirements imposed by federal or state statutes, or by ordinances, orders or regulations or any governmental body having jurisdiction thereover, including, but not limited to, building and zoning ordinances regulating the occupancy, use or enjoyment of the Leased Premises or regulating the character, dimensions or location of any Track and Track Support Structures on the Leased Premises. Should any governmental body having jurisdiction in the matter require Lessor to dedicate, restrict or otherwise encumber any portion of the Leased Premises as a condition to approval of Lessee's use of the Leased Premises, Lessor may, if said condition is unacceptable to Lessor, terminate this Lease Agreement. Lessee covenants to promptly notify Lessor should any of the above occur.

SECTION VIII

REPRESENTATIONS AND WARRANTIES

SECTION 8.01 -- Lessor -- Lessor represents and warrants that, as of the date hereof and of the Commencement Date:

(a) Provided that Lessee continues to comply with all the conditions and restrictions contained within the instruments and documents that vested an interest in, or title to, the Leased Premises in Lessor, Lessor has sufficient title to the Leased Premises to permit its continued use as a railroad corridor by

Lessee, sufficient to allow Lessee to operate trains in substantially the same manner as train operations have been conducted by Lessor.

(b) It has full statutory power and authority to enter into this Lease Agreement and, subject to necessary regulatory authority, to carry out the obligations of Lessor hereunder.

Section 8.02 -- Lessee -- Lessee represents and warrants that, as of the date hereof and as of the Commencement Date:

(a) It has full statutory power and authority to enter into this Lease Agreement and, subject to necessary regulatory authority, to carry out the obligations of Lessee hereunder.

(b) Lessee has satisfied itself as to the state of title to the Leased Premises, the physical condition of the Leased Premises and their suitability for the uses proposed by Lessee. In so doing, Lessee has relied solely upon its own inspection and investigation and not upon any representation or warranty made or furnished by Lessor or any of its agents or other representatives, except as expressly stated in any representation or warranty contained in this Lease Agreement.

SECTION IX

COVENANTS OF THE PARTIES

SECTION 9.01 -- Utility Bills -- During the term hereof, Lessee shall pay prior to delinquency all bills for utilities, including without limitation those for water, sewer, gas and electric service to the Leased Premises. If Lessor is required to, or does pay, any such bill, Lessee shall promptly reimburse Lessor within twenty (20) days of receipt of a bill or bills therefor. If the Leased Premises are not billed separately but as a part of a larger tract or parcel, Lessee shall pay that portion of such bills as is attributable to usage on or in connection with Leased Premises.

SECTION 9.02 -- Defense of Title -- Lessee shall at its sole cost and expense protect and defend Lessor's title against all persons claiming against or through Lessee and at all times keep the Leased Premises free from any legal process or encumbrance whatever, including without limitation mechanics' and execution liens, attachments and levies (except any created by or under Lessor), and shall give Lessor immediate written notice of any such legal process or encumbrance and shall indemnify, defend, protect and hold harmless Lessor from same and from any loss caused thereby.

SECTION 9.03 -- Compliance with Law; Wastes and Pollution -- During the term of the Lease Agreement, Lessee shall comply with all federal, state, and local laws, rules, regulations, and

ordinances applicable to the Leased Premises, including but not limited to those controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste, or other pollutants. Except to the extent that such activities are the responsibility of Lessor under Section 9.04, Lessee, at its sole cost and expense shall make all modifications, repairs, or additions to the Leased Premises, and implement and bear the expense of any and all structures, devices, equipment, or any remedial or monitoring actions which may be required under any such laws, rules, regulations, ordinances, or judgments, which if attached to the Land shall become owned by Lessor. During the term of this Lease Agreement, Lessee shall not dispose of any wastes of any kind, whether hazardous or not, on the Leased Premises. Lessee shall not handle or store hazardous waste or hazardous substances on the Leased Premises other than as may be used by Lessee in its operations in the normal course of business or as may be transported by Lessee in its capacity as a common carrier by rail. Without limiting the generality of the foregoing, at each location that Lessee parks its locomotives, Lessee shall install drip pans and a recovery system for fuel drippings that meet or exceed legal requirements within six months after the Commencement Date.

SECTION 9.04 -- Indemnities -- It is the express intention of both Lessee and Lessor that Lessee assumes the risk of and agrees to indemnify and hold Lessor harmless, and to defend Lessor against and from any claims, costs, liabilities, expense (including without limitation court costs and attorneys' fees), or demands of whatsoever nature or source for any defects or Environmental Problems, latent or obvious, discovered or undiscovered, in the Leased Premises and for personal injury to or death of persons whomsoever (including without limitation employees, agents or contractors of Lessor, Lessee, or any third party), or property damage or destruction of whatsoever nature (including without limitation property of Lessor or Lessee, or property in its or their care, custody, or control, and third party property), when such defects, Environmental Problems, injury or damage arise out of acts, omissions or negligence or events occurring on the Leased Premises after possession of the Leased Premises was delivered to Lessee (June 15, 1992) and at any time during the term of this Lease. It is the express intention of both Lessee and Lessor that Lessor assumes the risk of and agrees to indemnify and hold Lessee harmless, and to defend Lessee against and from any claims, costs, liabilities, expenses (including without limitation court costs and attorney fees), or demands of whatsoever nature or source for any defects or Environmental Problems, latent or obvious, discovered or undiscovered, in the Leased Premises, for personal injury to or death of persons whomsoever (including without limitation employees, agents or contractors of Lessor, Lessee or any third party) or property damage or destruction of whatsoever nature (including without limitation property of Lessor or Lessee, or property in its or their care, custody or control, and third party property) where such defects, Environmental Problems, injury or damage arise out of acts, omissions, or negligence or events occurring on the Leased Premises prior to delivery of the Leased

Premises to the Lessee (June 15, 1992) or arising from the exercise of the rights reserved by Lessor in Section XV. "Environmental Problems" means any cause of action under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended) and any cause of action arising from similar federal, state or local legislation or other rules of law, and private causes of action of whatever nature which arise from environmental damage, toxic waste and the like.

SECTION 9.05 -- Notices of Releases of Hazardous Materials -- Lessee shall promptly furnish Lessor written notice of any and all (a) releases or threatened releases of hazardous wastes or substances of which it becomes aware which occur during the term of this Lease Agreement whether or not such releases or threatened releases are required to be reported to any federal, state, or local authority and (b) alleged water or air permit condition violations. To the extent practicable, such written notice shall identify the substance released or threatened to be released, the amount released or threatened to be released and the measures undertaken to clean up and remove the released material and any contaminated soil or water, the nature and extent of the alleged violation and the measures taken to eliminate the violation, and shall certify that Lessee has complied with all applicable regulations, orders, judgments or decrees in connection therewith, or the date by which such compliance will be effected. Lessee shall also provide Lessor with copies of any and all reports made to any governmental agency which relate to such releases or such alleged violations during the term of this Lease Agreement.

SECTION 9.06 -- Right to Inspect and Correct -- During the term of this Lease Agreement, Lessor shall have the right to enter, inspect and test the Leased Premises for the purpose of inspecting the Leased Premises to ensure compliance with the requirements of this Section IX. If Lessor detects any violation, including any contamination of the Leased Premises which it deems to be the responsibility of Lessee under this Section IX, Lessor shall notify Lessee in writing of the violation. Upon receipt of such notice Lessee shall take immediate steps to eliminate the violation or remove the contamination to the satisfaction of any governmental agency with jurisdiction over the subject matter of the violation. Should Lessee inadequately remedy or fail to eliminate the violation, Lessor or its representative shall have the right, but not the obligation, to enter the Leased Premises and to take whatever corrective action Lessor deems necessary to eliminate the violation, at the sole cost and expense of Lessee. Lessee shall reimburse Lessor for any and all amounts expended by Lessor promptly following Lessor's demand. Should it subsequently be determined that the contamination or violation was Lessor's responsibility under Section 9.04, Lessor shall promptly reimburse Lessee for any and all amounts expended by Lessee in seeking to remedy or eliminate the condition or violation.

SECTION 9.07 -- No Statute of Limitations -- As between the parties, Lessee and Lessor waive and shall not assert as a defense

any statute of limitations applicable to any controversy or dispute arising between the parties under this Section IX.

SECTION 9.08 -- No Assignment -- Lessee covenants not to assign, sublease or in any other manner admit another party to any or all of the Leased Premises, including without limitation any railroad or transportation related company, without Lessor's prior written consent which may not be unreasonably withheld unless such acquisition involves a Class I rail carrier or its affiliate, in which case Lessor may withhold its consent at its sole discretion.

SECTION 9.09 -- Other Companies -- Lessee covenants not to enter into any commercial arrangement with any other transportation company, including but not limited to transloading, joint operations and haulage, interchange, without Lessor's prior written consent, which consent Lessor may not be unreasonably withheld, unless such arrangement involves a Class I rail carrier or its affiliate, in which case Lessor may withhold its consent at its sole discretion.

SECTION X

EMINENT DOMAIN

SECTION 10.01 -- Exercise of Eminent Domain -- In the event that at any time during the term of this Lease Agreement the whole or any part of the Leased Premises shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose the following provisions shall be applicable:

SECTION 10.02 -- Eminent Domain of Whole of Leased Premises -- If such proceedings shall result in the taking of the whole of the Leased Premises or a portion of the Leased Premises which materially interferes with Lessee's use of the Leased Premises for freight railroad purposes, Lessee shall have the right, upon written notice to Lessor, to terminate this Lease Agreement in its entirety. In that event, and subject to any necessary regulatory approvals or exemptions, this Lease Agreement shall terminate and expire on the date title to the Leased Premises vests in the condemning authority, and the rent and other sums or charges provided in this Lease Agreement shall be adjusted as of the date of such termination.

SECTION 10.03 -- Eminent Domain of Portion of Leased Premises -- If such proceeding shall result in the taking of a portion of the Leased Premises which does not materially interfere with Lessee's use of the Leased Premises for freight railroad purposes, then this Lease Agreement shall continue for the balance of its term as to the part of the Leased Premises remaining, without any deduction, abatement or offset in respect of rent or any other sum or charge to be paid by the Lessee under the provisions of this Lease Agreement.

SECTION 10.04 -- Funds to Lessor -- Lessor shall be entitled to any and all funds payable for the total or partial taking of the Leased Premises without any participation by Lessee; provided, however, that nothing contained herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority for loss of its leasehold estate, loss of good will, and a sum attributable to Lessee's track, track support structures, improvements and alterations which Lessee has the right to remove from the premises pursuant to the provision of this Lease but elects not to remove; or, if Lessee elects to remove any such track, track support structures, and improvements, a sum for reasonable removal and relocation costs not to exceed the fair market value of such track, track support structures, and improvements.

SECTION 10.05 -- Notification and Cost Allocation -- Each party shall provide prompt notice to the other party of any eminent domain proceeding involving the Leased Premises. Each party shall be entitled to participate in any such proceeding, at its sole cost and expense, and to consult with other party, its attorneys, and experts.

SECTION XI

INDEMNIFICATION AND INSURANCE

SECTION 11.01 -- Indemnification and Allocation of Risk -- (a) It is the express intent of Lessor and Lessee that Lessee shall protect, defend, hold harmless, and indemnify Lessor from and against any and all demand, liability, damage, expense, cost, claim or suit, including attorney's fees (collectively, "Liability"), incurred by or assessed against Lessor, its agents, employees, affiliated companies and its successors and assigns on account of injuries, death, or property loss or damage arising from Lessee's use, operation or maintenance of the Leased Premises, including Liability proximately caused or contributed to by the acts, omissions or negligence of Lessor, except, however, Liability arising from the sole acts, omissions or negligence of Lessor or the criminal conduct of Lessor or from the acts of Lessor or its tenants, licensees or lessees or contractors arising from the exercise of the rights reserved by Lessor under Section XV, and that all Liability, including Liability for any injury, death, or property loss or damages arising in connection with hazardous substances or environmental conditions shall be governed by the provisions of Section 9.04 hereof. The foregoing notwithstanding, neither party shall have any claim against the other party for interruption of or delay to such party's business or for loss of profit or income.

(b) Each party hereto covenants and agrees that its obligations under this indemnity will be fulfilled whether or not such Liability arises during the time that this Lease Agreement is in effect or thereafter. The covenants of indemnity contained in

this Lease Agreement shall continue in full force and effect notwithstanding the full payment of all sums due under this Lease Agreement, or the satisfaction, discharge or termination of this Lease Agreement in any matter whatsoever.

SECTION 11.02 -- Insurance -- Lessee shall, at its sole cost and expense, procure the following kinds of insurance for the term of this Lease Agreement effective on Commencement Date and promptly pay when due all premiums for that insurance. Upon the failure of Lessee to maintain insurance as provided herein, Lessor shall have the right to obtain insurance and Lessee shall promptly reimburse Lessor for that expense. The following minimum insurance coverage shall be kept in force during the term of this Lease Agreement:

Comprehensive General Liability insurance, including contractual liability providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least Ten Million Dollars (\$10,000,000) for each incident and a general aggregate limit of at least Ten Million Dollars (\$10,000,000). This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this Lease Agreement, severability of interests and name Lessor as an additional insured with respect to liabilities arising out of Lessee's obligation to Lessor in this Lease Agreement. If coverage is purchased on a "claims made" basis it shall provide for at least a one (1) year period, which shall be invoked should insurance covering the time period of this Lease Agreement be canceled unless replaced with a policy containing the same retroactive date as the policy being replaced. Should the aggregate limit be eroded by forty (40) percent or more, Lessee shall immediately restore the aggregate limit to Ten Million Dollars (\$10,000,000).

SECTION 11.03 -- Reviewed Requirements -- Lessee warrants that this Lease Agreement has been reviewed with its insurance agent(s)/broker(s) and the agent(s)/broker(s) has been instructed to procure the insurance coverage required herein and name Lessor as additional insured with respect to liabilities which arise out of Lessee's obligation to Lessor.

SECTION 11.04 -- Furnish Certificates -- Lessee shall annually not later than July 1 of each year, furnish to Lessor certificates of insurance evidencing the required coverage and endorsement(s) and upon written request of Lessor, Lessee shall provide certified duplicate copies of any policy. The insurance company(ies) issuing such policy(ies) shall notify Lessor in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregation limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

SECTION 11.05 -- Insurance Company -- The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Lessor or with current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company

shall be authorized to transact business in the State of Arizona. If requested, Lessee must furnish a certified copy all insurance policy(ies) and endorsement(s) to Lessor within seven (7) days of such request.

SECTION 11.06 -- No Relief of Liability -- Insurance coverage provided in the amounts set forth herein shall not relieve Lessee from liability hereunder in excess of such coverage, nor shall it preclude Lessee or Lessor from taking such other action as is available to it under any other provision of this Lease Agreement or otherwise in law or equity.

SECTION 11.07 -- Adjustment of Insurance Coverage -- The limits of liability required under Section 11.02 shall be adjusted every five (5) years during the term or any extended term hereof based on any increases or decreases in the Consumer Price Index, or any successor index; unless, however, Lessee has notified Lessor in writing no more than ninety (90) days prior to the end of each five (5) year period that such insurance is not commercially available. In such case, the parties shall mutually agree on the level of adjustment that shall not be less than specified in this Section 11.

SECTION 11.08 -- Lessor is additional insured -- On or prior to the effective date of this Agreement, Lessee shall have provided to Lessor a certificate from its insurance company evidencing that Lessee has procured the insurance coverage required herein and named Lessor as an additional insured with respect to liabilities which arise out of Lessee's obligation to Lessor.

SECTION XII

TAXES

SECTION 12.01 -- Lessee's Obligation -- Except as provided in Sections 12.02 and 12.04 below, Lessee shall pay and shall reimburse, protect and hold harmless Lessor against all taxes, fees, governmental charges and assessments, of any nature whatsoever, including interest, fines, additions to tax, and penalties thereon, imposed by any taxing authority with respect to the Leased Premises and in connection with the transactions contemplated by the Lease Agreement or by any other Related Agreement; provided, however, that the foregoing indemnity shall not apply to taxes based on net income.

SECTION 12.02 -- Lessee Tax Filings -- Notwithstanding Section 12.01 above, the obligation to report and pay all taxes in the nature of or in lieu of property taxes shall be as provided in this Section 12.02. Lessee shall prepare and file with the appropriate taxing authority all required property tax filings including but not limited to property renditions (including, but not limited to, maps, tangible property list, track mileage changes, tax rate area changes, financial statements) regarding the Leased Premises. The

Leased Premises shall be used by Lessee in its railroad freight operations, shall be a part of Lessee's operating property and, as such, shall be reported by the Lessee for property tax reporting purposes as unitary property.

With respect to the property tax year ("property tax year" defined hereinafter as that period beginning July 1 and ending June 30) of 1994-1995 and the property tax year in which the Lease terminates, Lessee shall pay timely, or reimburse Lessor promptly for, Lessee's pro rata share, based on the number of lease days falling within the applicable property tax year, of all property taxes, special assessments and bond assessments, including interest, fines, additions to tax, and penalties thereon, if any, imposed by any taxing authority and attributable to any portion of the Leased Premises classified as unitary property by such taxing authority (all such taxes and assessments, and all penalties, additions to tax and interest imposed in connection therewith being hereinafter called "Unitary Taxes"). With respect to all other property tax years falling within the term of the Lease, including any lease term extensions, Lessee shall pay timely all Unitary Taxes.

With respect to the 1994-1995 property tax year and all subsequent property tax years, Lessor shall pay timely all property taxes, special assessments and bond assessments, including interest, fines, additions to tax, and penalties thereon, if any, imposed by any taxing authority and attributable to any portion of the Leased Premises classified as nonoperating property by such taxing authority (all such taxes and assessments, and all penalties, additions to tax and interest imposed in connection therewith being hereinafter called "Nonunitary Taxes").

In the event that any taxing authority classifies the Leased Premises, or any part thereof, as nonoperating property for property tax purposes, and in conjunction therewith assesses Nonunitary Taxes applicable to the Leased Premises, Lessee shall immediately notify Lessor of such classification and assessment in writing. In its sole discretion, Lessor may, at its expense, contest such classification and assessment by appropriate administrative or legal proceedings. Lessee shall provide its good faith assistance and cooperation to Lessor with respect to such contest at no expense to Lessor. Any contest conducted pursuant to this Section 12.02 may be conducted by Lessor either in its own name or, if required by the applicable jurisdiction, in Lessee's name. During such contest, Lessor may defer payment of the Nonunitary Taxes at issue in such contest. In the event that any such contest is unsuccessful, in whole or in part, due to a lack of cooperation by Lessee as determined in Lessor's sole discretion, and notwithstanding the preceding paragraph of this Section 12.02, Lessor agrees to pay 60% and Lessee agrees to pay 40% of the Nonunitary Taxes at issue in such contest. Notwithstanding anything to the contrary, Lessee's obligation under Section XII for Nonunitary Taxes for any tax year shall in no event exceed \$1,000.

Upon Lessee's written request, Lessor may, in its sole discretion, provide assistance to Lessee in fulfilling Lessee's reporting and filing obligations set forth in this Section 12.02. Lessee shall compensate Lessor for this assistance at a rate of \$75.00 per hour per employee of Lessor engaged in providing such assistance. Such compensation shall be paid by Lessee with twenty days of Lessee's receipt of Lessor's written statement setting forth the amount due. The foregoing rate shall be adjusted every three years from the date of the Lease Agreement using the cumulative change in the Consumer Price Index over the three year period to develop the percentage adjustment in the rate.

SECTION 12.03 -- Scope of Payments -- Lessee further agrees that, with respect to any payment or indemnity to Lessor under this Section XII, and notwithstanding the proviso in Section 12.01, Lessee's indemnity obligations shall include any amount necessary to hold Lessor harmless on an after-tax basis from all taxes required to be paid by Lessor with respect to such payment or indemnity (including any payments under this Section 12.03). Payment shall be made by the Lessee no later than the date on which Lessor must pay such taxes.

SECTION 12.04 -- Cooperation -- With respect to tax proceedings pending on the date hereof, Lessee agrees to provide its good faith cooperation and assistance to Lessor.

SECTION XIII

LESSEE'S MANAGEMENT RESPONSIBILITIES

SECTION 13.01 -- New track and other agreements -- From and after the Commencement Date, Lessee shall manage all existing industrial track, private crossing and other agreements involving the Track or Track Support Structure. Lessor shall continue to pay any per car reimbursements required under existing industrial track agreements. From and after the Commencement Date, Lessee shall have the right to enter into new industrial track, private crossing and other agreements involving the Track or Track Support Structure, provided that in each such case Lessee complies with the Agreement For The Handling Of Agreement Matters between Lessor and Lessee of even date herewith (Exhibit 4).

SECTION 13.02 -- Public Projects -- Provided that the applicable agreement has been approved in advance in writing by Lessor, Lessee shall be responsible for administering agreements for designing and installing Track and Track Support Structures relating to projects initiated by public agencies, including but not limited to modification of existing or creation of new pedestrian, roadway, drainage and flood control facilities upon, over, under or across the Leased Premises. Lessor shall not be liable for any costs associated with such projects, and Lessee shall not be liable for such costs to the extent the project was

approved and the project has already been funded by any public agency.

SECTION XIV

TERMINATION

SECTION 14.01 -- Termination Events -- This Lease Agreement may be terminated as follows:

(a) By Lessee:

- (1) upon not less than forty-five (45) days' written notice to Lessor, following Lessee's obtaining all necessary regulatory approvals or exemptions to permit Lessee to discontinue rail operations and otherwise in accordance with Section 3.02; and
- (2) upon occurrence of an event of default by Lessor as set forth in Section XVIII; and

(b) by Lessor:

- (1) upon occurrence of an event of default by Lessee as set forth in Section XVIII;
- (2) upon acquisition of ownership or control of Lessee by any company or entity, including without limitation any railroad or transportation related company without the prior written consent of Lessor, which may not be unreasonable withheld unless such an acquisition involves a class I rail carrier or its affiliate, in which case Lessee may withhold its consent at its sole discretion; and
- (3) upon the conditions set forth in Section 9.06 above.

SECTION 14.02 -- Vacation of Leased Premises -- In the event of expiration or termination of this Lease Agreement, Lessee shall vacate the Leased Premises in an expeditious, orderly manner within fifteen (15) days of termination or expiration and, in addition, Lessor shall be entitled to all of its remedies under Section XIX hereof.

SECTION XV

LESSOR'S RESERVED RIGHTS

SECTION 15.01 -- Lessor's Exclusive Rights -- Lessor excepts from the Leased Premises and reserves unto itself, its successors and assigns, the following exclusive rights with respect to the Leased Premises (provided, that Lessor shall not materially interfere with Lessee's freight and/or passenger railroad operations on the Leased Premises in the exercise of such rights):

(a) -- Mineral Rights -- The right to use all minerals and mineral rights, interests, and royalties, including, but not limited to, oil, gas and other hydrocarbon substances, timber, and metallic or other solid minerals, in and under the Leased Premises.

(b) -- Pipelines and Communications Systems -- The right to own, construct, reconstruct, maintain, operate, use and remove existing and future pipelines, communication systems, signboards and related facilities of every kind and nature, including, but not limited to, all existing pipelines and telephone, telegraph, television and fiber optic lines, signboard structures and related equipment and appurtenances and to enter into leases, easements, licenses or leased in respect of the Leased Premises for longitudinal or transverse occupancies or crossings.

(c) -- Other Uses -- The right to use the Leased Premises for any other commercial, industrial, utility-related or lawful purpose.

(d) -- Right of Access -- A limited right-of-way and right of access across the Leased Premises, for purposes of the use, enjoyment, maintenance, operation and access across the Leased Premises.

(e) -- Improvements -- All improvements presently existing on or hereafter constructed on the Leased Premises by Lessor and/or by any licensee/sublessee/assignee of Lessor shall remain the property of Lessor or Lessor's licensee/sublessee/assignee, unless Lessor has consented in writing.

(f) -- Revenues -- Lessor shall be entitled to all revenues derived from all current and future agreements to which Lessor is a party affecting the Leased Premises. Except as expressly set forth in this Lease Agreement, Lessor shall receive and be entitled to all of the rents, income, receipts, revenues, issues and profits derived from the Leased Premises that have accrued during the term of this Lease Agreement, excepting those revenues derived from Lessee's railroad operations and except those agreements assigned to Lessee or for future agreements issued under the Exhibit 4, Agreement for the Handling of Agreement Matters.

(g) -- Designation of Parcels to be Removed from Leased Premises -- The right, upon thirty (30) days' prior written notice,

to designate to Lessee those parcels or parcel of land not then used by Lessee for freight and passenger rail operations, or reasonably likely to be used in the near term for maintenance, storage, access or other railroad uses that Lessor desires to remove from the Leased Premises. Upon receipt of such notice, Lessee shall determine in good faith whether the designated parcel(s) are being used by it for freight rail operations and, if not, Lessee shall vacate the designated parcel(s) by the thirtieth (30th) day specified in the designation notice. If the designated parcel is used by Lessee for freight rail operations, the parties shall confer about the scope of the parcel release. Lessee shall execute such documents in the form of Exhibit 3 attached to formalize the release of parcels. Any parcel vacated by Lessee shall, from and after such thirtieth (30th) day, be deemed to have been added to Attachment A hereto, and this Lease Agreement shall terminate as to such parcel from and after such date. Lessor and Lessee shall promptly execute an addendum to this Lease Agreement confirming such termination.

(h) -- Water Rights -- The right to use all water rights and interests in and under the Leased Premises.

SECTION 15.02 -- Other Lessor Rights -- Except as expressly set forth in this Lease Agreement and in the Assignment, Assumption and Indemnification of Agreements (Exhibit 2), Lessor shall have the exclusive right to lease, operate, manage and control the Leased Premises (provided, that Lessor shall not materially interfere with Lessee's freight and passenger railroad operations on the Leased Premises in the exercise of such rights) and to take all action in connection therewith deemed appropriate by Lessor, at Lessor's sole cost and expense, including without limitation the right to:

(a) negotiate or renew leases of the Leased Premises upon such terms and leasing rates as Lessor deems appropriate;

(b) execute all lease documents, collect rents, security deposits, utility payments and other monies due or to become due from the Leased Premises or its use or possession;

(c) terminate tenancies and sign and serve such notices to tenants as are deemed necessary or appropriate by Lessor;

(d) institute and prosecute actions to evict tenants as Lessor deems necessary or appropriate;

(e) sue to recover rents and other sums due, and otherwise to enforce the rights of Lessor with respect to the Leased Premises;

(f) settle, compromise and release claims or legal proceedings in respect of the Leased Premises.

SECTION XVI

FORCE MAJEURE

SECTION 16.01 -- Force Majeure -- Neither party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each party shall be excused from performance of any of its obligations hereunder, during the time when such non-performance is occasioned by fire, earthquake, flood, explosion, wreck, casualty, strike, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God, inability to obtain labor, materials or supplies or any other similar cause beyond the party's reasonable control; provided, that if either party suffers a work stoppage due to a labor dispute, such party shall make such reasonable efforts, if practicable to staff its operations so as to minimize disruptions.

SECTION XVII

DEFEASANCE

SECTION 17.01 -- Defeasance -- Lessee shall not make any use of the Leased Premises which is inconsistent with Lessor's right, title and interest therein and which may cause the right to use and occupy the Leased Premises to revert to any party other than Lessor. So long as the Leased Premises are sufficient to permit Lessee to operate, this Lease Agreement shall not be affected by any determination, whether by judicial order, decree or otherwise, that the ownership of any portion of the Leased Premises is vested in a person other than Lessor and there shall be no abatement of rent on account of such determination.

SECTION XVIII

EVENTS OF DEFAULT

SECTION 18.01 -- Events of Default -- The following shall be Events of Default:

(a) Lessee fails to make payments of Full Rent when due, and such failure continues for thirty (30) days following written demand therefor.

(b) Lessee files a petition for bankruptcy, reorganization or other arrangement by Lessee pursuant to the bankruptcy laws or any similar proceeding, which petition is not dismissed within thirty (30) days.

(c) Lessee fails:

- (1) to maintain the Leased Premises as required in Section III,
- (2) to perform fully any other provision of the Lease Agreement or the Related Agreements as defined in the Sale Agreement (other than failure to make payments of rent which are subject to subparagraph (a) above and failure to maintain insurance, for which Lessee shall not be allowed any grace period).

and fails to cure such breach within forty-five (45) days after receipt of written notice of such breach from Lessor or fails to commence to cure such default within forty-five (45) days, or, once commenced, fails to use due diligence to complete the cure, and complete such cure within 90 days thereafter. Notwithstanding the cure period, there shall be no cure period for violations of Sections 9.06, 9.12, 9.13, 9.14, and 11.02;

(d) The filing of any involuntary bankruptcy, receivership or arrangement proceeding, against Lessee which filing is not dismissed within sixty (60) days.

(e) Lessee attempts to assign, sublease or in any other manner admit another party to any or all of the Leased Premises without Lessor's prior written consent, which consent Lessor may withhold in its sole discretion.

(f) Default by Lessee under any of the Related Agreements or any other agreement to which Lessor and Lessee are a party, which default remains uncured for forty-five (45) days after Lessee receives written notice of same.

(g) Lessor fails to perform in any material respect any provision of this Lease Agreement and fails to cure such breach within forty-five (45) days after receipt of written notice of such breach from Lessee, or fails to commenced to cure such default within forty-five (45) days, or once commenced, fails to use due diligence to complete the cure.

SECTION XIX

REMEDIES

SECTION 19.01 -- Remedies -- If an Event of Default shall have occurred, Lessor (to the extent permitted by and subject to compliance with any mandatory requirements of applicable law then in effect) shall have the following rights and remedies, in addition to all other remedies at law or in equity, and none of the following, whether or not exercised by Lessor, shall preclude the exercise of any other right or remedy whether herein set forth or existing at law or in equity.

(a) -- Termination Notice -- Lessor may terminate this Lease Agreement by giving Lessee notice in writing at any time. No act by or on behalf of Lessor other than giving Lessee written notice of termination (such as entry onto the Leased Premises by Lessor to perform maintenance and repairs and efforts to relet the Leased Premises) shall terminate this Lease Agreement. If Lessor gives such notice, this Lease Agreement, the term and the right, title and interest of Lessee under this Lease Agreement shall wholly cease and expire in the same manner and with the same force and effect (except as to Lessee's liability) on the date specified in such notice as if such date were the expiration date of the term without the necessity of reentry or any other act on Lessor's part. Upon termination of this Lease Agreement pursuant to this Section 19(a), Lessee shall surrender to Lessor the Leased Premises as set forth herein. If this Lease Agreement is terminated pursuant to this Section 19(a), Lessor shall be entitled to recover forthwith from Lessee as damages all amounts allowed under applicable law including, but not limited to, all costs (including reasonable attorneys' fees and disbursements) of repossession, removing persons or removing property from the Leased Premises, reletting and reasonable repairs in connection with reletting, if any.

(b) -- Reenter and Take Possession -- Lessor may, without demand or notice of any kind to Lessee, terminate Lessee's right of possession (but not this Lease Agreement) and reenter and take possession of the Leased Premises or any part thereof, and repossess the same as of Lessor's former estate and expel Lessee and those claiming through or under Lessee, and remove the effects of any and all such persons without being deemed guilty of any manner of trespass, without prejudice to any remedies for arrears of rent or other sums payable under this Lease Agreement or preceding breach of covenants and without terminating this Lease Agreement or otherwise relieving Lessee of any obligation hereunder. Should Lessor elect to reenter as provided in this Section 19(b), or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor, from time to time, without terminating this Lease Agreement, shall use reasonable efforts to relet the Leased Premises and each part thereof for such term or terms and at such rental or rentals, and upon such other conditions as Lessor may in its reasonable discretion deem advisable, with the right to make reasonable repairs to the Leased Premises. No such reentry, repossession or reletting of the Leased Premises by Lessor shall be construed as an election on Lessor's part to terminate this Lease Agreement unless a written notice of termination is given to Lessee by Lessor, nor shall it relieve Lessee of its liability and obligation under this Lease Agreement, all of which shall survive such reentry, repossession or reletting. Upon the occurrence of such reentry or repossession, Lessor shall be entitled to the amount of rent and all other sums payable under this Lease Agreement which would be payable hereunder if such reentry or repossession had not occurred, less the net proceeds, if any, of any reletting of the Leased Premises after deducting all of Lessor's reasonable expenses in connection with such reletting, including, but not limited to, all repossession costs, legal expenses, attorneys' fees, repair costs

and expenses of preparation for such reletting. Lessee shall pay such amount to Lessor on the days on which rent and all other sums payable under this Lease Agreement would have been payable hereunder if possession had not been retaken. In no event shall Lessee be entitled to receive the excess, if any, of net rent collected by Lessor as a result of such reletting over the sums payable by Lessee to Lessor hereunder. If this Lease Agreement is terminated by operation of law as a result of Lessor's actions under this Section 19(b), then Lessor shall be entitled to recover damages from Lessee as provided in Section 19(a) above.

(c) -- Lessee's Right to Possession Maintained -- Lessor may maintain Lessee's right to possession, in which case this Lease Agreement shall continue in effect whether or not Lessee shall have abandoned the Leased Premises. In such event, Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease Agreement, including the right to recover rent and all other sums payable under this Lease Agreement as they become due hereunder.

(d) -- Lessor's Right to Sue -- Lessor shall have the right to collect from Lessee the rents and damages provided for above by suit or suits or proceedings brought from time to time on one or more occasions without Lessor being obligated to wait until the expiration of the term, or if this Lease Agreement is terminated, the date on which such expiration would have occurred.

(e) -- Lessor's Right to Perform -- If an Event of Default shall have occurred with respect to any payment required to be made by Lessee (other than payment of rent) or with respect to any other obligations of Lessee under this Lease Agreement, Lessor may, but shall not be obligated to, make such payment or, on behalf of Lessee, expend such sum as may be reasonably necessary to perform such obligation. All sums so expended by Lessor with interest thereon at the lower of 10% per annum or the highest rate allowed by law from the date of such Event of Default shall be repaid by Lessee to Lessor on demand. No such payment or expenditure by Lessor shall be deemed a waiver of such Event of Default nor shall it affect any other remedy of Lessor by reason of such Event of Default.

(f) -- Common Carrier Duties -- If an Event of Default shall have occurred, anything in this Lease Agreement to the contrary notwithstanding, Lessor may enter the Leased Premises and assume all common carrier duties (including but not limited to the provision of freight service and dispatching), regardless of whether or not this Lease Agreement has been terminated.

SECTION XX

SURRENDER OF PREMISES

SECTION 20.01 -- Surrender of Leased Premises -- Upon termination of this Lease, Lessee, without further notice, shall deliver up to Lessor possession of the Leased Premises. Lessee shall, to the satisfaction of Lessor, restore the Leased Premises, including removal of Lessee's trade fixtures and non-track improvements installed by Lessee and any removal of hazardous substances as required by Section 9.04 heretofore. Furthermore, Lessee shall not remove any Track and Track Support Structures or any other improvements made by Lessee unless Lessee obtains Lessor's written authorization to remove said improvements upon the Leased Premises (said authorization must be executed by an officer of Lessor). In the event of such failure or refusal of Lessee to surrender possession of the Leased Premises, Lessor shall have the right to reenter the Leased Premises and remove therefrom Lessee and any other person, firm, or corporation claiming by, through, or under Lessee.

Upon the failure or refusal of Lessee to remove the improvements and all personal property from the Leased Premises and restore the Leased Premises, at the option of Lessor, said improvements and personal property shall become the sole property of Lessor or Lessor may remove the non-railroad improvements and any personal property at Lessee's expense and Lessee shall reimburse Lessor upon demand for expenses of removal/restoration within thirty (30) days of demand.

SECTION XXI

MISCELLANEOUS

SECTION 21.01 -- Entire Agreement -- This Lease Agreement contains the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understanding with respect to the matters provided for herein, and no modification of this Lease Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the party to be charged.

SECTION 21.02 -- Notices -- All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either party to the other pursuant to this Lease Agreement shall be in writing and shall be deemed to have been properly given or sent:

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

Managing Director - Plant Rationalization
Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105

With a copy to:

Director-Contract & Joint Facilities
Southern Pacific Transportation Company
1860 Lincoln Street, 12th Floor
Denver, CO 80295

Vice President, Real Estate
Southern Pacific Transportation Company
One Market Plaza, Room 870
San Francisco, CA 94105

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

President
SWKR Operating Co., Inc.
8687 East Via de Ventura #310
Scottsdale, AZ 85258
Attention: Mr. Lynn T. Cecil

SECTION 21.03 -- Receipt of Notices -- Each notice, demand, request or communication which shall be mailed by registered or certified mail to either party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request, or communication shall be either received by the addressee or refused by the addressee upon presentation. Either party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

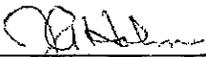
SECTION 21.04 -- Binding -- This Lease Agreement shall be binding upon and inure to the benefit of Lessor and Lessee, and shall be binding upon the successors and assigns of Lessor and Lessee, subject to the limitations hereinafter set forth. Lessee may not assign its right under this Lease Agreement or any interest therein, or attempt to have any other person assume its obligations under this Lease Agreement, without the prior written consent of Lessor, which consent may be withheld in Lessor's sole discretion. Prior to any proposed assignment, Lessee shall secure any necessary approvals of the ICC and such other regulatory approvals as may be then required. Nothing in this Section 20.04 shall affect Lessor's right to terminate this Lease Agreement pursuant to Section 14.01(b)(2). Lessee may not admit, sub lease, assign or otherwise allow unto the Leased Premises any person or entity providing rail transportation services without prior written consent of Lessor and such consent may be withheld at Lessor's sole discretion.

SECTION 21.05 -- Interpretation -- If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Lease Agreement in whole in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Lease Agreement shall remain operative and in full force and effect.

SECTION 21.06 -- Headings -- Section and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed in duplicate as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

BY 
(TITLE) J.A. HOLM
VP HUMAN RESOURCES

SWKR OPERATING CO., INC.

BY 
(TITLE) E.T. CECILIA
President

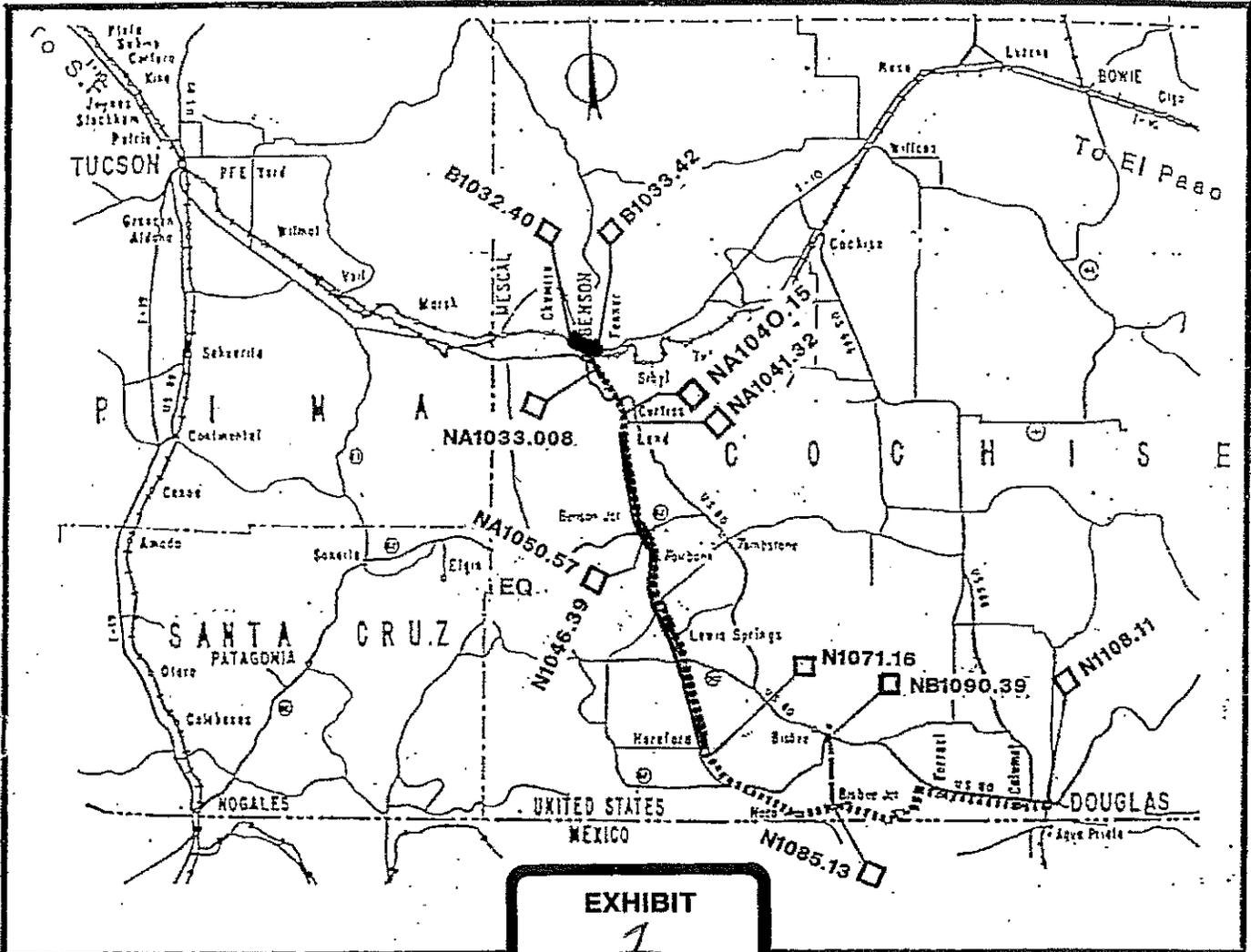


EXHIBIT
1

LEGEND

- DOUGLAS BRANCH** EASEMENT TO BE RESERVED TO SPTCo. FOR FIBER OPTICS
- BISBEE BRANCH**
- LEASE TO BE GRANTED MP NA1033.008 TO MP NA1040.15
- GRANT EASEMENT TO MP N1071.16 MP NA1041.32
- SALE MP NA1040.15 TO MP NA1041.32 AND MP N1071.16 TO MP N1108.11
- SALE (BISBEE BRANCH) MP N1085.13 TO MP NB1090.39
- License For Interchange Tracks MP B1032.40 TO MP B1033.42

Southern Pacific
Transportation Company
General Engineers, Office
Southern Pacific Building, One Market Plaza, San Francisco, California, 94105

**SALE OF DOUGLAS & BISBEE
BRANCHES TO THE SWKR
OPERATING CO. Inc.**

SCALE	NO SCALE		
VAL. SEC.	Az 41	SHEET	13
DRAWN BY	RM	CHECKED BY	NPR
ROUTE NO.	N	M. A.	1032.40
DRAWING NO.	CE 44729		
DATE	June 23, 1992		
SHEET NO.	1		
REVISED TO	DEC. 7, 1994		
FILE DRAWER	8 1/2 x 11		

AGREEMENT FOR
PURCHASE OF RAILROAD ASSETS OF
SWKR OPERATING CO., INC.
AND
SAN PEDRO RAILROAD OPERATING COMPANY, LLC

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Exhibit L	Monthly Car Count
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Exhibit N	Trail Assignment Agreement
Exhibit O	Joint Notice of Intent to Substitute Trail Users
Exhibit P	Transition of Rail Service Operations

AGREEMENT FOR
PURCHASE OF RAILROAD ASSETS OF
SWKR OPERATING CO., INC.
AND
SAN PEDRO RAILROAD OPERATING COMPANY, LLC

This Agreement is entered into as of this 24th day of October 2003, between SWKR OPERATING CO., INC., an Arizona corporation (hereinafter referenced as "Seller"), and SAN PEDRO RAILROAD OPERATING COMPANY, LLC, an Arizona LLC (hereinafter referenced as "Buyer").

WHEREAS, Seller desires to sell and convey to Buyer, on the terms and conditions set forth in this Agreement, any and all of Seller's interests, including without limitation owned interests and leaseholds, in the rail line and right-of-way segments located in the State of Arizona, and lying between MP N 1033.008 at or near Benson and the end of the Line at MP NA 1106.7, and between MP NB 1085.13 to MP NB 1090.40, together with the right to conduct rail freight transportation business upon the operating line segments thereof, and the abandonment rights, the salvage rights and/or any remaining operating rights as to the non-operating segments, and certain other rights, obligations and assets as specified in this Agreement; and

WHEREAS, Buyer desires to purchase, pursuant to the terms and conditions set forth in this Agreement, Seller's interest in these same assets, the right to conduct rail freight transportation business upon the operating line segments thereof, and the abandonment rights, the salvage rights and/or any remaining operating rights as to the non-operating segments, and certain other assets, rights and obligations as specified in this Agreement.

NOW THEREFORE, Buyer and Seller agree as follows:

1. DESCRIPTION OF ASSETS SOLD.

(a) Seller shall convey to Buyer, by a Quitclaim Deed delivered to Buyer on the date of Closing, all of Seller's right, title, and interest in and to all real estate, structures, improvements, fixtures, and appurtenances located on and along the following rail line segments (together, the "Rail Lines"):

(i) MP N 1040.15 to MP N 1041.32 (near Curtiss) acquired by Seller by quitclaim conveyance from Southern Pacific Transportation Company ("Southern Pacific");

(ii) MP N 1041.32 to MP NA 1071.16 acquired by easement by Seller from Southern Pacific;

(iii) MP NA 1071.16 to MP NA 1097.3 (near Paul Spur), including all real property located in Naco, AZ, acquired by Seller by quitclaim conveyance from Southern Pacific;

(iv) MP NA 1097.3 to MP NA 1106.7 (the "Douglas Segment") acquired by Seller by quitclaim conveyance from Southern Pacific; and

(v) MP NB 1085.13 to MP NB 1090.39 (the "Bisbee Branch") acquired by easement from Southern Pacific.

The conveyance of the Rail Lines, including without limitation segments both abandoned, rail-banked, or pending abandonment, shall be accomplished by execution and delivery of a Quitclaim Deed, substantially in the form set forth in Exhibit "A" attached hereto. The conveyance shall include all of Seller's right, title and interest in and to all real estate located along the Rail Lines, including without limitation fee interests, easements, rights of way, leases, and minerals and water rights over, under, across, and attributable to the real property interests. The Buyer acknowledges the reservations of minerals and water rights interests in the Southern Pacific quitclaim conveyance to Seller.

(b) Seller's conveyance to Buyer of the Rail Lines shall also include all structures, facilities, fixtures, leaseholds, appurtenances, and other improvements located on or appurtenant to the Rail Lines.

(c) Except as set forth in Section 1(d), Seller shall convey to Buyer, on the date of Closing, by delivering to Buyer on the date of Closing a Bill of Sale substantially in the form set forth in Exhibit "B" attached hereto, all of Seller's right, title, and interest in and to all fixtures and articles of personal property attached to the Rail Lines, including without limitation, all rail, ties, spikes, tie plates, rail anchors, wires, switches, turnouts, crossovers, pipes, conduits, bridges, culverts, signaling equipment, and other supporting structures, ballast, track materials, and other fixtures and personal property that contribute to the structure of the rail track, as well as supplies, tools, part inventories, maintenance equipment on wheels and radios that, on the date of the Closing, are not improvements that constitute the Rail Lines, but which then are present on the real property comprising the Rail Lines, as well as all uninstalled rail and other track material (collectively, the "Track").

(d) Seller's conveyance to Buyer by Bill of Sale shall also include two SW-1200 locomotives: AZER #1501 (currently utilized in routine operations) and AZER # 25 (leased to Apache Nitrogen), and other tangible personal property listed on Exhibit "C", all of which the Buyer has inventoried and accounted for at the time of Closing, (all items described in this provision being collectively referred to as the "Tangible Personal Property"). The Tangible Personal Property does not include three (3) specific railcars (#SWKR 683, SWKR 685 and SWKR 2692) to be relocated from the Rail Lines or Leased Portion within six (6) months after Closing.

(e) Seller shall assign to Buyer all of Seller's rights and interests under that certain Lease, by and between Seller and Union Pacific's predecessor, Southern Pacific Transportation Company, dated January 31, 1995 (the "UP Lease"), which UP Lease pertains to Seller's operations of the Curtiss Segment, located between MP N 1033.008 (at or near Benson) and MP N 1040.15 (near Curtiss). Effective 12:01 a.m. on the day after the date of Closing, Buyer shall become responsible for, and assume the Seller's obligations under, the UP Lease, except with respect to such obligations and responsibilities arising after the date of Closing as a result of acts, omissions or circumstances occurring on or prior to the date of Closing (which obligations and responsibilities shall remain with Seller). The right-of-way comprising the Curtiss Segment and subject to the UP Lease is hereinafter sometimes referred to as the "Leased Portion." Union Pacific's consent to the assignment of the UP Lease by Seller and the assumption of the UP Lease by Buyer, shall be accomplished by execution and delivery of the Consent and Agreement substantially in the form set forth in Exhibit "D" attached hereto.

(f) Seller shall also assign to Buyer, effective at 12:01 a.m. on the day after the date of Closing and subject to all terms and conditions set forth in this Agreement, the following:

(i) those certain license and interchange agreements with Union Pacific relating to the interchange of railcars upon right-of-way owned by Union Pacific, between MP 1032.40 and MP 1033.42 (at or near Benson); and Buyer shall become responsible for, and assume the Seller's obligations under, such license and interchange agreements, except with respect to obligations and responsibilities incurred or accruing on or prior to the date of Closing (which obligations and responsibilities shall remain with Seller); and

(ii) all other agreements of Seller relating to railroad operations on the Rail Lines, the Leased Portion or the Track, including the UP Lease (the "Contracts"), which Contracts are listed upon and assigned by virtue of, that certain Assignment and Assumption of Contracts document substantially in the form set forth in Exhibit "E" attached hereto. The Contracts include without limitation all operating agreements, freight transportation contracts, licenses, contracts, commitments and understandings with governmental agencies, car leases, contracts with customers relating to railroad operations, machinery and equipment warranties and service contracts, permits and licenses. Buyer shall accept the assignment of all such rights and obligations in accordance with their terms and the terms of this Agreement, and Buyer shall become responsible for, and assume the Seller's obligations under, such Contracts, except with respect to obligations and responsibilities incurred or accruing on or prior to the date of Closing (which obligations and responsibilities shall remain with Seller).

If any Contract is related to the Rail Lines, the Leased Portion or the Track and is not identified in Exhibit "E" (an "Unidentified Contract"), Seller shall provide to Buyer a copy of any such Contract immediately upon locating it; provided, however, that Buyer shall have the right to reject assumption of an Unidentified Contract if such contract (w) relates to services fully rendered or goods delivered prior to Closing, but with payment obligations remaining or due after Closing; (x) will unreasonably interfere with Buyer's ability to perform rail freight service over the Rail Lines or the Leased Portion; (y) creates indemnification liability on the part of the Buyer (other than in the ordinary course), or (z) requires payment(s) by the Buyer in excess of One Thousand Dollars (\$1,000) per year. It is the intent of both Seller and Buyer that all assignments related to the Rail Lines and the Leased Portion shall be effective at 12:01 a.m. on the day immediately following the date of Closing, except for the assignment of an

Unidentified Contract which shall become effective when delivered to the Buyer (unless Buyer rejects assumption of such Unidentified Contract pursuant to Section 1(f)(ii)).

(g) Seller shall deliver to Buyer at Closing the following: all customer lists, technical information and data, authorizations and regulatory approvals, and all other files related to the operations of the Rail Lines and the Leased Portion (collectively, the "Intangible Personal Property").

(h) Seller shall also deliver to Buyer at Closing all existing property records, tax and assessment records, valuation maps, data and information related to railroad operations, including, without limitation, inventory records, vendor lists, customer lists and records (the "Records").

(i) Seller shall cause its affiliate, San Pedro Trails, Inc. (x) to convey to Buyer any and all of the right, title and interest of San Pedro Trails Inc. in and to that segment of the Rail Lines between MP NA 1055.8 (near Charleston) and MP NA 1106.7, by delivery to Buyer of (A) a Quitclaim Deed (with respect to real property interests), and (B) a Bill of Sale (with respect to fixtures and personal property), each in a form reasonably acceptable to Buyer, and (y) to convey to Cochise Trails, LLC all of the right, title and interest of San Pedro Trails, Inc. in and to that certain Amended and Restated Interim Trail Use Agreement, dated September 9, 2003, attached hereto as Exhibit M, by delivery to Buyer of an Assignment and Assumption Agreement, substantially in the form of Exhibit "N", attached hereto (the "Trail Assignment Agreement").

2. CONSIDERATION FOR THE SALE.

(a) Purchase Price. The aggregate consideration (the "Purchase Price") to be paid by Buyer for the Rail Lines, the Leased Portion, the Track, the Contracts, the Tangible

Personal Property, the Intangible Personal Property, and all the other personal property, rights and interests to be conveyed by the Seller and San Pedro Trails, Inc. hereunder (together, the "Assets") shall be [REDACTED] (the "Purchase Price").

(b) Terms of Payment. The Purchase Price shall be paid by Buyer to Seller in the following manner: (i) [REDACTED] shall be paid by wire transfer received by Seller at Closing (the "Cash Consideration"); and (ii) a short-term purchase money note (due and payable December 30, 2003), to be delivered to Seller at Closing, in the principal amount of [REDACTED] substantially in the form of Exhibit "F" (the "Note"), together with a purchase money deed of trust substantially in the form of Exhibit "G" (the "Deed of Trust") securing the Note and encumbering the Assets.

(c) Allocation of Purchase Price. The Purchase Price shall be allocated among the assets to be acquired according to the Allocation Schedule attached hereto as Exhibit "H". The Allocation Schedule shall be binding on Seller and Purchaser as to the allocation of the consideration for all purposes, including without limitation federal tax purposes. Neither party shall allocate the Purchase Price in a manner different from the allocation contained in the Allocation Schedule in any tax return or other document.

3. ADDITIONAL AGREEMENTS.

(a) Inspections Period. Buyer acknowledges that it has already performed and completed its investigation but, from the date hereof through the date of Closing, Buyer shall continue to be provided with reasonable access to the Rail Lines, the Leased Portion, the Tangible Personal Property, the Contracts, the Leases, the Intangible Personal Property, the Records, and to the customers, shippers and employees of the Seller's railroad operations. Buyer

was provided opportunity and access to all of the properties, valuation maps, books, contracts, commitments and records pertaining to the railroad operations and abandonment of certain Rail Line segments for the purpose of satisfying its due diligence requirements.

(b) Confidential Treatment of Information. Until this Agreement is fully performed, or if this Agreement is terminated, the parties hereto and their representatives shall hold in confidence all data and information obtained with respect to the other party or its business, and shall not use such data or information or disclose the same to others, except such data or information as is necessary to conduct Buyer's inspections, to transfer and properly transition the Rail Line operations, or as otherwise required by law. In the event this Agreement is terminated, each party shall promptly return to the other(s) any statements, documents, schedules, exhibits or other written information obtained from them in connection with this Agreement, and shall not retain any copies thereof.

(c) Abandonment and Pending Abandonment. The parties acknowledge and understand that various segments of the Rail Lines have been abandoned, rail-banked, or are pending abandonment approval, as follows:

(i) The Charleston Segment, between MP N 1040.15 (at or near Curtiss) to MP NA 1055.8 (near Charleston) is pending abandonment a;

(ii) The segment of the Rail Lines from MP NA 1055.8 (near Charleston) through the end of the Line at MP NA 1106.7, together with the Bisbee Branch, have received regulatory authority for abandonment, the track has been removed from the Bisbee Branch, and Seller has consummated the abandonment with respect to the portion of the Rail Lines between MP NA 1106.5 and MP NA 1106.7; and

(iii) The segment of Rail Lines from MP NA 1055.8 (near Charleston) to MP NA 1106.5 is currently the subject of the Trail Use Asset Agreement with San Pedro Trails, Inc.

(d) Storage of Railcars. Buyer agrees to permit the three (3) railcars, referenced in Section 1(d), to be stored on the Rail Lines or Leased Portion for a period of up to six (6) months after Closing; provided, that Seller agrees that (i) Buyer shall choose the location(s) for storage and may change those location(s) from time to time, and (ii) for the period of time during which the three rail cars described above remain on the Rail Lines or Leased Portion, Buyer shall not be liable for any damage to or loss of those cars from any cause whatsoever, except if such damage, destruction or loss directly results from the Buyer's gross negligence or willful misconduct. Buyer agrees to grant to Seller free storage for these railcars during that period of time. If Seller does not relocate the three rail cars within six months after Closing, the Buyer may (but is not obligated to) transfer such rail cars to any interchange point of a rail affiliate of Seller at Seller's sole cost and expense, and Buyer shall have no liability for any damage, destruction or loss to such rail cars arising out of or in connection with such transfer.

4. GOVERNMENTAL APPROVALS.

(a) STB Authority. Buyer represents that Buyer is not a "rail carrier" within the meaning of 49 U.S.C. § 10102(2). On or before the day following execution of this Agreement, Buyer, at its sole expense, shall prepare and file such documents as may be required to secure approval, or exemption from approval, of the regulated aspects of this transaction by the Surface Transportation Board of the United States Department of Transportation ("STB"), as appropriate. Buyer shall make all reasonable efforts to obtain this approval or exemption in a timely fashion. The Seller hereby agrees to cooperate and, if necessary, affirmatively support

any exemption or application that Buyer may file with the STB for authority to acquire and/or operate the portion of the Rail Lines and the Leased Portion regulated by the STB.

(b) Pending Abandonment: The parties acknowledge that on July 17, 2003, Seller filed with the STB a petition to abandon the portion of the Rail Lines from MP N 1040.15 to MP NA 1055.8 (the "Pending Abandonment Line"). Seller covenants that if the STB grants Seller authority to abandon the Pending Abandonment Line, Seller will not consummate the abandonment of that line. Seller further covenants that:

(i) Seller shall immediately notify Buyer (both orally and in writing) if Seller receives an offer of financial assistance pursuant to 49 C.F.R Part 1152.27 ("OFA") with respect to the Pending Abandonment Line, or any inquiries regarding an OFA; (ii) if more than one OFA is filed with the STB with respect to the Pending Abandonment Line, and one such OFA is filed by Buyer, (x) Seller shall select Buyer as the offeror with whom it wishes to transaction business, pursuant to 49 C.F.R § 1152.27, and (y) the Seller and Buyer shall execute and consummate the sale of the Pending Abandonment Line on the same terms as set forth in this Agreement, with the sole consideration for the sale of the Pending Abandonment Line being the consummation of this Agreement; and (iii) if an interim trail use request is filed with respect to the Pending Abandonment Line prior to the date of Closing, Seller shall timely reply that it is not interested in negotiating a trail use agreement for that line.

(c) Trail Use.

(i) Buyer shall cause Cochise Trails, LLC to execute, and Seller shall cause San Pedro Trails, Inc. to execute, the Joint Notice of Intent to Substitute Trail Users, pursuant to 49 C.F.R. § 1152.29, substantially in the form of Exhibit "O" attached hereto (the "Joint Notice of Intent"). The parties hereto intend that the Joint Notice of Intent will be filed

with the STB on or after the date of Closing. It is the intent of the parties hereto that the Joint Notice of Intent will result in (x) a transfer to Cochise Trails, LLC of any and all rights of San Pedro Trails, Inc. as a trail user with respect to the segment of Rail Lines from MP NA 1055.8 to MP NA 1106.5 (the "Rail-Banked Lines"), and (y) the replacement of San Pedro Trails, Inc. by Cochise Trails, LLC as the trail user with respect to the Rail-Banked Lines. Seller agrees to cause San Pedro Trails, Inc., and Buyer agrees to cause Cochise Trails, LLC, to make any such other filings, and take any other reasonable steps, necessary to effect such transfer and substitution.

(ii) Seller agrees to fully support the Joint Notice of Intent, and shall not in any manner (directly or indirectly) take any adverse position to the transfer of trail use rights and the substitution of trail users, as described in Section 4(c)(i) hereof. Upon request of Buyer, Seller shall take all reasonable steps necessary to show Seller's support for such transfer and substitution, including without limitation filing with the STB any appropriate supporting documents.

5. REPRESENTATIONS AND WARRANTIES.

(a) Seller hereby represents and warrants to Buyer, and Buyer's successors and assignees, as of the date of this Agreement and as of the date of Closing:

(i) Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Arizona.

(ii) Seller has the corporate power and authority to enter into this Agreement and any instruments and agreements contemplated herein to be executed by it

("Related Agreements") and carry out its obligations under this Agreement and the Related Agreements.

(iii) The execution, delivery and performance of this Agreement and the Related Agreements, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized and approved by all necessary corporate actions of Seller, and no further corporate proceedings of Seller are required to complete the transactions covered by this Agreement.

(iv) All of Seller's obligations set forth in this Agreement and the Related Agreements constitute legal, valid and binding obligations of Seller which are enforceable against Seller in accordance with their terms, except to the extent enforcement may be limited by bankruptcy, insolvency or reorganization law.

(v) There is no provision in the Certificate of Incorporation or By-Laws of Seller (or any affiliate of Seller) which prohibits the execution or delivery of this Agreement or the Related Agreements or consummation of the transactions covered by this Agreement or the Related Agreements. The execution or delivery of this Agreement or the Related Agreements, and the consummation of the transactions covered by this Agreement or the Related Agreements will not, to Seller's knowledge, result in any violation or default under any judicial or administrative judgment, order or decrees, any law, regulation or ordinance, any note, bond, mortgage or indenture, any license, permit, agreement or lease, or any other instrument or obligation to which Seller (or any affiliate of Seller) is a party or is otherwise bound or to which the Assets may be subject.

(vi) The negotiations related to this Agreement have been handled by Seller on its own behalf, without intervention of any agent or other person, so that no party has a

valid claim on this basis for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement.

(vii) Seller has duly filed with the appropriate agencies of the United States, the State of Arizona, and appropriate local governments or political subdivisions within that State, all tax returns and reports required to be filed, which tax returns were correct and complete in all material respects.

(viii) As of the date hereunder, there is no pending or, to Seller's knowledge, threatened litigation or arbitration proceeding, or administrative proceeding or investigation, against or affecting the Assets or Seller's operations over or related to the Rail Lines or Leased Portion, the result of which in the case of threatened proceedings or investigations foreseeably would materially adversely affect Buyer's ability to conduct rail freight transportation operations over the Rail Lines or Leased Portion following the date of Closing.

(ix) Seller has received no written notice of any pending or threatened civil, criminal, or administrative actions with respect to any hazardous or toxic substance on or adjacent to the Rail Lines or the Leased Portion.

(x) The financial records, data and information provided to Buyer as to the operations of the Rail Lines are accurate, and fairly reflect the information intended to be stated therein.

(xi) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental entity, authority or instrumentality, or any third party (except for Union Pacific), is required to be obtained or made by or with respect to Seller in connection with the execution and delivery of

this Agreement or the Related Agreements or the consummation by Seller of the transactions contemplated hereby or thereby, other than any required exemptions or approval by the STB of the transactions contemplated by the Agreement.

(xii) (A) No affiliate of Seller, except for San Pedro Trails, Inc., has any right, title or interest in any of the Assets, and (B) during the four (4) month period prior to the date of this Agreement, Seller did not convey any assets or interest in the Assets of Seller to any affiliate of Seller.

(xiii) Seller has received no notice of default as to the UP Lease or any Contract, and to Seller's knowledge, the UP Lease and each of the Contracts are in full force and effect. Copies of each of the Contracts have been provided by Seller to Buyer, as requested by Buyer, and no agreements have been withheld by Seller on account of confidentiality clauses or otherwise.

(xiv) To Seller's knowledge, there are no underground storage tanks located on the Rail Lines.

(xv) Since January 7, 2002, to Seller's knowledge, there has been no release of reportable quantities of a Hazardous Material on or about the Assets.

(xvi) To Seller's knowledge, Seller has received no written notice of material violation of any applicable law, regulation or ordinance with respect to the Rail Lines, Track, and Leased Portion, or its operations thereon.

(xvii) To Seller's knowledge, Seller has not granted to any third party, from or after January 7, 2002: (A) the right to conduct railroad operations over all or any portion of the Rail Lines or Leased Portion, (B) the right to price traffic moving to or from stations on the Rail Lines or Leased Portion (whether or not such traffic is treated as in the account of Seller

or a third party), or (C) the right to acquire an interest in all or any portion of the Rail Lines or Leased Portion.

(xviii) Attached as Exhibit "L" hereto is a month by month car count for traffic handled on the Rail Lines in 2003, broken down by commodity, and annual figures for 2001 and 2002, with each figure broken down by commodity.

The representations made to "Seller's knowledge" in subsections 5(a)(viii) and (xiii) through (xvii) are made to the actual knowledge of Seller's General Manager, Tanya Cecil, and of RailAmerica, Inc.'s Senior Vice-President with supervisory authority over Seller, Thomas Schlosser. In addition, "Seller's knowledge" shall be deemed to include the actual knowledge of RailAmerica, Inc.'s Vice-President-Contracts, Sandy Franger, as to the representations made in subsections 5(a)(xiii) and (xvii) and RailAmerica, Inc.'s Senior Vice President & General Counsel, Scott Williams, as to the representations made in subsection 5(a)(xvi).

(b) Buyer hereby represents and warrants to Seller, and Seller's successors and assignees, the following facts as of the date of this Agreement and as of the date of Closing, except where specifically noted to be as of the date of Closing only:

(i) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona.

(ii) Buyer has all requisite company authority to purchase Seller's rights and properties which are conveyed to Buyer by this Agreement; to enter into this Agreement; as of the date of Closing only, to conduct rail freight transportation business on the portion of the Rail Lines and Leased Portion over which common carrier rail operations are performed by Seller as of the date of the Agreement; and to perform all of Buyer's obligations under this Agreement.

(iii) The execution, delivery and performance of the Agreement and all Related Agreements and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by all necessary company actions of Buyer, and no further company proceedings of Buyer are required to complete the transactions covered by this Agreement.

(iv) All of Buyer's obligations set forth in this Agreement and the Related Agreements constitute legal, valid and binding obligations of Buyer which are enforceable against Buyer in accordance with their terms, except to the extent enforcement may be limited by bankruptcy, insolvency or reorganization law.

(v) There is no provision in the Articles of Organization or Operating Agreement of Buyer which prohibits the execution or delivery of this Agreement and the Related Agreements or consummation of the transactions covered by this Agreement or the Related Agreements. The execution or delivery of this Agreement or the Related Agreements, and the consummation of the transactions covered by this Agreement or the Related Agreements will not, to Buyer's knowledge, result in any violation or default under any judicial or administrative judgment, order or decrees, any law, regulation or ordinance, any note, bond, mortgage or indenture, any license, permit, agreement or lease, or any other instrument or obligation to which Buyer (or any affiliate of Buyer) is a party or is otherwise bound.

(vi) The negotiations related to this Agreement have been handled by Buyer on its own behalf, without intervention of any agent or party, and in such manner as not to give rise to any valid claim by any party for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement.

(vii) Except to the extent that Buyer files any exemption or application with the STB for authority to acquire and operate all or a portion of the Rail Lines and Leased Portion, as of the date hereof, to Buyer's knowledge, there is no pending or threatened litigation or arbitration proceeding, or administrative proceeding or investigation against or affecting Buyer's rights to conduct rail freight operations over the Rail Lines and Leased Portion.

(viii) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental entity, authority or instrumentality, or any third party, is required to be obtained or made by or with respect to Buyer in connection with the execution and delivery of this Agreement or the Related Agreements or the consummation by Buyer of the transactions contemplated hereby or thereby, other than any required exemptions or approval by the STB of the transactions contemplated by the Agreement.

6. LIABILITY AND INDEMNITY.

(a) Cooperation in Defense. Except where the interests of the Buyer and Seller are adverse to each other, Buyer and Seller agree that, for four (4) years following the date of Closing, they will cooperate as reasonably necessary in defense of any claim, demand, investigation or litigation arising out of Seller's or Buyer's ownership or operations upon the Rail Lines or Leased Portion.

(b) Definitions.

(i) In this Agreement, the term "Losses" shall include all costs, expenses, fees or liabilities of, or in any way related to: (A) any violation of law, regulation or ordinance, (B) any damage to (or loss or destruction of) property, the environment or natural resources, (C) any bodily injury or death of any person, or (D) the breach of any contract,

including this Agreement or Related Agreements. "Losses" shall include, but not be limited to, all costs of claims, activities in response to enforcement, costs of investigation, remediation and monitoring, damages, judgments, awards, orders, decrees, payments, fines, penalties, assessments, court costs, and reasonable attorneys', consultants' and expert witnesses' fees, and shall include cost recovery or contribution claims made pursuant to Environmental Law (as defined in Section 6(b)(iii) hereof).

(ii) In this Agreement, the term "Hazardous Material" shall mean any material or substance that: (A) is characterized as a "hazardous waste," "hazardous material," "hazardous substance," "pollutant," "contaminant" or is regulated under any Environmental Law, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Federal Water Pollution Control Act, as amended, the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended, the Federal Insecticide, Fungicide, or Rodenticide Act, as amended, Clean Air Act, as amended, and Resource Conservation and Recovery Act, as amended, and analogous state and local laws; (B) contains gasoline, diesel fuel or other petroleum products or products containing petroleum hydrocarbons or volatile organic compounds; (C) contains polychlorinated biphenyls ("PCBs") or asbestos or urea formaldehyde foam insulation; or (D) contains or emits radioactive particles, waves or material, including without limitation radon gas.

(iii) In this Agreement, the term "Environmental Law" shall mean any law, regulation, ordinance or order relating to the pollution or protection of the environment, including without limitation those laws, regulations, ordinances and orders addressing injury to or protection of real and personal property or human health, as such matters are related to the protection or pollution of the environment.

(c) General Liability and Indemnity.

(i) Seller's General Liability and Indemnity. Except as provided in Subparagraph (d) of this Section (environmental liability), Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer (including its successors and assigns), its parent corporations, subsidiaries and affiliates, and all of their respective shareholders, officers, directors, agents and employees, fully against, all Losses (except to the extent such Losses are caused by Buyer), which: (A) arise out of or in connection with (x) any act or omission by Seller or San Pedro Trails, Inc. (or their respective shareholders, officers, directors, agents, licensees, lessees, invitees or employees) on or prior to the date of Closing, and (y) the ownership or possession by Seller or San Pedro Trails, Inc. of any of the Assets; or (B) result from any breach by Seller of any of its representations and warranties set forth in Sections 5(a) and 9 of this Agreement, or any failure by Seller to perform any of its respective obligations under this Agreement or the Related Agreements.

(ii) Buyer's General Liability and Indemnity. Except as provided in Subparagraph (d) of this Section (environmental liability), Buyer shall be responsible for, and shall indemnify, defend and hold harmless Seller (including its successors and assigns), its parent corporations, subsidiaries and affiliates, and all of their respective shareholders, officers, directors, agents and employees, fully against, all Losses (except to the extent such Losses are caused by Seller), which: (A) arise out of or in connection with (x) any act or omission by Buyer (or its shareholders, officers, directors, agents, licensees, lessees, invitees or employees) after the date of Closing, and (y) the ownership or possession by Buyer of any of the Assets, or (B) result from any breach by Buyer of any of its representations or warranties set forth in Section 5(b) of

this Agreement, or any failure by Buyer to perform any of its obligations under this Agreement or the Related Agreements.

(d) Environmental Liability and Indemnity.

(i) Buyer's Acknowledgments with Respect to the Rail Lines. Buyer acknowledges that Seller has provided Buyer with access to inspect the Rail Lines and Leased Portion. Buyer further acknowledges that Seller makes only those representations and warranties to Buyer concerning the existence of Hazardous Material on or near the Rail Lines or Leased Portion, or compliance with any statutes, ordinances, rules, regulations, orders or decisions with regard to Hazardous Material on or near the Rail Lines or Leased Portion, which are expressly set forth in Section 5(a) of this Agreement.

(ii) Seller's Environmental Liability and Indemnity. Notwithstanding any other liability or indemnification provision in this Agreement, Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer (including its successors and assigns), its parent corporations, subsidiaries and affiliates, and all of their respective shareholders, officers, directors, agents and employees, fully against, Losses incurred due to any claim, demand, litigation, fine, judgment, order or governmental investigation, where such Losses:

I. arise out of or in connection with: (x) the violation by Seller or Seller's predecessor in title of an Environmental Law affecting the Assets, which violation occurs on or prior to the date of Closing; (y) the release, use, transport, storage or disposal of a Hazardous Material by Seller or Seller's predecessors in title on or prior to the date of Closing from, on, at or affecting any of the Assets; or (z) breach by Seller of any of its representations or warranties in Section 5(a) of this Agreement relating to Environmental Laws or Hazardous Materials;

II. result from any written claim, demand, litigation, fine, judgment, order or governmental investigation made, asserted, assessed, imposed or commenced by a party other than Buyer or any person or entity affiliated with Buyer (a "Claim"), notice of which Claim is delivered to Seller within two (2) years following the date of Closing; and

III. result from Claim(s) for indemnification that exceed \$50,000 in the aggregate in any year (measured from the date of Closing).

(iii) Buyer's Environmental Liability and Indemnity. As part of the consideration for this Agreement, and notwithstanding any other liability or indemnification provision in this Agreement, Buyer shall be responsible for, and shall indemnify, defend, and hold harmless Seller fully against, regardless of any negligence or alleged negligence of Seller, Losses incurred due to any claim, demand, litigation, fine, judgment, order or governmental investigation, where such Losses arise out of or in connection with: (x) the violation of an Environmental Law affecting the Assets; or (y) the release, use, transport, storage or disposal of a Hazardous Material from, on, at or affecting any of the Assets, and either:

I. were not caused by one or more acts of Seller, or Seller's predecessors in title, and such Losses result from a Claim, notice of which is first delivered to Seller within the two (2)- year period following the date of Closing;

II. result from a Claim, notice of which is first delivered to Seller more than four (4) years after the date of Closing; or

III. result from Claim(s) for indemnification under Section 6(d)(ii) to the extent such Claim(s) do not exceed the \$50,000 aggregate per year threshold.

(e) (i) A party seeking indemnification of a claim (the "Indemnitee") shall promptly notify the other party (the "Indemnitor") in writing of the commencement or assertion of the claim and provide the Indemnitor with the related process and legal pleadings.

(ii) Except as otherwise provided in this Section 6(e)(iii), the Indemnitor shall have the right and obligation at its sole expense, to undertake the defense of all claims by representatives reasonably chosen by it. The Indemnitee shall have the right, at its sole cost and expense, to participate in the defense of any claim. The Indemnitor shall not, without the written consent of the Indemnitee, settle or compromise any claim or consent to the entry of any judgment that (A) does not include as an unconditional term thereof the giving by the claimant to the Indemnitee a release from all liability in respect to such claim, or (B) obligates the Indemnitee prospectively to take certain actions or to refrain from taking certain actions.

(iii) If the Indemnitor fails to acknowledge in writing to the Indemnitee within a reasonable time not to exceed thirty (30) days the Indemnitor's indemnification obligation, and its obligation to defend, with respect to the claim, then the Indemnitee, upon written notice to the Indemnitor, shall have the right to undertake the defense or settlement of such claim on behalf of and for the account and risk of the Indemnitor, and the Indemnitor shall be obligated to indemnify the Indemnitee with respect to the defense, settlement and/or judgment in connection with such claim.

(iv) Notwithstanding any provision in this Section 6(e) to the contrary, the Indemnitor shall not compromise or settle a claim brought against the Indemnitee in the Indemnitee's name without providing the Indemnitee with fifteen (15) business days' prior written notice of the terms of the settlement. The Indemnitee shall have the right to reject any proposed settlement, in which case the Indemnitor shall not enter into the settlement, and the

Indemnitee shall bear all cost and expense with regard to the subject claim incurred subsequent to the rejection, as well as the liability in excess of the amount of the rejected proposed settlement (which rejected settlement amount, and the expenses accrued through the time of the rejected settlement, shall be borne by the Indemnitor.)

7. OBLIGATIONS ARE CONTINUING.

The representations, warranties and obligations of Buyer and Seller in this Agreement are continuing and survive the Closing, and delivery of the Quitclaim Deed and other closing documents. Terms of continuing obligations in this Agreement are subject to amendment only by a written contract signed by both Buyer and Seller, or their respective successors or permitted assignees.

8. INSPECTION AND CONDITION OF RAIL LINES.

(a) By signing this Agreement, Buyer acknowledges that (i) except as set forth in Sections 5(a) and 9 of this Agreement, no representation has been made by Seller to Buyer concerning the state or condition of the Rail Line or Leased Portion, or the age of any improvements thereon; (ii) Buyer has not relied upon any statement or declaration of Seller, oral or in writing, as an inducement to entering into this Agreement, other than as stated in this Agreement; and (iii) the sole consideration for execution of this Agreement by Buyer is set forth in this Agreement.

(b) EXCEPT AT OTHERWISE PROVIDED IN THIS AGREEMENT, SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE ASSETS, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE ASSETS, OR THE CONFORMITY OF

THE ASSETS TO THEIR INTENDED USES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SELLER OFFERS, AND BUYER ACCEPTS, THE ASSETS IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON SELLER'S RIGHTS, INTEREST, AND TITLE TO THE ASSETS.

9. LIENS AND ENCUMBRANCES.

Seller represents, warrants and covenants that the Assets are, or will be, free and clear of all mortgages, deeds of trust, and other financial liens as of Closing. The only encumbrances presently affecting the Assets of which Seller is aware as of the date hereof and as of Closing are described in the agreements identified in Exhibit "I", attached hereto. If there is a mortgage, deed of trust, or other financial lien that exists as of the date of Closing, or that is filed after Closing but due to work performed or materials delivered prior to Closing, Seller will arrange for release of the mortgage, deed of trust, or financial lien within thirty (30) days' receipt of notice of such mortgage or lien.

10. BUYER TO CONSIDER HIRING SELLER'S QUALIFIED EMPLOYEES.

Exhibit "J" contains a list of all active employees of Seller. Buyer shall consider those employees shown on Exhibit "J" for employment with Buyer; provided, however, any hiring by Buyer shall be limited to those persons who Buyer, in its sole discretion, determines to be qualified and needed for Buyer's operations.

11. CLOSING.

(a) The closing of this transaction shall occur by or before October 31, 2003 (referenced herein as "Closing"), unless otherwise extended by the parties.

(b) At Closing, Seller shall deliver to Buyer the following documents:

(i) A sufficient number of original counterparts of executed Quitclaim Deeds for the Rail Lines, in recordable form and in substantially the same form as the Quitclaim Deed attached hereto as Exhibit "A", to enable Buyer to file an original Quitclaim Deed in each county in which the real property comprising the Rail Lines is located;

(ii) An executed Bill of Sale in the form of the Bill of Sale attached hereto as Exhibit "B";

(iii) An executed Consent and Agreement in the form of Exhibit "D";

(iv) An executed Assignment and Assumption of Contracts in the form of Exhibit "E";

(v) A copy of Seller's Articles of Incorporation and By-Laws and appropriate corporate resolutions authorizing the proposed transaction;

(vi) A Guaranty of the Seller's post-closing obligations, including without limitation, its indemnity obligations pursuant to Section 6 hereunder and Seller's post-closing obligations, executed by StatesRail, Inc., a Delaware corporation, substantially in the form of the Guaranty attached hereto as Exhibit "K";

(vii) A sufficient number of original counterparts of a Quitclaim Deed, in recordable form, executed by San Pedro Trails, Inc., pursuant to Section 1(i) of the Agreement, and (ii) a Bill of Sale executed by San Pedro Trails, Inc., pursuant to Section 1(i) of the Agreement;

(viii) The Trail Assignment Agreement, executed by San Pedro Trails, Inc.; and

(ix) An original Joint Notice of Intent to Substitute Trail Users, executed by San Pedro Trails, Inc.

- (c) At Closing, Buyer shall deliver to Seller:
 - (i) The Cash Consideration, the Note and the Deed of Trust;
 - (ii) A copy of Buyer's Articles of Organization, its Operating Agreement, and appropriate resolutions authorizing the transaction;
 - (iii) An executed Consent and Agreement in the form of Exhibit "D";
 - (iv) An executed Assignment and Assumption of Contracts in the form of Exhibit "E";
 - (v) The Deed of Trust, substantially in the form of Exhibit "G";
 - (vi) The Trail Assignment Agreement, executed by Cochise Trails, LLC; and
 - (vii) An original Joint Notice of Intent to Substitute Trail Users, executed by Cochise Trails, LLC.

(d) The obligations of each party hereto to consummate the transactions contemplated by this Agreement and the Related Agreements are subject to the fulfillment at or prior to the Closing of each of the following conditions:

- (i) The representations and warranties made by the other party in this Agreement shall be true, complete and accurate, in all material respects, as of the date when made and as of the date of Closing;
- (ii) The other party performed and complied, in all material respects, with all agreements, obligations, covenants and conditions required by this Agreement or the Related Agreements to be so performed or complied with at or prior to Closing;
- (iii) The Buyer shall have received STB authority to acquire and operate the Rail Lines and Leased Portion, to the extent such rail lines are regulated by the STB,

and the authority shall have become effective and shall not be subject to any condition that either party hereto reasonably determines to be unacceptable;

(iv) On or before the date of Closing, each Exhibit shall have been appended to the Agreement in a form mutually acceptable to each party.

12. PRORATION AND EXPENSES OF CLOSING.

Real estate taxes, prepaid rentals, utilities, and other income or fees attributable to the Rail Line or Leased Portion interests transferred to Buyer under the terms of this Agreement, shall be prorated between Seller and Buyer in such manner as to allocate to Seller all income, taxes and expenses attributable to the Rail Lines and Leased Portion on or prior to the date of Closing, and to allocate to Buyer all income, taxes and expenses attributable to the Rail Lines and Leased Portion after the date of Closing. To the extent practicable, the balance of the Purchase Price paid by Buyer to Seller at Closing shall be adjusted based upon this proration. To the extent that this proration cannot be computed or completed as of Closing, settlement upon the remaining prorated items shall be paid, in full, no later than sixty (60) days following the date of Closing.

Buyer shall bear the expense of any real estate transfer taxes, excise taxes, sales taxes, and recording fees attributable to the sale, conveyance and assignments governed by this Agreement. Each party shall pay its own professional fees and expenses of document preparation. The estimated 2003 real estate taxes are \$114,000. Therefore, the per diem tax is $\$114,000/365 \text{ days} = \312.33 .

13. TRANSFER OF OPERATIONS.

All rail operations on the Rail Lines and Leased Portion shall be transferred from Seller to Buyer at 12:01 a.m. on the day after the date of Closing. Upon request by the Buyer, the

Seller shall assist Buyer with accounting services for as long as thirty (30) days after Closing in order to facilitate Buyer's transition for railroad accounting purposes.

14. COLLECTION OF REVENUES.

Seller shall submit freight bills or interline settlements for, and shall collect all revenues due for movements over the Rail Lines or Leased Portion of all shipments moved through the date of Closing; provided, that Buyer shall be entitled to all revenue attributable to (A) all loaded inbound cars that have not been delivered to the customers as of 12:01 a.m. on day after the date of Closing; and (B) all loaded outbound cars that have not be interchanged to a connecting carrier as of 12:01 a.m. on the day after the date of Closing. Seller shall assess and collect all charges due for all switching services performed on or before the date of Closing. Seller shall assess and collect all demurrage and miscellaneous charges relating to car supply and other services performed on or before the date of Closing. Buyer shall assess and collect all demurrage and miscellaneous charges relating to any car supply and other services performed after the date of Closing. Other particulars involved in the transition of rail service operations shall be in accordance with Exhibit "O" attached hereto.

15. TRANSFER OF LIABILITIES; PAYMENT OF CHARGES.

For the period before and including the day of Closing, Seller shall be responsible for: (a) all common carrier rail operations (to the extent applicable) with respect to the Rail Lines or the Leased Portion, including car supply; (b) any freight loss and damage claims attributable to rail operations over the Rail Lines or Leased Portion prior to the date of Closing; and (c) all car accounting and all car hire and car mileage allowance payments relating to rail operations over the Rail Lines and Leased Portion prior to the date of Closing. After the date of Closing, Buyer shall be responsible for: (d) all common carrier rail operations (to the extent applicable) with

respect to the Rail Lines or the Leased Portion; (e) any freight loss and damage claims attributable to rail operations over the Rail Lines or the Leased Portion after the date of Closing; and (f) all car accounting and all car hire and car mileage allowance payments relating to Buyer's rail operations after the date of Closing.

16. ASSIGNMENT OF FREIGHT TRANSPORTATION CONTRACTS.

Pursuant to Section 1(f)(ii), effective 12:01 a.m. the day after Closing, Seller shall assign to the Buyer all of the following freight transportation contracts: (a) those freight transportation contracts that apply to traffic moving to or from facilities on or along the Rail Lines or Leased Portion; and (b) those freight transportation contracts with or involving shippers or receivers that have facilities on or along the Rail Lines or Leased Portion, and which would apply to one or more shipments to or from a facility on or along the Rail Lines or Leased Portion.

17. APPLICABLE LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Arizona.

18. NOTICES.

All notices and other communications under this Agreement shall be in writing and deemed properly served on the date delivered, if delivered by hand or, three (3) days after mailing, if sent by registered or certified mail, postage prepaid, or the next business day, if sent by a national overnight service in a prepaid mailer, return receipt requested, in each case addressed as follows:

Buyer: San Pedro Railroad Operating Company, LLC

3099 Dry Creek Road
Napa, CA 94558
Attn: David L. Parkinson

with a copy to:

Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW, Fifth Floor
Washington, DC 20036-1609
Attn: Mark H. Sidman, Esq.

Seller: SWKR Operation Company, Inc.
c/o RailAmerica, Inc.
5300 Broken Sound Blvd., NW
Boca Raton, Florida 33487
Attn: Senior Vice President and General Counsel

Either party hereto may change its address or addressee to which communications are to be given by providing written notice of the change to the other party.

19. CONFIDENTIALITY.

Except to the extent that the terms of this Agreement are required to be disclosed by the STB or the State regulatory agency, by order of any court of competent jurisdiction or any governmental agency, or by parties involved in financing this purchase, each party to this Agreement shall not disclose the contents of this Agreement to any other party, without the prior written consent of the other party to this Agreement. The parties agree to a joint press release acknowledging this transaction at Closing.

20. ENTIRE AGREEMENT; INTEGRATION OF AGREEMENT.

This document, together with all Exhibits attached hereto, constitutes the entire agreement between Buyer and Seller relating to this transaction. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein. The headings and titles to provisions in this Agreement are for convenience only, and shall not be deemed to modify or affect the rights or duties of Buyer or

Seller. All rights and obligations of Buyer and Seller set forth in this Agreement, or in any Exhibit attached hereto, are integral parts of this Agreement. The consideration inducing Buyer and Seller to enter into this Agreement includes all of the commitments by Buyer to Seller, and by Seller to Buyer, as set forth in this Agreement, including terms set forth in the Exhibits attached hereto.

21. FURTHER ASSURANCES.

From time to time after the Closing, at the request of a party hereto and at the expense of such requesting party, the other party shall execute and deliver to the requesting party such documents and take such other action as such requesting party may reasonably request in order to consummate more effectively the transactions contemplated by this Agreement and the Related Agreements.

22. COUNTERPARTS.

This Agreement may be executed in one or more counterparts all of which shall be considered one and the same agreement and shall become effective when said counterparts have been signed by each of the parties hereto and delivered to the other party, it being understood that the parties hereto need not sign the same counterpart. A facsimile signature shall be deemed an original.

23. NO THIRD PARTY BENEFICIARIES.

This Agreement is not intended and shall not be deemed to confer upon or give any person except the parties hereto and their respective successors and permitted assigns any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

24. WAIVER.

No waiver of any provision of this Agreement, or of any breach of a provision of this Agreement, shall extend to or affect in any way any other provision of this Agreement or any prior or subsequent breach of a provision of this Agreement. Any agreement on the part of a party hereto to any such waiver shall be valid only if set forth in a written instrument signed on behalf of the waiving party.

25. SEVERABILITY.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless to do so would deprive a party hereto substantially of the benefit of the bargain negotiated by such party.

26. ASSIGNMENT.

This Agreement and any of the rights, interest or obligations hereunder may not be assigned, directly or indirectly, by either Seller or Buyer, without the prior, written consent of the other party hereto (which consent shall not be unreasonably withheld).

27. CONSENT TO JURISDICTION.

The parties hereto hereby irrevocably submit to the jurisdiction of the courts of the State of Arizona and the federal courts of the United States of America located in the State of Arizona, and appropriate appellate courts therefrom, over any dispute or proceeding arising out of or relating to this Agreement or any of the transactions contemplated hereby, and each party hereto irrevocably agrees that all claims with respect to such dispute or proceeding may be heard and determined in such courts. The parties hereto hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any dispute or proceeding arising out of or relating to this Agreement or any of the

transactions contemplated hereby brought in such courts, any defense of inconvenient forum for the maintenance of such dispute or proceeding, or any defense based on similar grounds. Each party hereto agrees that a judgment in any such dispute or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. This consent to jurisdiction is being given solely for purposes of this Agreement and is not intended to, and shall not, confer consent to jurisdiction with respect to any other dispute or proceeding in which a party hereto is or may become involved. Each party hereto hereby consents to process being served by the other party to any dispute or proceeding of the nature specified in this Section 27 by sending a copy thereof in a manner set forth in Section 18 hereof.

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

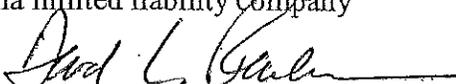
SWKR Operating Co., Inc., an Arizona
corporation

By: 
Title: vice president

Executed this 24th day of October, 2003

**San Pedro Railroad Operating Company,
LLC**, an Arizona limited liability company

By: Arizona Railroad Group, LLC, an
Arizona limited liability company

By: 
David L. Parkinson

Its: Sole Manager

Executed this 24th day of October, 2003

FIRST AMENDMENT TO
AGREEMENT FOR PURCHASE OF RAILROAD
ASSETS OF SWKR OPERATING CO., INC. AND
SAN PEDRO RAILROAD OPERATING COMPANY, LLC

The First Amendment to the Agreement ("First Amendment") is made as of October 31, 2003, by and between SWKR Operating Co., Inc. ("Seller") and San Pedro Railroad Operating Company, LLC ("Buyer"). Unless otherwise defined herein, each capitalized term herein has the meaning ascribed to it in the Agreement for Purchase of Railroad Assets of SWKR Operating Co., Inc. and San Pedro Railroad Operating Company, LLC (the "Agreement").

WHEREAS, the parties hereto wish to amend the Agreement to clarify further the rights and obligations of the parties pursuant to the terms of the Agreement.

NOW THEREFORE, the parties hereto agree to amend the Agreement as follows:

1. Section 3(c)(iii) of the Agreement shall be amended to add the phrase "and the Bisbee Branch" immediately following the term "MP 1106.5". The word "is" that currently immediately follows the term "MP 1106.5" shall be replaced with the word "are", which will immediately follow the addition of the newly inserted phrase "and the Bisbee Branch".
2. It is the intention of the parties hereto that the description of the rights, title and interest conveyed by the Quitclaim Deed by Seller in favor of Buyer, dated October 31, 2003, and by the Quitclaim Deed by San Pedro Trails, Inc. in favor of Buyer, dated October 31, 2003, conform to the corresponding description set forth on the appropriate valuations maps. If following Closing, it is discovered that the property description in one or both of the Quitclaim Deeds does not accurately reflect the property description on the appropriate valuation maps, Seller and/or San Pedro Trails, Inc., as applicable, shall execute an amended Quitclaim Deed to correct the property description so that it accurately describes the property on the appropriate valuation maps. The parties acknowledge that Seller and San Pedro Trails, Inc. may no longer have any rights, title or interest in or to certain property described on the appropriate valuation maps; however, the parties acknowledge that it is the parties' intent that each of Seller and San Pedro Trails, Inc. convey to Buyer, by Quitclaim Deed, all their respective rights, title and interests in and to the property described on the appropriate valuation maps.
3. Replace current Section 5(a)(xviii) with the following language: Seller has no knowledge of any continuous two-year period within which no rail cars moved from milepost 1071.16 to milepost 1041.32, but prior to Seller's ownership and operation of the line, Seller's information is limited to that disclosed in Surface Transportation Board filings. The date

the last car moved from milepost 1071.16 to milepost 1041.32 was August 31, 2002.

4. On the Table of Contents page of the Agreement, the phrase "Monthly Car Count" following the term "Exhibit L" shall be replaced with the phrase "Intentionally Omitted".
5. All references to the "Agreement for Purchase of Railroad Assets of SWKR Operating Co., Inc. and San Pedro Railroad Operating Company, LLC" in the Agreement and the Exhibits attached thereto shall be replaced with the phrase "Agreement for Purchase of Railroad Assets between SWKR Operating Co., Inc. and San Pedro Railroad Operating Company, LLC".

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, authorized representatives of the parties hereto have executed this First Amendment as of the date first set forth above.

SWKR Operating Co., Inc., an Arizona corporation

By: *WJ Howe*
Title: *Vice President*

San Pedro Railroad Operating Company, LLC, an Arizona limited liability company

By: Arizona Railroad Group, LLC, an Arizona limited liability company

By: _____
David L. Parkinson
Its: Sole Manager

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P. 004

IN WITNESS WHEREOF, authorized representatives of the parties hereto have executed this First Amendment as of the date first set forth above.

SWKR Operating Co., Inc., an Arizona corporation

By: _____
Title: _____

San Pedro Railroad Operating Company, LLC, an Arizona limited liability company

By: Arizona Railroad Group, LLC, an Arizona limited liability company

By: David L. Parkinson
David L. Parkinson
Its: Sole Manager

STB FINANCE DOCKET NO. 35666

CAPTION SUMMARY
SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION
FINANCE DOCKET NO. 35666

**--UNION PACIFIC RAILROAD COMPANY--
CLASS EXEMPTION FOR ACQUISITION OF
AND OPERATING AUTHORITY OVER AND
OVERHEAD TRackage RIGHTS OVER VARIOUS
PORTIONS OF THE CURTISS BRANCH LINE OF
THE SAN PEDRO RAILROAD OPERATING COMPANY, LLC
ALL BEING LOCATED IN COCHISE COUNTY, ARIZONA**

Union Pacific Railroad Company ("Union Pacific") will agree to the acquisition and operation of various portions of the Curtiss Branch Line in Cochise County, Arizona which will not constitute a major market extension and where the Surface Transportation Board ("Board") has found that the public convenience and necessity permit abandonment thereof.

This Notice is filed under 49 C.F.R. § 1180.2(d)(1).

San Pedro Railroad Operating Company, LLC (SPROC) will agree to grant overhead trackage rights to Union Pacific Railroad Company between SPROC Milepost 1033.008 near Benson, Arizona to SPROC milepost 1040.15 near Curtiss, Arizona, a distance of approximately 8.31 miles.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7).

Dated: _____

By the Board,

Cynthia T. Brown
Chief, Section of Administration