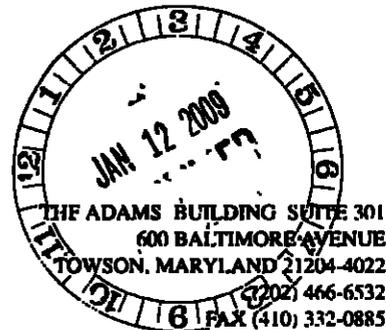


LAW OFFICES OF
LOUIS E. GITOMER

LOUIS E GITOMER
LOU_GITOMER@VERIZON.NET



224337

January 12, 2009

FILED

JAN 12 2009

**SURFACE
TRANSPORTATION BOARD**

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W
Washington, DC 20423

RE: Finance Docket No. 35212. *Kyle Railroad Company—Acquisition
and Operation Exemption –Mid-States Port Authority*

Dear Acting Secretary Quinlan:

Enclosed for filing are the original and 10 copies of a Notice of Exemption by Kyle Railroad Company ("Kyle"). Also enclosed are a check from Kyle for the filing fee of \$1,800, and a computer diskette containing the Notice in Word and pdf format. The color Exhibit is attached to the end of the Notice in Exhibit I.

Please time and date stamp the additional copy of this letter and the Notice and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me

Sincerely yours,

Louis E. Gitomer
Attorney for Kyle Railroad Company

ENTERED
Office of Proceedings
JAN 12 2009
Part of
Public Record

Enclosure

FEE RECEIVED
JAN 12 2009
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35212

KYLE RAILROAD COMPANY—ACQUISITION AND OPERATION EXEMPTION—MID-STATES PORT AUTHORITY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41., *et seq*



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JAN 12 2009
SURFACE
TRANSPORTATION BOARD

Scott G. Williams Esq.
Senior Vice President & General Counsel
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(202) 466-6532
Lou_Gitomer@verizon.net

Attorneys for: KYLE RAILROAD COMPANY

Dated: January 12, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35212

KYLE RAILROAD COMPANY—ACQUISITION AND OPERATION EXEMPTION—MID-
STATES PORT AUTHORITY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41., *et seq*

Kyle Railroad Company ("Kyle"), a Class III carrier, with current annual revenues in excess of \$5 million, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150. Subpart E- Exempt Transactions Under 49 U.S.C. § 10902 for Class III Rail Carriers, with the Surface Transportation Board (the "Board") for Kyle to acquire and operate from Mid-States Port Authority ("MSPA") about 351.50 miles of railroad. The line runs between Limon, CO, milepost 531.00, and Belleville, KS, milepost 189.40, between Belleville, milepost 189.40, and Munden, milepost 182.00, and between Belleville, milepost 226.25, and east of Belleville, milepost 223.75 (the "Line"). The Line runs through Lincoln and Kit Carson Counties, CO, and Sherman, Thomas, Sheridan, Decatur, Norton, Phillips, Smith, Jewell, and Republic Counties, KS.

BACKGROUND

The Line was formerly part of the estate of the bankrupt Chicago, Rock Island and Pacific Railroad Company ("CRIP"). The Interstate Commerce Commission (the "ICC") granted CRIP authority to abandon its entire rail system on May 23, 1980. *Chicago, R I & P R Co. Abandonment*, 363 I.C.C. 150 (1980). The abandonment was conditioned on CRIP

attempting for a reasonable time to sell certain rail lines and not abandoning any line for which an acquisition application was pending at the ICC. *Id.* at 172.

Mid-States Port Authority ("MSPA") filed an application to acquire the Line and additional portions of the CRIP (the "Extended Line") on September 15, 1980, pursuant to Section 17(b) of the Milwaukee Railroad Restructuring Act, Pub L. 96-101, 93 Stat. 736 (1979) and Section 112 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. No. 960254 (1980). The ICC accepted the application for consideration. *Mid-States Port Authority-Purchase (Portion)-Chicago, Rock Island and Pacific Railroad Company Debtor (William M Gibbons, Trustee) Between Denver, CO and McFarland, KS*, ICC Finance Docket No. 29470 (Sub-No. 1) (ICC served September 26, 1980). At that time, the Extended Line was being operated pursuant to directed service orders. The Bankruptcy Court authorized the sale of the Extended Line to MSPA in Order No. 676A on April 18, 1984.

MPSA and Kyle entered an Agreement dated April 30, 1984, as amended (the "Agreement") for Kyle to lease and operate the Line, as well as two branch lines between Munden, milepost 182.00, and Mahaska, KS, milepost 170.00, and between east of Belleville, milepost 223.75, and Clay Center, KS, milepost 178.37 (combined with the Line referred to as the "Kyle Line"). See Exhibit D for the Agreement and amendments. In essence, MSPA and Kyle used the Agreement as a means of financing the acquisition of the Line by MSPA from CRIP. MSPA arranged for a number of loans and used the rental payments by Kyle to repay the debt. In addition, Kyle incurred the costs of operating and maintaining the Kyle Line. In Section 4.1, the Agreement also granted Kyle the sole and exclusive right to purchase the Kyle Line at the end of the term of the Agreement upon the payment of \$1.00. Kyle filed a Notice of Modified Certificate to operate the Kyle Line pursuant to the Agreement. The ICC granted the

modified certificate in a notice served on June 4, 1984. *Kyle Railroad Company-Notice of Modified Certificate of Public Convenience and Necessity*, ICC Finance Docket No. 30490 (ICC served June 4, 1984) Kyle terminated operations between east of Belleville and Clay Center by notice given on August 11, 1995 On March 1, 2004, Kyle gave notice that it was terminating operations between Munden and Mahashka, KS.

Kyle has complied with the requirements of the Agreement and will exercise its option to purchase the Line Kyle is filing this notice of exemption for two reasons. First, Kyle wants to assure MSPA and the shippers on the Line that it intends to operate the Line as a common carrier subject to all of the provisions of 49 U.S.C. Subtitle IV, Part A. For example, operating under the modified certificate, Kyle can discontinue or abandon service on 60 days notice See 49 C.F.R. §1150.24. As a common carrier subject to the full requirements of 49 U.S.C. Subtitle IV, Part A, before Kyle can abandon or discontinue service over any portion of the Line it requires advance authorization from the Board. Second, Kyle is seeking the government authority required by the Agreement so that it can acquire the Line and remove that potential impediment to exercising its option to acquire the Line.

In support of this Notice of Exemption, Kyle submits the following information as required by 49 C.F.R. § 1150.43:

a. Full name and address of applicant:

Kyle Railroad Company
38 Railroad Avenue
Phillipsburg, KS 67661

b Applicant's Representatives:

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue
Suite 301

Towson, MD 21204
(410) 296-2250
Lou_Gitomer@verizon.net

- c. An agreement was reached between MSPA, as seller, and Kyle, as buyer in 1984.
- d. The operator of the property will be Kyle.
- e. Summary of proposed transaction:
 - 1. The name and address of the railroad transferring the property is

MSPA owns the Line, but MSPA is not a railroad

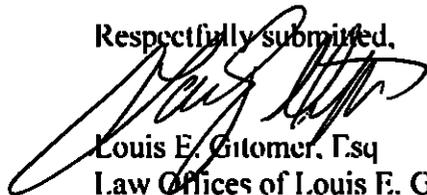
Mid-States Port Authority
Post Office Box 612
Phillipsburg, KS 67661
 - 2. The proposed time schedule for the consummation of the transaction is June 1, 2009.
 - 3. The Line that Kyle is acquiring from MSPA is between: (i) milepost 531.00, Limon, CO, and milepost 189.40, Belleville, KS, (ii) milepost 189.40, Belleville, and milepost 182.00, Munden, KS, and (iii) milepost 226.25, Belleville, and milepost 223.75, east of Belleville, KS.
 - 4. Kyle is acquiring about 351.50 miles of track from MSPA and will be operating the line and all ancillary trackage and property.
- f. A map of the Line is attached as Exhibit E. The map is in color and will be the last page of this pleading
- g. A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.43(g) is attached as Exhibit A.
- h. Interchange commitments. There is no provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means.

- i. A caption summary, as required by 49 C.F.R. § 1150.44, is attached as Exhibit B
- j. No environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 C.F.R. § 1105.7(c)(4) or (5) and there will be no action that would normally require environmental documentation. The proposed transaction is changing the ownership of the Line and changing Kyle from a modified certificate railroad to a standard railroad. Hence, this Notice of Exemption does not require environmental documentation under 49 C.F.R. § 1105.6(b)(4) and (c)(2)(i).
- k. An historic report is not required because Kyle will continue to operate the Line as it does today after the acquisition, will require further Board approval to abandon or discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).
- l. The Certification to the Board and the Notice posted and served on the national offices of all labor unions with employees on the affected line is attached as Exhibit C

This action will not significantly affect either the quality of the human environment or energy conservation.

Scott G. Williams Esq.
Senior Vice President & General Counsel
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329

Respectfully submitted,



Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(202) 466-6532
Lou_Gitomer@verizon.net

Attorneys for KYLL: RAILROAD COMPANY

Dated January 12, 2009

EXHIBIT A—CERTIFICATE OF COMPLIANCE

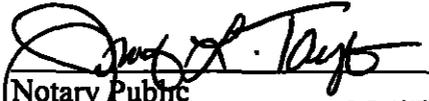
CERTIFICATION

State of Florida)
)ss:
County of Duval)

I, Joshua Putterman being duly sworn depose and state that I am Vice President and Treasurer of the Kyle Railroad Company, and that the projected annual revenues from the rail operations of the Kyle Railroad Company would not exceed those that would make it a Class II carrier under 49 C.F.R. Part 1201(1-1)


JOSHUA PUTTERMAN
Vice President & Treasurer

Subscribed and sworn to before me this 9th day of January 2009.


Notary Public **JENNIFER L TAYLOR**

(SEAL)

My Commission Expires: 6/26/09

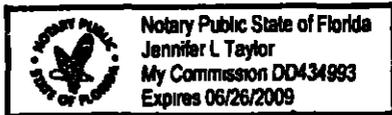


EXHIBIT B – CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35212

KYLE RAILROAD COMPANY—ACQUISITION AND OPERATION EXEMPTION—MID-STATES PORT AUTHORITY

Kyle Railroad Company (“Kyle”) has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire and operate, pursuant to an agreement entered into between Mid-States Port Authority (“MSPA”) and Kyle, about 351.50 miles of railroad. The line runs between Limon, CO, milepost 531.00, and Belleville, KS, milepost 189.40, between Belleville, milepost 189.40, and Munden, milepost 182.00, and between Belleville, milepost 226.25, and east of Belleville, milepost 223.75 (the “Line”). The Line runs through Lincoln and Kit Carson Counties, CO, and Sherman, Thomas, Sheridan, Decatur, Norton, Phillips, Smith, Jewell, and Republic Counties, KS.

Because Kyle’s projected annual revenues will exceed \$5 million, Kyle certified to the Board on January 9, 2009, that it sent the required notice of the transaction to the national offices of all labor unions representing employees on the line on January 9, 2009, and posted a copy of the notice at the workplace of the employees on the affected lines on January 9, 2009. See 49 C.F.R. § 1150.42(e).

The transaction is scheduled to be consummated on June 1, 2009, after the March 13, 2009 effective date of the exemption (which is more than 60 days after Kyle’s certification to the Board that it has complied with the Board’s rule at 49 C.F.R. § 1150.42(e)).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34508, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: Scott G. Williams Esq., Senior Vice President & General Counsel, RailAmerica, Inc., 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256, (904) 538-6329, and Louis F. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204. (202) 466-6532, Lou_Gitomer@verizon.net.

Board decisions and notices are available on our website at "www.stb.dot.gov." Decided: January __, 2009.

By the Board, David M. Konschnik, Director, Office of Proceedings

Anne K. Quinlan
Acting Secretary

EXHIBIT C – LABOR CERTIFICATION AND NOTICE

**LAW OFFICES OF
LOUIS E. GITOMER**

LOUIS E. GITOMER
Lou_GITOMER@VERIZON.NET

THE ADAMS BUILDING, SUITE 301
600 BALTIMORE AVENUE
TOWSON, MARYLAND 21204-4022
(202) 466-6532
FAX (410) 332-0885

January 9, 2009

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

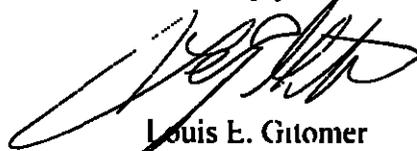
RE: Finance Docket No. 35212, *Kyle Railroad Company— Acquisition
and Operation Exemption—Mid-States Port Authority*

Dear Acting Secretary Quinlan:

Kyle Railroad Company (“Kyle”) hereby certifies that on January 9, 2009, Kyle posted the attached Notice at the workplace of the employees on the rail line that is the subject of this transaction and on January 9, 2009 Kyle served a copy of the Notice on the national offices of all labor unions with employees on the affected line.

This certification is being efiled. If you have any questions, please call or email me

Sincerely yours,



Louis E. Gitomer
Attorney for Kyle Railroad Company

Enclosure

**LAW OFFICES OF
LOUIS E. GITOMER**

LOUIS E. GITOMER
LOU_GITOMER@VERIZON.NET

THE ADAMS BUILDING, SUITE 301
600 BALTIMORE AVENUE
TOWSON, MARYLAND 21204-4022
(202) 466-6532
FAX (410) 332-0885

January 9, 2009

United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107-4250

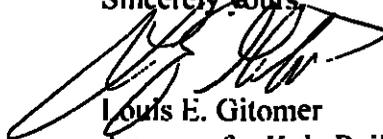
RE: Finance Docket No. 35212, *Kyle Railroad Company—Acquisition
and Operation Exemption—Mid-States Port Authority*

Gentlemen:

Pursuant to 49 C.F.R. §1150.42(e), Kyle Railroad Company is serving on you a notice of its intent to undertake the proposed transaction.

If you have any questions, please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for Kyle Railroad Company

Enclosure

NOTICE

Pursuant to Surface Transportation Board (the "Board") regulations at 49 C.F.R. § 1150.42(e), Kyle Railroad Company ("Kyle") hereby provides notice to the employees of Kyle that Kyle will acquire and operate from Mid-States Port Authority ("MSPA") about 351.50 miles of railroad between Limon, CO, milepost 531.00, and Belleville, KS, milepost 189.40, between Belleville, milepost 189.40, and Munden, milepost 182.00, and between Belleville, milepost 226.25, and east of Belleville, milepost 223.75 (the "Line"). Kyle intends to file a notice of exemption with the Board on January 12, 2009 in Finance Docket No. 35212, *Kyle Railroad Company—Acquisition and Operation Exemption—Mid-States Port Authority Company*, which will become effective on March 10, 2009. However, Kyle does not intend to close the transaction until June 1, 2009.

As a result of the acquisition of the Line, Kyle will not make any changes in the number of employees working on the Line, compensation of employees, or fringe benefits of its employees after it acquires the Line. Kyle has operated the Line for almost 24 years and is acquiring the Line as a result of exercising its option to acquire the Line.

This notice is being posted in accordance with the requirements of 49 C.F.R. § 1150.42(e) which requires the posting of a notice of intent to undertake a proposed transaction under 49 U.S.C. § 10902 that will result in projected annual revenues in excess of \$5 million at the workplace of the employees of the affected railroad line(s) at least 60 days before the notice of exemption relating to the proposed transaction becomes effective. A copy of this notice is being served by overnight delivery on the national offices of the labor unions with employees on the affected railroad line(s). Kyle is concurrently certifying to the Board that it has served and posted this notice.

VERIFICATION

State of Florida)
)ss:
County of Duval)

I, Joshua Putterman being duly sworn depose and state that I am Vice President and Treasurer of the Kyle Railroad Company, and that I am authorized to make this verification, and that I have read the foregoing notice of exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.


JOSHUA PUTTERMAN
Vice President & Treasurer

Subscribed and sworn to before me this 8th day of January 2009


Notary Public **JENNIFER L. TAYLOR**

(SEAL)

My Commission Expires: 6/26/09



EXHIBIT D—AGREEMENT AND AMENDMENTS

File 17

Check

AGREEMENT

by and among

THE KYLE RAILROAD COMPANY

and

THE MID-STATES PORT AUTHORITY

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AGREEMENT

THIS AGREEMENT is made and entered into this 30th day of April, 1984, by and between MID STATES PORT AUTHORITY, ("Authority") a joint port authority, created as a public body corporate and politic, organized and existing by virtue of the laws of the State of Kansas, including particularly K.S.A. 12-3401 to 12-3433 inclusive, as amended ("Kansas Act"), consisting of fourteen member counties all political subdivisions of the State of Kansas and KYLE RAILROAD CO., a Kansas corporation, wholly owned by Kyle Railways, Inc., whose principal offices are located in Phillipsburg, Kansas, ("Kyle Co.").

WHEREAS, the Authority and the United States of America, represented by the Secretary of Transportation, acting through the Administrator of the Federal Railroad Administration or the Administrator's designee ("Administrator"), have entered into a Financing Agreement dated the same date as the date hereof ("Financing Agreement") pursuant to which the Administrator has agreed to loan to the Authority the principal sum of \$18,000,000, represented by 1,800 notes, each with an initial principal of \$10,000 and each ranking equally with every other note in all respects (collectively referred to herein as "Notes"), upon the terms and conditions set forth in the Notes and the Financing Agreement; and

WHEREAS, the Authority, in conjunction with Kyle Co., has submitted to the Administrator under section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act") an application and supplemental materials, ("Application"), which Application is incorporated by reference herein requesting financial assistance in the amount of Eighteen million dollars (\$18,000,000) in order to finance the acquisition and rehabilitation of certain property from the trustee of the Estate of the Chicago, Rock Island and Pacific Railroad Company, Debtor, ("Rock Island Trustee") described in a mortgage covering all of the property of the Authority ("Property") such mortgage being attached hereto as Exhibit I ("Mortgage"); and

WHEREAS, the Authority has issued \$1,000,000 in railroad facilities revenue bonds, series 1984 A, in order to finance acquisition of a portion of the Property (the "Bonds").

WHEREAS, the Authority has entered into a trust agreement ("Trust Agreement") with the First National Bank of Phillipsburg ("Trustee") for the benefit of the holder of the Bonds and the Administrator by which the proceeds from this Agreement will be deposited in the "Revenue Fund" created by the Trust Agreement in order to meet the obligations of the Bonds and the Financing Agreement including the Notes.

WHEREAS, the Property will be purchased and rehabilitated, as described in Exhibit C to the Financing Agreement, ("Project"), in part, with the proceeds of the Notes, the Bonds,

local rail assistance funds made available through the states of Kansas and Colorado and funds provided by Kyle Co.

THEREFORE IN CONSIDERATION of the sums to be paid as provided in paragraph two (2) of this Agreement and the mutual covenants and promises made herein the Authority agrees to lease to Kyle Co. a portion of the Property as described in Appendix A, attached hereto, and Kyle Co. agrees to accept said lease in accordance with the following terms and conditions:

1.) Facilities Included. Those facilities covered by this Agreement include those portions of the Property as described in Appendix A which constitute a rail corridor consisting of track, rights-of-way track materials, roadbed together with railroad yards and other improvements useful and integral in the conduct of the business of a rail carrier; except real property which is currently under lease or which is not integral or vital to the rail operations of Kyle Co., may be sold or leased in the future (in accordance with the provisions of paragraph 17 hereof) so long as any such subsequent sale or lease does not unreasonably interfere with the rail operations of Kyle Co., said property being hereinafter sometimes referred to as "Ancillary Property."

2.) Rental Payments. As consideration for the possession and use of said rail facilities, Kyle Co. agrees to, and shall, provide all services as required by this Agreement, those obligations to be performed by the "Contract Operator" of the Authority enumerated in the Financing Agreement and shall pay to

the Authority the sum of Fifty-one Thousand Two Hundred and Fifty Dollars (\$51,250) per month, in advance, for the first three years of this Agreement. Said monthly payment shall be increased to the sum of Sixty-seven Thousand Two Hundred Fifty Dollars (\$67,250) at the beginning of the fourth year of this Agreement. The monthly rental as herein provided shall be paid directly to the Trustee as provided by the Financing Agreement and the Trust Agreement. In the event the Revenue Fund created by the Financing Agreement and the Trust Agreement exceeds the minimum fund balance required by said Agreements, Kyle Co.'s rental payment obligation shall be reduced to an amount necessary to maintain said Revenue Fund at the minimum fund balance. In the event there is a deficiency in the minimum fund balance of said Revenue Fund, Kyle Co.'s rental payment obligations shall be increased to an amount necessary to maintain said Revenue Fund at the minimum fund balance. Further, the Authority agrees to join with Kyle Co. in requesting relief from or postponement of the principal and/or interest obligations or the maintenance of a minimum Revenue Fund balance in the event of either natural disaster or governmental action adversely affecting railroad operations contemplated by this Agreement.

3.) Term. This Agreement shall commence on the first day of the month next following the date on which the Authority obtains title to the Property from the Rock Island Trustee and Kyle Co. obtains requisite operating authority from the

Interstate Commerce Commission. From said commencement date, this Agreement shall continue for a term of 22 years and 3 months; provided, said term may be subject to adjustment upon the written agreement of the parties and shall be adjusted in the event of any adjustment of the repayment terms of the debts of the Authority to the Administrator, approved by Kyle Co., so that the term of this Agreement shall continue for the full period of said financing.

4.) Purchase Agreement. If Kyle Co. is not then in substantial default under this Agreement, at the end of the term of this Agreement Kyle Co. shall have the sole and exclusive right to purchase all of the Property (not sold by the Authority pursuant to Paragraph 16, 17 or 19, infra.) upon payment of the sum of \$1.00 to the Authority, which option to purchase shall be exercised by delivery of said sum at any time during the last one hundred twenty (120) days of the term. Such purchase by Kyle Co. at the end of the term of this Agreement is subject to such government agency approval as may then be required. The Authority agrees to use its best efforts and due diligence to do or cause to be done such acts and things as may be required to effectuate this purchase option and to deliver appropriate deeds and other instruments of conveyance reasonable and necessary to convey title to Kyle Co. promptly at the end of the term of this Agreement free and clear of all liens and encumbrances other than

such as may have been placed on the property during the term hereof with the written consent of Kyle Co.

5.) Rail Operation.

(a) Kyle Co. agrees to use its best efforts to provide regular rail freight service as may be reasonably requested to all those stations and shippers located on that portion of the Property described in Appendix A as required by the reasonable demand of those shippers and the contracts entered into between Kyle Co. and the shippers located thereon. Kyle may, from time to time, implement changes in operations, including service frequency and equipment supply, so long as any such change does not unreasonably put Kyle Co. in breach of any contract or agreement with those shippers who have or may in the future enter into an agreement with Kyle Co. for the shipment of goods and materials.

(b) Kyle Co. agrees to cooperate fully with the Interstate Commerce Commission (ICC) and the Federal Railroad Administration (FRA) and to adhere to any and all requirements, including accounting requirements, which may be imposed upon Kyle Co. by the ICC or the FRA.

(c) Kyle Co. will supply all operating equipment, maintenance equipment, personnel, working capital, insurance coverage, and normal business functions to perform the necessary service to handle all traffic offered to it and which it is obligated to accept as a common carrier and to continue the

operation thereof in accordance with the reasonable requirements of the shippers and in compliance with regulations of the ICC.

(d) ALL shipper contracts shall be with Kyle Co., who shall be entitled to all income and revenue from the rail freight service and other revenue from the use of the facilities subject to this agreement, and shall be responsible for all costs of operation.

(e) Kyle Co. shall be responsible for the management and operation of the rail freight service, including, but not limited to, the procuring of locomotives, cars, and other equipment, the dispatching of trains, assignment of available cars in good order, assignment of crews and other employees, assignment and utilization of power, establishing of transportation, accessorial and demurrage rates and charges, agreeing to division, per diem, and other accounting and operating agreements with other railroads, and performance of maintenance. Kyle Co. shall have the exclusive authority to promulgate and adopt rules and regulations for the operation of the rail freight service, and shall provide the Authority with requested copies thereof.

(f) Kyle Co. shall keep fully informed of, and shall at all times observe and comply with, all federal, state, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect those engaged or employed by Kyle Co.

or which in any way affect the performance of this Agreement. Kyle Co. shall obtain all permits and licenses, obtain any and all necessary safety waivers, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful performance of this Agreement. Except as provided by paragraph 11 of this Agreement, nothing in this Agreement shall be construed to require Kyle Co. to pay any tax obligation of the Authority, including but without limitation, tax liabilities paid or assumed by the Authority as part of the purchase price of the rail properties.

(g) Kyle Co. shall indemnify, hold harmless, and protect the Authority, its directors, its representatives, officers, employees, successors, and assigns from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of any act or omission, neglect or misconduct of Kyle Co., its representatives, officers, employees, or agents, or from any claims or amounts arising or recovered under any Federal Employees Liability act or any other comparable law, ordinance, order, or decree.

(h) Kyle Co. shall at all times conduct its operations so as to insure the safety and protection of workers, the general public, residents along the Property and all other persons and property.

(i) Kyle Co. shall at all times maintain detailed records of operations conducted pursuant to this Agreement consistent with the requirements promulgated by the ICC, and shall provide the Authority with financial statements of operations on a quarterly basis, except as otherwise agreed to by the parties.

6.) Application for Government Funding. The parties agree to cooperate in the application for any federal, state or local funding which may be required to successfully consummate acquisition and rehabilitation of the railroad facilities contemplated by this Agreement or which from time to time may become necessary or beneficial for the continued operation of the railroad facilities acquired by the Authority.

7.) Regularized Maintenance. Kyle Co. agrees to perform all maintenance, after rehabilitation, necessary to maintain the portion of the Property described in Appendix A, consisting of track, track materials, roadbed, yards and other improvements in at least the same condition to which said property was rehabilitated pursuant to Exhibit C of the Financing Agreement.

8.) Assignment. No party shall assign this Agreement nor any rights or duties of any of the parties to this Agreement without the prior written consent of the other party and the Administrator, which such consent shall not be unreasonably

withheld; provided, Kyle Co. may assign this Agreement, without the consent of the Authority or the Administrator, to Kyle Railways, Inc. or any subsidiary owned wholly or in part by Kyle Railways, Inc. or to a successor acquiring all or substantially all of the assets of Kyle Co.; provided further, Kyle Co. shall not be released from its obligations under this Agreement or the Financing Agreement by reason of any such assignment.

9.) Default.

(a) It is agreed by the parties that time is of the essence of this Agreement. In the event that Kyle Co. shall fail to make any of the rental or other payments provided for herein, then demand shall be made upon Kyle Co. for said payment. If Kyle Co. fails to cure any said default within 45 days of receipt of said notice, the Authority may declare this Agreement terminated or remove Kyle Co. as operator and substitute operators without relinquishing its right to pursue Kyle Co. under the provisions of this Agreement. In such event, after notice and in accordance with the laws of Kansas all right, title and interest of Kyle Co. in and to the Property shall cease and determine and revert to and re-vest in the Authority. All amounts paid by Kyle Co. up to and including the time of default, shall be retained by the Authority as liquidated damages and rental, and not as a penalty. In lieu of declaration of default the

Authority may require specific performance and in addition thereto, exercise any other remedy available to the Authority under this Agreement or the Laws of Kansas.

(b) In the event of default by either of the parties of any other terms or conditions of this Agreement, other than default in making rental or other payments provided by this Agreement, the Financing Agreement or the Trust Agreement, the defaulting party shall be given 60 days to cure any such default after notification by the other party of such default. In the event such default is not cured within the specified time period the non-defaulting party may declare this Agreement terminated, seek specific performance of the specific term or condition, or exercise any other remedy available to the parties under the laws of Kansas; provided however, if the default is such that it cannot reasonably be cured within said sixty (60) day period, such party shall not be in default if it commences, and diligently and in good faith pursues, the curing of such default within the 60-day period.

10.) Notices. All notices or other communications hereunder shall be in writing and shall be delivered in person or by certified or registered mail, return receipt requested, first class, postage prepaid, to the person specified herein as entitled to receive such notice, unless notice of a change of address is given pursuant to the provisions of this Article:

To the Authority

Chairman of the Board
Mid States Port Authority
Post Office Box 446
Phillipsburg, Kansas 67661

and

General Counsel
Mid-State Port Authority
Shadow Wood Office Park
5863 S.W. 29th Street
Topeka, Kansas 66614

To Kyle Co.

Mr. Willis B. Kyle, President
Kyle Railroad Co.
861 Sixth Avenue, Suite 419
San Diego, California 92101

and to:

General Manager
Kyle Railroad, Co.
3rd & State
Phillipsburg, Kansas 67661

All notices mailed shall be deemed given on the date received at the office of the party to whom notice is to be given as evidenced by the registered or certified mail return receipt.

11.) Taxes. To the extent that any of the property subject to this Agreement, as described in Appendix A, is subject to ad valorem taxation or special assessments, Kyle Co. agrees to pay said tax or special assessment upon presentation of the bill for the same; provided however, Kyle Co. shall have the right to contest or defend against any such tax or assessment at its sole expense.

12.) Insurance. Kyle Co. agrees to procure and maintain without lapse and pay all premiums on policies of insurance as are normal and customary to insure the improvements and facilities which are normally and customarily insured by Kyle

Railways, Inc. Kyle Co. shall also procure such policies of liability insurance as are normal and customary in other Kyle Railways, Inc. operations to cover any suits, actions, or claims of any injuries received or damages sustained by any person, persons or property on account of any act, omission, neglect or misconduct of Kyle Co., its representatives, officers, employees or agents, and name the Authority its officers and directors as additional insureds on said policy.

The Authority agrees to procure and maintain a policy of liability insurance covering the acts and omissions of its employees, officers and directors and name Kyle Co. as an additional insured.

13.) Rehabilitation Funds.

(a) It is expressly understood and agreed and this Agreement is entered into in reliance on the fact that the Authority shall pay or cause to be paid not less than \$6,000,000.00 for rehabilitation work during the first two (2) years of the term of this Agreement. Kyle Co. agrees to provide any matching funds required to obtain Local Rail Assistance Funds, pursuant to section 5 of the Department of Transportation Act, to the extent such funds are available, to be administered and disbursed through the States of Kansas and Colorado. Kyle Co. further agrees to provide such additional funds as may become necessary to complete the rehabilitation work as contemplated by Exhibit C to the Financing Agreement.

(b) In performance of rehabilitation work, as required by Exhibit C to the Financing Agreement, Kyle Co. shall act as the Authority's "Contract Operator", as provided in the Finance Agreement, in the creation of specifications, letting of bids, review of bids submitted, supervision of performance of any contract and coordination of work to be performed. If upon review of all bids submitted Kyle Co. believes all the bids are too high or inadequately meet the required specifications then Kyle Co. may submit a proposal to the Authority to perform the work. Final approval of any contract for rehabilitation shall be made by the Authority and Kyle Co. The requirements of this subparagraph shall apply only to rehabilitation work to be performed by using, in whole or part, public monies of any federal, state or local government entity or monies of the Authority.

14.) Accounting Requirements. Kyle Co. shall provide the Authority with an annual report of its operations and income and such other documentation that may be required of Kyle Co. as the Authority's Contract Operator pursuant to the Financing Agreement. At the annual meeting of the Authority, the Authority shall present its annual audit of its operations and accounts.

15.) Assignment of Trackage Rights Agreements. The Authority hereby assigns and Kyle Co. hereby accepts all rights, title, interest and obligations of the Authority to grant

trackage rights to parties designated by the Rock Island Trustee pursuant to paragraph 5A of the contract of sale between the Authority and the Rock Island Trustee, attached hereto as Exhibit 2, for that portion of the Property described in Appendix A. Kyle Co. shall be responsible for all negotiations and dealing with any such designated user and entitled to all revenue from any such agreement.

16.) Abandonment or Sale of Railroad Facilities.

a.) If the parties mutually agree that continued operations of a segment of the railroad facilities, subject to this Agreement, has become so unprofitable so as to significantly affect the continued operation of the whole railroad, then and in that event the parties may mutually agree to sell or abandon that segment of the line. The terms of any such abandonment or sale shall be agreed to between the parties, but in no event shall such agreement reduce the payment as required by paragraph 2 of this Agreement or any other payment required by the Financing Agreement or Trust Agreement; provided, any such abandonment must first receive the approval of the Administrator and any other necessary agency approvals.

b.) Kyle Co. agrees that, without the prior consent of the Authority and the Administrator, it will not exercise

abandonment rights contained in 49 CFR 1150, Subpart C. If the parties cannot reach agreement as provided in subparagraph (a) of this paragraph, Kyle Co. may apply to the Interstate Commerce Commission for an order allowing abandonment of service on any segment of the railroad facility subject to this Agreement; provided, the Administrator first must approve said application and any order entered by the ICC allowing abandonment by Kyle Co. Such abandonment shall not affect the payment required of Kyle Co. by paragraph 2 of this Agreement or any other payment required by the Financing Agreement or Trust Agreement. Further, in the event that the ICC does not have authority or refuses to act on an application by Kyle Co. pursuant to this subparagraph (b), the issue of abandonment may be submitted by Kyle Co. to a binding arbitration; it being the agreement of the parties that if they cannot mutually agree on abandonment, the matter shall be determined by a neutral forum and each of the parties hereto agrees to cooperate in resolving any such dispute by an arbitration provision; provided, any such arbitration award will be subject to the approval of the Administrator.

c.) The proceeds of any sale as contemplated by this paragraph shall be applied as provided by the Financing Agreement, Trust Agreement or the directive of the Administrator.

17.) Sale of Ancillary Property. The parties understand and agree that there exists certain property adjacent to the railroad facilities, subject to this Agreement, which was acquired as non-rail or Ancillary Property upon which is located the facilities of the various shippers along this line and some of which is vacant. Said Ancillary Property may be leased pursuant to the provisions of paragraph 18 below or sold; provided, any such property, not currently under lease, shall not be sold by the Authority without the prior consent of Kyle Co. to such disposition, which consent Kyle Co. shall not unreasonably withhold. The Authority covenants that any funds raised from the sale of any of said Ancillary Property, after payment of expenses of such sale, shall be applied as provided by the Financing Agreement and Trust Agreement.

18.) Operations Fund. The Authority shall establish a fund into which all monies obtained from the lease of Ancillary Properties, shall be deposited. Said fund shall be called the "Operations Fund" and may be maintained in one or more accounts in the Authority's discretion. The Authority shall apply the monies in the Operations Fund only to:

- (a) payment of the reasonable administrative costs of the Authority including, but not limited to, staff salaries,

office rental, equipment rental, accountants fees, consultants fees, attorney fees, insurance premiums and expenses incurred by any member of the Authority's board of directors,

- (b) payment of tax obligations when the same become due, whether or not said tax obligation may be chargeable to a third party; provided, all reimbursements for such taxes shall be deposited in the Operations Fund.
- (c) payment of such amounts as may be required by paragraph 2(c) of the Trust Agreement, or
- (d) rehabilitation of the railroad facilities subject to this Agreement, special projects intended to enhance the value and usefulness of said railroad facilities or made available to Kyle Co. to reduce the payments required by paragraph 2 of this Agreement; provided, the expenditure authorized by this subparagraph must be mutually agreed to by the parties.

The Operations Fund shall be maintained at such levels so as to provide an adequate reserve for the payment of any future administrative or tax obligations of the Authority. Upon the expiration of this Agreement any funds remaining in the

Operations Fund shall be used for those purposes enumerated in subparagraph d of this paragraph. The Authority represents and warrants to Kyle Co. and covenants and agrees with Kyle Co. that the Authority will not engage in any activities other than the management of the Property without the prior written consent of Kyle Co. and that it will confer and consult with Kyle Co. in the management of said Property including, but without limitation, on the rental of the Ancillary Property.

19. Union Pacific Lease.

(a) The Authority has leased a portion of the Property located in Nebraska to the Union Pacific Railroad Co. In the event the Union Pacific terminates operations at any time during the term of this Agreement, Kyle Co. shall have the option to assume the operations over that portion of the Property upon the terms and conditions of this Agreement, including the option to purchase, except, the payment obligations, provided by paragraph 2 of this Agreement shall be adjusted to provide that the minimum fund balances required by paragraph 2(c) of the Trust Agreement are maintained. Further, the Authority agrees not to amend, modify or waive any of the terms or provisions of the Union Pacific Lease without the prior written consent of the Kyle Co.

(b) In the event Kyle Co. shall terminate this Agreement prior to expiration of its term Kyle Co. agrees to assign its Agreement with the Union Pacific concerning operation between Limon and Denver to the Authority, attached hereto as Exhibit 2, or any Agreement entered into with Union Pacific which is intended to replace the attached Agreement, Exhibit 2.

20. Construction of Buildings and Other Structures. Kyle Co. may from time to time construct buildings or other structures upon the properties of the Authority as are needed for the continued successful operation of rail operations. The Authority agrees to cooperate in the location and financing of any such structure, the same to become a fixture to the property.

21.) Deferred Rental Payments. Notwithstanding the requirements of paragraphs 2., 9.(a) and 9.(b) of this Agreement Kyle Co. may from time to time defer payments of the rental required by paragraph 2. for a period of not to exceed 3 years; provided, no more than twelve months payments may be deferred at any one time and no more than six months in any one year; provided further, such rent deferral shall not cause the Authority to default in its obligations to the Administrator to maintain the minimum fund balances required by Section 2(c) of the Trust Agreement. Kyle Co.'s intent to defer any payment must

be communicated to the Authority at least 10 days prior to said payment's due date. If said notice is not timely made or if more than 12 months payments are deferred then and in that event Kyle Co. shall be considered in default as provided by paragraph 9.(a).

22.) Nondiscrimination. Kyle Co. agrees to implement and maintain an approved Affirmative Action plan and other nondiscriminatory action designed to insure nondiscrimination in employment, pay, working conditions and other areas, as such plan or action is required of Kyle Co. as the Authority's Contract Operator under the Financing Agreement and provide documentation thereof to the Authority.

23.) Environmental Protection. Kyle Co. agrees to comply with all environmental requirements imposed upon it as the Authority's Contract Operator under the Financing Agreement.

24.) Government Approvals. The parties hereto agree to cooperate in obtaining all approvals, certificates or licenses necessary to the successful operation of the railroad contemplated by this Agreement.

25.) Arbitration. Any dispute concerning a provision of this Agreement may be submitted to arbitration upon the mutual consent of all parties.

26.) Additional Documents. Each of the parties hereto agrees to, and shall, execute such additional documents and perform such other and additional acts as may be reasonable and necessary to carry out the intent and purposes of this Agreement.

27.) Authority and Consents. Each of the parties hereto shall deliver to the other a certified copy of an appropriate resolution of its governing board authorizing and approving execution of this Agreement for and on behalf of such party and each party further represents and warrants to the other that it has the right, power, legal capacity, and authority to enter into and perform its obligations under this Agreement and that no approvals or consents of any persons or entities, governmental or otherwise, are necessary in connection with it, except those such as the ICC, acknowledged by the terms of this Agreement.

28.) Severability. If any of the terms, covenants or provisions of this Agreement are held by a court of competent jurisdiction to be void or ineffective, such invalidity shall not impair the remainder of said Agreement or the effectiveness of any of its other terms, covenants or provisions.

29.) Force Majeure. The parties agree that they will carry out their obligations under this Agreement correctly and punctually. However, they further agree that neither party shall

be liable to the other for any loss, injury, delay, damages or other casualty suffered or incurred by the other party due to strike, irregular industrial accident short of strike, riots, fires, storms, explosions, acts of God, war (declared or undeclared), supervening legislation, governmental or other regulations and directives, or any other similar cause beyond the reasonable control of either party and any failure or delay by either party in performance of any of its obligations under this Agreement due to any of the foregoing causes shall not be considered a breach of this Agreement.

30. Sole Agreement. This Agreement and the Exhibits attached hereto constitute the entire understanding and agreement of the parties concerning the subject matters of it and supercedes all prior negotiations, correspondence and agreements, oral and written.

31. Other Agreements. The parties hereto agree to execute all necessary documents and agreements required by the Federal Railroad Administration, the Interstate Commerce Commission, the State of Kansas, the State of Colorado or any other entity or agency necessary to or contemplated by this Agreement. Any such agreements executed by the parties shall be attached hereto as

subsequent exhibits and incorporated in and made a part of this Agreement. Further, the Authority agrees not to amend, modify or waive any of the terms or provisions of the Financing Agreement and the Trust Agreement without the prior written consent of the Kyle Co.

MID-STATES PORT AUTHORITY

By: McNeil Boyd
Chairman of the Board

WITNESS

[Signature]

KYLE RAILROAD COMPANY

By: Phillip B. Kyle

WITNESS

Bethie Brinski

AMENDED AND RESTATED
LEASE AGREEMENT

THIS FIRST AMENDMENT AND RESTATEMENT OF LEASE is made and entered into this 21st day of April, 1989, by and between MID STATES PORT AUTHORITY, ("Authority") a joint port authority, created as a public body corporate and politic, organized and existing by virtue of the laws of the State of Kansas, including particularly K.S.A. 12-3401 to 12-3433 inclusive, as amended ("Kansas Act"), consisting of thirteen (13) member counties all political subdivisions of the State of Kansas and KYLE RAILROAD CO., a Kansas corporation, which is wholly owned by Kyle Railways, Inc., and whose principal offices are located in Phillipsburg, Kansas, ("Kyle Co.").

RECITALS:

(A) Authority and Kyle Co. entered into a written agreement dated April 30, 1984, ("the Lease"), in which authority leased to Kyle Co. and Kyle Co. leased from Authority the facilities therein described ("Facilities"); and

(B) The Facilities are a portion of that certain property acquired by the Authority from the Trustee of the Estate of the Chicago, Rock Island and Pacific Railroad Company, "Debtor", described in the deed from said Trustee to the Authority (herein "Property"). Said deed is attached as Appendix "A" to this Lease; and

(C) The Lease was entered into, in part, to satisfy the requirements of the Administrator of the Federal Railroad Administration ("Administrator") which provided a substantial portion of the funds pursuant to which the Authority acquired the Property and said Lease was for a term and at a rental intended to provide for repayment of the debts of the Authority to the Administrator, after which the Property was to pass to Kyle Co. pursuant to the provisions of section 4 of the Lease; and

(D) The Authority has negotiated a loan from BANK IV Wichita, N.A. to refinance the indebtedness to the Administrator ("Refinancing") and the discounted payoff to the Administrator through the refinancing of the Authority's indebtedness has been approved by Kyle Co.; and

(E) The parties now desire to amend the Lease in several respects including the elimination of certain provisions required by the Administrator which are no longer applicable to the Property and to revise the term and rental provisions to provide for the repayment of the Refinancing of the Authority and desire to restate the Lease as so amended;

IN CONSIDERATION of the sums to be paid as provided herein and the mutual covenants, promises, and agreements of the parties as herein set forth, the Authority leases to Kyle Co. and Kyle Co. hires and takes from the Authority the Facilities, being a portion of the Property described in Appendix A hereof on the following terms and conditions:

1. Facilities. The Facilities leased to Kyle Co. include those portions of the Property which are described in Appendix B attached hereto and constitute a rail corridor consisting of track, rights-of-way, track materials, roadbed, railroad yards and other improvements useful and integral in the conduct of the business of a rail carrier. The Facilities do not include and there is expressly excluded from this Lease the Non-Operated Rail Property as described herein, and certain real property which is currently under lease or which is not integral or vital to the rail operations of Kyle Co., herein sometimes referred to as the "Ancillary Property". The Ancillary Property may be sold or leased in the future in accordance with the provisions of paragraph 15 hereof so long as such subsequent sale or lease is approved by Kyle Co. and does not unreasonably interfere with the rail operations of Kyle Co. The Facilities also do not include and there is expressly excluded from this Lease that certain portion of the Property presently leased to the Union Pacific Railroad Co. pursuant to the Agreement dated April 27, 1984.

2. Rental Payments. As consideration for the possession and use of the Facilities, Kyle Co. agrees to, and shall, provide all services as required by this Lease and shall pay to the Authority the sum of Sixty-Seven Thousand Two Hundred Fifty and 00/100 Dollars (\$67,250.00) per month in advance. The monthly rental as herein provided shall be paid directly to the

Authority's rail operations account at the First National Bank of Phillipsburg. The monthly rental as herein provided shall be adjusted annually on June 1 of each year, commencing June 1, 1990, so that the rental obligations hereunder shall be in the amount which when combined with the rental income to the Authority under the UP Lease will meet the obligations of the Authority on the Refinancing and maintain a reserve account as required by the guarantee of the State of Kansas. The Authority agrees not to change the repayment terms on the Refinancing without the prior written approval of Kyle Co. and further agrees to make prepayments on the Refinancing (as authorized by the loan documents) at the request of Kyle Co. provided Kyle Co. provides all of the funds for such prepayment or the Authority determines to provide funds from the Operations Fund of the Authority in accordance with paragraph 16 of this Agreement.

3. Term. This Lease shall continue for a term of fifteen (15) years from the date of the Refinancing; provided, however, said term may be subject to adjustment upon the written agreement of the parties and shall be adjusted in the event of any change in the repayment terms of the Refinancing of the Authority, requested or approved by Kyle Co., such that the term of this Agreement shall be co-extensive with the term of said Refinancing.

4. Purchase Agreement. If Kyle Co. is not then in substantial default under this Agreement, at the end of the term of this Agreement, Kyle Co. shall have the sole and exclusive right to purchase all of the Property (including, but without limitation, the Facilities, the Non-Operated rail property, the Ancillary Property, and the UP Property) not previously sold by the Authority pursuant to Paragraphs 14, 15, or 17, infra, upon payment of the sum of \$1.00 to the Authority. The option to purchase shall be exercised by delivery of said sum at any time during the last one hundred twenty (120) days of the term. The Authority agrees to use its best efforts and due diligence to do or cause to be done such acts and things as required to effectuate this purchase option and to deliver appropriate deeds and other instruments of conveyance reasonable and necessary to convey title to Kyle Co. promptly at the end of the term of this agreement free and clear of all liens and encumbrances other than such as may have been placed on the property during the term hereof with the written consent of Kyle Co.

5. Rail Operations.

(a) Kyle Co. agrees to use its best efforts to provide regular rail freight service as may be reasonably requested to all those stations and shippers located on the Facilities as required by the reasonable demand of those shippers and the contracts entered into between Kyle Co. and the shippers located thereon. Kyle may, from time to time, implement changes in operations, including service frequency and equipment supply.

(b) Kyle Co. shall comply with all the requirements of the Interstate Commerce Commission (ICC) and the Federal Railroad Administration (FRA).

(c) Kyle Co. will supply all operating equipment, maintenance equipment, personnel, working capital, insurance coverage, and normal business functions to perform the necessary service to handle all traffic offered to it and which it is obligated to accept as a common carrier and to continue the operation thereof in accordance with the reasonable requirements of the shippers and in compliance with regulations of the ICC.

(d) All shippers contracts shall be with Kyle Co., who shall be entitled to all income and revenue from the rail freight service and other revenue from the use of the Facilities subject to this Agreement, and shall be responsible for all costs of operation.

(e) Kyle Co. shall be responsible for the management and operation of the rail freight service, including, but not limited to, the procuring of locomotives, cars, and other equipment, the dispatching of trains, assignment of available cars in good order, assignment of crews and other employees, assignment and utilization of power, establishing of transportation, accessorial and demurrage rates and charges, agreeing to division, per diem, and other accounting agreements, negotiating trackage rights, and operating agreements with other

railroads and side track agreements, and performance of maintenance. Kyle Co. shall have the exclusive authority to promulgate and adopt rules and regulations for the operation of the rail freight service, and shall provide the Authority with requested copies thereof.

(f) Kyle Co. shall keep fully informed of, and shall at all times observe and comply with, all federal, state and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner effect those engaged or employed by Kyle Co. or which in any way affect the performance of this Agreement. Kyle Co. shall obtain all permits and licenses, obtain any and all necessary safety waivers, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful performance of this Agreement. Except as provided in paragraph 11 of this Agreement, nothing in this Agreement shall be construed to require Kyle Co. to pay any tax obligation of the Authority.

(g) Kyle Co. shall indemnify, hold harmless, and protect the Authority, its directors, its representatives, officers, employees, successors and assigns from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of any act or omission, neglect or misconduct of Kyle Co., its representatives, officers, employees, or agents, or from any claims or amounts arising or recovered

under any Federal Employees Liability Act or any other comparable law, ordinance, order, or decree.

(h) Kyle Co. shall at all times conduct its operations so as to insure the safety and protection of workers, the general public, residents along the Property and all other persons and property.

(i) Kyle Co. shall at all times maintain detailed records of operations conducted pursuant to this Agreement consistent with the requirements promulgated by the ICC.

6. Application for Government Funding. The parties agree to cooperate in the application for any federal, state or local funding which from time to time may become necessary or beneficial for the continued operation of the Facilities.

7. Regularized Maintenance. Kyle Co. agrees to perform all maintenance, after rehabilitation, necessary to maintain the Facilities in the same general condition as they exist upon the execution of this Agreement and to those levels required by certain grants received from the states of Kansas and Colorado.

8. Assignment. No party shall assign this Agreement nor any rights or duties of any of the parties to this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, Kyle Co. may assign this Agreement, without the consent of the Authority

to Kyle Railways, Inc. or any subsidiary owned wholly or in part by Kyle Railways, Inc. or to a successor acquiring all or substantially all of the assets of Kyle Co.; provided further, Kyle Co. shall not be released from its obligations under this Agreement by reason of such assignment.

9. Default.

(a) It is agreed by the parties that time is of the essence of this Agreement. In the event that Kyle Co. shall fail to make any of the rental or other payments provided for herein, then demand shall be made upon Kyle Co. for said payment. If Kyle Co. fails to cure any said default within 60 days of receipt of said notice, the Authority may terminate this Agreement and relet the Facilities without relinquishing its rights to pursue Kyle Co. under the provisions of this Agreement. In such event, and after notice and in accordance with the laws of Kansas, the Authority may regain possession of the Facilities and recover from Kyle Co. damages and exercise such other rights and remedies as provided to the Authority under the laws of the State of Kansas. At Authority's option, the Authority may elect to continue this Agreement in effect for so long as the Authority does not terminate Kyle Co.'s right to possession and the Authority may enforce all rights and remedies under this Agreement including the right to recover rent.

(b) In the event of default by either of the parties of any of the terms or conditions of this Agreement, other than default in making rental or other payments provided by this Agreement the defaulting party shall be given sixty (60) days to cure any such default after notification by the other party of such default. In the event such default is not cured within the specified time period the non-defaulting party may declare this Agreement terminated, seek specific performance of the specific term or condition, or exercise any other remedy available to the parties under the laws of Kansas; provided however, if the default is such that it cannot reasonably be cured within said sixty (60) day period, such party shall not be in default if it commences, and diligently and in good faith pursues, the curing of such default within the 60-day period.

10. Notices. All notices or other communications hereunder shall be in writing and shall be delivered in person or by certified or registered mail, return receipt requested, first class, postage prepaid, to the person specified herein as entitled to receive such notice, unless notice of a change of address is given pursuant to this provisions of this Article:

To the Authority:

Chairman of the Board
Mid States Port Authority
Post Office Box 612
Phillipsburg, Kansas 67661

and:

General Counsel
Mid States Port Authority
Post Office Box 67147
Topeka, Kansas 66667

To Kyle Co.:

Mr. Willis B. Kyle, President
Kyle Railroad Co.
World Trade Center, Room 221
San Francisco, California 94111

and:

General Manager
Kyle Railroad Co.
3rd & State
Phillipsburg, Kansas 67661

All notices mailed shall be deemed given on the date received at the office of the party to whom notice is to be given as evidenced by the registered or certified mail return receipt.

11. Taxes. To the extent that any of the Facilities are subject to ad valorem taxation or special assessments, Kyle Co. agrees to pay said tax or special assessment upon presentation of the bill for the same; provided, however, Kyle Co. shall have the right to contest or defend against any such tax or assessment at its sole expense.

12. Insurance. Kyle Co. agrees to procure and maintain without lapse and pay all premiums on policies of insurance as are normal and customary to insure the improvements and facilities which are normally and customarily insured by Kyle Railways, Inc. Kyle Co. shall also procure such policies of liability insurance as are normal and customary in other Kyle Railways, Inc. operations to cover any suits, actions, or claims of any injuries received or damages sustained by any person, persons or property on account of any act, omission, neglect or

misconduct of Kyle Co., its representatives, officers, employees or agents, and name the Authority, its officers and directors as additional insured on said policy.

The Authority agrees to procure and maintain a policy of liability insurance covering the acts and omissions of its employees, officers and directors and name Kyle Co. as an additional insured.

13. Accounting Requirements. Kyle Co. shall provide the Authority with an annual report of its operations and income and such other documentation that may be required of Kyle Co. At the annual meeting of the Authority, the Authority shall present its annual audit of its operations and accounts. All accounting and other records of Kyle Co. made available to the Authority will be maintained by the Authority in strict confidence and will not be disclosed to third parties except as disclosure is required by law or the governing rules and regulations of the Authority.

14. Abandonment or Sale of Railroad Facilities.

(a) If the parties mutually agree that continued operations of a segment of the railroad facilities, subject to this Agreement, has become so unprofitable so as to significantly affect the continued operation of the whole railroad, then and in that event the parties may mutually agree to sell or abandon that segment of the line. The terms of any such abandonment or sale

shall be agreed to between the parties, but in no event shall such agreement reduce the payment required by Paragraph 2 of this Agreement.

(b) Kyle Co. agrees that, without the prior consent of the Authority it will not exercise abandonment rights contained in 49 CFR 1150, Subpart C. If the parties cannot reach agreement as provided in subparagraph (a) of this paragraph, Kyle Co. may apply to the Interstate Commerce Commission for an order allowing abandonment of service on any segment of the railroad facilities subject to this Agreement. Such abandonment shall not affect the payment required of Kyle Co. by paragraph 2 of this Agreement.

(c) The net sale proceeds from any sale of the Facilities pursuant to 14 (a) or (b) shall be applied as a prepayment to reduce the indebtedness of the Authority on the Refinancing unless the parties mutually agree to apply the proceeds otherwise.

15. Sale of Ancillary Property and Non-Operated Rail Property.

(a) The parties understand and agree that there exist certain property adjacent to the railroad facilities which was acquired as non-rail or Ancillary Property upon which is located the facilities of the various shippers along the line and some of which is vacant. The Ancillary Property which is presently leased may be sold by the Authority pursuant to purchase rights

contained in the existing Leases; provided, any such Ancillary Property not currently under a lease option agreement shall not be sold by the Authority without the prior consent of Kyle Co. to such sale, which such consent Kyle Co. agrees to not unreasonably withhold. The net sale proceeds on all sales of Ancillary Property shall be applied as a prepayment to reduce the indebtedness of the Authority on the Refinancing unless the parties mutually agree otherwise. The Authority agrees to confer and consult with Kyle Co. in the management of the Ancillary Property including, but without limitation, on the rental of the Ancillary Property.

(b) The portion of the Property from Maheska, Kansas thence Northeasterly to Fairbury, Nebraska is not currently being operated by either Kyle Co. or Union Pacific Railroad Co. and shall be called "Non-Operated Rail Property". The Authority recognizes the potential use of the Non-Operated Rail Property to Kyle Co. and agrees not to sell, lease, sublease, or otherwise deal with the same without the prior written consent of Kyle Co.

16. Operations Fund. The Authority shall establish a fund into which all monies obtained from the lease of Ancillary Properties shall be deposited. Said fund shall be called the "Operations Fund" and may be maintained in one or more accounts

in the Authority's discretion. The Authority shall apply the monies in the Operations Fund only to:

(a) Payment of the reasonable administrative costs of the Authority including, but not limited to, staff salaries, office rental, equipment rental, accountants fees, consultants fees, attorney fees, insurance premiums and reasonable expenses incurred by any member of the Authority's board of directors;

(b) Payment of tax obligations when the same become due, whether or not said tax obligation may be chargeable to a third party; provided, all reimbursements for such taxes shall be deposited in the Operations Fund; or

(c) Rehabilitation of the railroad facilities subject to this Agreement, special projects intended to enhance the value and usefulness of said railroad facilities or made available to Kyle Co. to reduce the payments required by paragraph 2 of this Agreement; provided, the expenditure authorized by this subparagraph must be mutually agreed to by the parties.

The Operations Fund shall be maintained at such levels so as to provided an adequate reserve for the payment of any future administrative or tax obligations of the Authority. Upon the expiration of this Agreement any funds remaining in the Operations Fund shall be used for those purposes enumerated in subparagraph (c) of this paragraph. The Authority represents and warrants to Kyle Co. and covenants and agrees with Kyle Co. that the Authority will not engage in any activities other than the management of the Property without the prior written consent of Kyle Co. and that it will confer and consult with Kyle Co. in the management of said property including, but without limitation, on the rental of the Ancillary Property.

17. Union Pacific Lease.

(a) The Authority has leased a portion of the Property located in Nebraska to the Union Pacific Railroad Co. ("UP"). In the event the UP terminates operations at any time during the term of this Agreement, Kyle Co. shall have the option to assume the operations over that portion of the Property upon the terms and conditions of this Agreement, including the option to purchase; except, the payment obligations, provided by paragraph 2 of this Agreement shall be adjusted to an amount which will provide full payment of principal and interest payment due under the Refinancing. Further, the Authority agrees not to amend, modify or waive any of the terms or provisions of the UP Lease without the prior written consent of Kyle Co. The UP rental payments shall be deposited directly to the rail operations account of the Authority at the First National Bank of Phillipsburg.

(b) In the event Kyle Co. shall terminate this Agreement prior to expiration of its term Kyle Co. agrees to assign its Agreement with the UP concerning operation between Limon and Denver to the Authority, attached hereto as Appendix C, or any agreement entered into with UP which is intended to replace the attached Agreement, Appendix C.

18. Construction of Buildings and Other Structures.

Kyle Co. may, from time to time, construct buildings or other structures upon the properties of the Authority as are needed for

the continued successful operation of rail operations. The Authority agrees to cooperate in the location and financing of any such structure, the same to become a fixture to the property.

19. Governing Law. This Lease shall be construed in accordance with the laws of the State of Kansas.

20. Environmental Protection. Kyle Co. agrees to assume all obligations under environmental requirements applicable to the Facilities.

21. Government Approvals. The parties hereto agree to cooperate in obtaining all approvals, certificates or licenses necessary to the successful operation of the railroad contemplated by this Agreement.

22. Additional Documents. Each of the parties hereto agrees to, and shall, execute such additional documents and perform such other and additional acts as may be reasonable and necessary to carry out the intent and purposes of this Agreement.

23. Authority and Consents. Each of the parties hereto shall deliver to the other a certified copy of an appropriate resolution of its governing board authorizing and approving execution of this Agreement for and on behalf of such party and each party further represents and warrants to the other that it has the right, power, legal capacity, and authority to enter into and perform its obligations under this Agreement and that no approvals or consents of any persons or entities, governmental or otherwise, are necessary in connection with it, except those such as the ICC acknowledged by the terms of this Agreement.

24. Severability. If any of the terms, covenants or provisions of this Agreement are held by a court of competent jurisdiction to be void or ineffective, such invalidity shall not impair the remainder of said Agreement or the effectiveness of any of its other terms, covenants or provisions.

25. Force Majeure. The parties agree that they will carry out their obligations under this Agreement correctly and punctually. However, they further agree that neither party shall be liable to the other for any loss, injury, delay, damages or other casualty suffered or incurred by the other party due to strike, irregular industrial accident short of strike, riots, fires, storms, explosions, acts of God, war (declared or undeclared), supervening legislation, governmental or other regulations and directives, or any other similar cause beyond the reasonable control of either party and any failure or delay by either party in performance of any of its obligations under this Agreement due to any of the foregoing causes shall not be considered a breach of this Agreement.

26. Sole Agreement. This Agreement and the Appendices attached hereto shall constitute the entire understanding and agreement of the parties concerning the subject matters of it and

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/ / /

supercedes all prior negotiations, correspondence and agreements,
oral and written.

MID STATES PORT AUTHORITY

By John Golden
John Golden,
Chairman of the Board

Witness:

William F. ...

KYLE RAILROAD COMPANY

By Thomas B. Toyle

Witness:

W. ...

A Copy.
B.I.P

**SECOND AMENDED AND RESTATED
LEASE AGREEMENT**

THIS SECOND AMENDMENT AND RESTATEMENT OF LEASE AGREEMENT ("Agreement") is made and entered into as of the 26th day of May, 1994, by and between MID-STATES PORT AUTHORITY ("Authority") a joint port authority, created as a public body corporate and politic, organized and existing by virtue of the laws of the State of Kansas, including particularly K.S.A. 12-3401 to 12-3433, inclusive, as amended, consisting of twelve (12) member counties, all political subdivisions of the State of Kansas, and KYLE RAILROAD CO., a Kansas corporation, which is wholly owned by Kyle Railways, Inc., and whose principal offices are located in Phillipsburg, Kansas ("Kyle").

WITNESSETH:

WHEREAS, Authority and Kyle entered into a written agreement dated April 30, 1984 ("Lease"), by which Authority leased to Kyle and Kyle leased from Authority the facilities therein described ("Facilities"); and

WHEREAS, the Facilities are a portion of that certain property acquired by the Authority from the Trustee of the Estate of the Chicago, Rock Island and Pacific Railroad

Company, described in the deed from said Trustee to the Authority ("Property");

WHEREAS, the Lease was entered into, in part, to satisfy the requirements of the Administrator of the Federal Railroad Administration ("Administrator") which provided a substantial portion of the funds with which the Authority acquired the Property, and said Lease was for a term and at a rental intended to provide for repayment of the debts of the Authority to the Administrator, after which the Property was to pass to Kyle pursuant to the provisions of Section 4 of the Lease; and

WHEREAS, the Authority subsequently entered into a Term Loan Agreement with BANK IV Kansas, N.A. (formerly known as BANK IV Wichita, N.A.) to refinance the indebtedness to the Administrator ("1989 Refinancing") and the discounted payoff to the Administrator through the refinancing of the Authority's indebtedness was approved by Kyle; and

WHEREAS, in connection with the 1989 Refinancing, the parties amended the Lease in several respects, including the elimination of certain provisions required by the Administrator which were no longer applicable to the Property and the revision of the term and rental provisions, to provide for the repayment of the 1989 Refinancing, and restated the Lease as so amended ("Restated Lease"); and

WHEREAS, pursuant to the 1989 Refinancing, the Authority borrowed the principal sum of \$6,575,000 for a term of 15 years and at a rate of 11 percent per annum; and

WHEREAS, MSPA's Board of Directors has determined on the basis of a funding analysis prepared by personnel of the Kansas Department of Transportation and a comparison of the respective terms, provisions and conditions attending the BANK IV's proposed refinancing and the issuance of revenue refunding bonds, pursuant to K.S.A. 12-3420, that it is advisable and in the best interests of the MSPA to proceed with the issuance of said revenue refunding bonds for the purpose of refinancing the Authority's indebtedness to BANK IV; and

WHEREAS, subject to the approval of Kyle and the Kansas Secretary of Transportation ("Secretary"), the Authority's Board of Directors has adopted a resolution authorizing the issuance of said Revenue Refunding Bonds in an aggregate amount not to exceed \$6,000,000 and for a term not to exceed 15 years; and

WHEREAS, Kyle and the Secretary have approved the issuance of said bonds, and the Secretary also has agreed to guarantee said revenue refunding bonds for and on behalf of the State of Kansas; and

WHEREAS, concurrently herewith, the Authority is issuing its Federally Taxable Revenue Refunding Bonds, Series 1994, dated May 1, 1994, in the aggregate amount of \$4,975,000 and for a term of 15 years ("Series 1994 Bonds"); and

WHEREAS, the parties deem it necessary and appropriate to amend the Restated Lease (as amended on August

3, 1993) in various respects, to accommodate the issuance of the Series 1994 Bonds, and to restate the Restated Lease as so amended;

NOW, THEREFORE, IN CONSIDERATION of the sums to be paid as provided herein and the mutual covenants, promises and agreements of the parties as herein set forth, the Authority leases to Kyle and Kyle hires and takes from the Authority the Facilities, being a portion of the Property described in Appendix A to the Restated Lease, on the following terms and conditions:

1. Facilities. The Facilities leased to Kyle include those portions of the Property which are described in Appendix I attached hereto and constitute a rail corridor consisting of track, rights-of-way, track materials, roadbed, railroad yards and other improvements useful and integral in the conduct of the business of a rail carrier. The Facilities do not include and there is expressly excluded from this Agreement the Non-Operated Rail Property as described herein, and certain real property which is currently under lease or which is not integral or vital to the rail operations of Kyle, herein sometimes referred to as the "Ancillary Property." The Ancillary Property may be sold or leased in the future in accordance with the provisions of paragraph 15 hereof, so long as such subsequent sale or lease is approved by Kyle and does not unreasonably interfere with the rail operations of Kyle. The Facilities also do not include and there is expressly excluded from this Lease that certain portion of the Property

presently leased by the Authority to the Union Pacific Railroad Company ("Union Pacific") pursuant to the Lease of Railroad Line dated April 27, 1984 ("Union Pacific Lease").

2. Rental Payments. (a) As consideration for the possession and use of the Facilities, Kyle agrees to and shall provide all services as required by this Agreement and shall pay to the Authority, in advance, a monthly rental which shall be in an amount which, when combined with the rental income to the Authority under the Union Pacific Lease, will meet the obligations of the Authority under the Series 1994 Bonds and maintain the Authority's Trust Fund, as required by the Authority's covenants made in connection with the Series 1994 Bonds and by the unconditional guarantee of the State of Kansas. The monthly rental from the commencement of this Agreement through November 30, 1994, shall be in the amount of \$24,878.64, and the first monthly rental payment under this Agreement shall be paid on or before June 1, 1994. The monthly rental shall be adjusted by the Authority at its annual meeting in May of each year, to be effective on the next following June 1, and at its quarterly meeting in November of each year, to be effective on the next following December 1, and the first adjustment date shall be December 1, 1994. The monthly rental also shall be subject to monthly adjustment as necessary to meet the obligations of the Authority under the Series 1994 Bonds and to maintain the Authority's Trust Fund, as required by the Authority's covenants made in connection with the Series 1994 Bonds and by the unconditional guarantee of the State of Kansas.

The monthly rental as herein provided shall be paid directly to the Authority's General Fund at the First National Bank and Trust, located in Phillipsburg, Kansas, established in connection with the Authority's issuance of the Series 1994 Bonds ("General Fund"). The Authority covenants and agrees with Kyle and represents and warrants to Kyle that the Authority will make all payments required of it under the Indenture of Trust dated as of May 1, 1994, between the Authority and the First National Bank and Trust, Phillipsburg, Kansas as Trustee ("Indenture of Trust") and will perform all other obligations of the Authority under said Indenture of Trust. Subject to the terms and conditions of the Series 1994 Bonds and the Indenture of Trust, the Authority agrees: (1) not to change the repayment terms of the Series 1994 Bonds without the prior written approval of Kyle; and (2) to make prepayments on the Series 1994 Bonds at the request of Kyle, if either Kyle provides all of the funds for such prepayment or the funds are available therefor from the sale of a portion of the Property.

(b) This Agreement confirms and continues in existence the prior amendment of the Restated Lease that, notwithstanding the requirements of subparagraph (a) of this Paragraph 2, and based on the report of the Escrow Agent showing that the amount in the Rail Escrow Reserve Fund at the First National Bank and Trust, Phillipsburg, Kansas ("Escrow Fund") was sufficient to make the payment to Bank for the month of September, 1993, without the receipt of the rental

payment by Kyle for that month and without breaching any requirement of the Term Loan Agreement with Bank as to the required minimum balance in the Escrow Fund, Authority agreed to defer the obligation of Kyle to make a rental payment for the month of September, 1993, until such time as Kyle is able to reimburse the Escrow Fund for the amount of said rental payment, or until the Authority has made demand upon Kyle for payment of the deferred rental payment, as hereinafter provided. From and after the effective date of this Agreement, any payment made by or required of Kyle in reimbursement of the Escrow Fund shall be a payment to the General Fund.

(c) This Agreement further confirms that Authority deposited in the Escrow Fund prior to November 1, 1993, moneys in the Authority's Operations Fund in an amount equal to the rental payment due from Kyle for the month of November, 1993, and the Authority agreed to defer the obligation of Kyle to make such rental payment for the month of November, 1993, until such time as Kyle is able to reimburse the Authority's Operations Fund for the amount of said rental payment, or until such time as the Authority has made demand upon Kyle for reimbursement of said rental payment, as hereinafter provided. From and after the effective date of this Agreement, any payment made by or required of Kyle in reimbursement of the Operations Fund shall be a payment to the General Fund.

(d) Any demand made by Authority upon Kyle for payment of all or any portion of a rental payment which has

been deferred pursuant to either subparagraph (b) or (c) of this Paragraph 2 shall be made in writing, and Kyle agrees to make payment thereof within sixty (60) days after receipt of the written demand, but no demand for payment shall be made by Authority, unless any one (1) of the following conditions shall exist:

(1) Kyle becomes insolvent or admits in writing its inability to pay its debts as they mature, or applies for, consents to or acquiesces in the appointment of a trustee, custodian or receiver for Kyle or any property owned by Kyle, or in the absence of such application, consent or acquiescence, a trustee, custodian or receiver is appointed for Kyle or for a substantial part of the property owned by Kyle, and is not discharged within thirty (30) days thereof; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Kyle and is consented to or acquiesced in by Kyle or remains for thirty (30) days undismissed; or any warrant of attachment is issued against any substantial portion of property owned by Kyle and is not released within thirty (30) days of service; or

(2) Kyle defaults in the full and timely payment of any monthly rental required by subparagraph (a) of this Paragraph 2 and not otherwise deferred by either subparagraph (b) or (c) of this Paragraph 2; or

(3) Payment of all or any portion of either or both of the rental payments deferred pursuant to subparagraphs (b) and (c) of this Paragraph 2 is required to enable the Authority to avoid breaching any of its covenants made in connection with the Series 1994 Bonds; or

(4) Payment of all or any portion of either or both of the rental payments deferred under subparagraphs (b) and (c) of this Paragraph 2 is required to enable the Authority to maintain the prescribed minimum balance in the Authority's Trust, as required by the Authority's covenants made in connection with the Series 1994 Bonds; or

(5) Payment of all or any portion of either or both of the rental payments deferred pursuant to subparagraphs (b) and (c) of this Paragraph 2 is necessary to enable Authority to pay its necessary and reasonable expenses or its lawful debts as they mature or come due.

(e) For purposes of subparagraph (d) of this Paragraph 2, in order for the payment of all or any portion of either or both of the rental payments deferred pursuant to subparagraphs (b) and (c) of this Paragraph 2 to be deemed necessary to provide Authority with money sufficient to satisfy any of its covenants or obligations, or to pay its necessary and reasonable expenses or its lawful debts as they mature or come due, it shall not be incumbent upon Authority to have first sought such moneys from any other source by way of gift, grant or loan, or to incur any financial penalty by reason of early withdrawal of any of the Authority's funds

evidenced by a certificate of deposit, or to otherwise incur any indebtedness or obligation as a precondition of making the demand upon Kyle.

(f) In the event that all or any portion of the rental payment deferred pursuant to subparagraph (b) of this Paragraph 2 has not been paid prior to the end of the term of this Agreement, the payment into the Authority's Trust Fund the amount of such deferred payment, or such amount thereof that has not previously been paid, shall be an additional condition precedent to Kyle exercising its right to purchase the Authority's Property pursuant to Paragraph 4 of this Agreement. In the event Kyle has not made the rental payment deferred pursuant to subparagraph (c) of this Paragraph 2 prior to the end of the term of this Agreement, and no demand for such payment has been made by Authority prior to (60) days before the end of the term of this Agreement, Kyle shall not be required to make the deferred rental payment.

(g) The deferral of rental payments under subparagraphs (b) and (c) of this Paragraph 2 shall not be construed as extending the term of this Agreement. Unless otherwise expressly agreed by Kyle and the Authority to the contrary, the provisions of this Paragraph 2 regarding the deferral of rental payments and the provisions regarding the obligation of Kyle to make the deferred payment shall survive any subsequent amendment or restatement of this Agreement.

3. Term. This Agreement shall continue for a term of fifteen (15) years commencing May 26, 1994, except that the

term may be subject to adjustment upon the written agreement of the parties and shall be adjusted in the event of any change in the repayment terms of the Series 1994 Bonds requested or approved by Kyle, such that the term of this Agreement shall be co-extensive with the term of the Series 1994 Bonds.

4. Purchase Agreement. If the Series 1994 Bonds have been paid in full or provision for their payment has been made pursuant to the Indenture of Trust, and if Kyle is not then in default under this Agreement requiring payment of money or in material default otherwise, Kyle shall have the sole and exclusive right to purchase all of the Property (including, but without limitation, the Facilities, the Non-Operated Rail Property, the Ancillary Property and the Union Pacific Property) not previously sold by the Authority pursuant to Paragraph 14, 15 or 17 of this Agreement upon payment of the sum of One Dollar (\$1.00) to the Authority. Kyle may deliver written notice to the Authority of its intent to exercise the purchase option at any time during the last six (6) months of the term of this Agreement or within thirty (30) days after the Series 1994 Bonds have been paid in full or provision for their payment has been made pursuant to the Indenture of Trust. Said notice shall specify the date of closing such purchase, which date shall be within thirty (30) days after the end of the term of this Agreement. The Authority agrees to use its best efforts and due diligence to do or cause to be done such acts and things as required to

effectuate this purchase option and to deliver appropriate deeds and other instruments of conveyance reasonably necessary to convey title to Kyle promptly at the date of closing and clear of all liens and encumbrances, other than such as may have been placed on the property during the term hereof with the written consent of Kyle.

5. Rail Operations. (a) Kyle agrees to use its best efforts to provide regular rail freight service as may be reasonably requested to all those stations and shippers located on the Facilities, as required by the reasonable demand of those shippers and the contracts entered into between Kyle and the shippers located thereon. From time to time, Kyle may implement changes in operations, including service frequency and equipment supply.

(b) Kyle shall comply with all the requirements of the Interstate Commerce Commission (ICC) and the Federal Railroad Administration (FRA).

(c) Kyle will supply all operating equipment, maintenance equipment, personnel, working capital, insurance coverage and normal business functions to perform the necessary service to handle all traffic offered to it and which it is obligated to accept as a common carrier and to continue the operation thereof in accordance with the reasonable requirements of the shippers and in compliance with regulations of the ICC.

(d) All shippers' contracts shall be with Kyle, which shall be entitled to all income and revenue from the

rail freight service and other revenue from the use of the Facilities subject to this Agreement, and Kyle shall be responsible for all costs of operation.

(e) Kyle shall be responsible for the management and operation of the rail freight service, including, but not limited to: The procurement of locomotives, cars and other equipment; dispatching of trains; assignment of available cars in good order; assignment of crews and other employees; assignment and utilization of power; establishment of transportation, accessorial and demurrage rates and charges; agreement as to division, per diem and other accounting agreements; negotiation of trackage rights and operating agreements with other railroad and side track agreements; and performance of maintenance. Kyle shall have the exclusive authority to promulgate and adopt rules and regulations for the operation of the rail freight service, and shall provide the Authority with requested copies thereof.

(f) Kyle shall keep fully informed of, and shall at all times observe and comply with, all federal, state and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect those engaged or employed by Kyle or which in any way affect the performance of this Agreement. Kyle shall obtain all permits and licenses, obtain any and all necessary safety waivers, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful performance of this Agreement. Except as

provided in Paragraph 11 of this Agreement, nothing in this Agreement shall be construed to require Kyle to pay any tax obligation of the Authority.

(g) Kyle shall indemnify, hold harmless and protect the Authority, its directors, its representatives, officers, employees, successors and assigns from all suits, actions or claims of any character brought because of any injuries or damage received or sustained by any person, persons or property on account of any act or omission, neglect or misconduct of Kyle, its representatives, officers, employees or agents, or from any claims or amounts arising or recovered under any Federal Employees Liability Act or any other comparable law, ordinance, order or decree.

(h) Kyle at all times shall conduct its operations so as to insure the safety and protection of workers, the general public, residents along the Property and all other persons and property.

(i) Kyle at all times shall maintain detailed records of operations conducted pursuant to this Agreement consistent with the requirements promulgated by the ICC.

6. Application for Government Funding. The parties agree to cooperate in the application for any federal, state or local funding which from time to time may become necessary or beneficial for the continued operation of the Facilities.

7. Regularized Maintenance. Kyle agrees to perform all maintenance necessary to maintain the Facilities in the same general condition as they existed upon the execution of

the Lease and to those levels required by any grants received from any state or the federal government.

8. Assignment. No party shall assign this Agreement or any rights or duties of any of the parties to this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that:

(a) The Authority may conditionally assign this Agreement pursuant to that certain Mortgage, Security Agreement and Conditional Assignment of Leases entered into by the Authority, as Mortgagor, and the Secretary, as Mortgagee, as of May 26, 1994, whereby the Authority, in consideration of the Secretary's Unconditional Guarantee of Payment to benefit the owners of the Series 1994 Bonds, grants to the Secretary a mortgage and security interest in Authority's property situated in Kansas and conditionally assigns to the Secretary, in the event of Authority's default under the Secretary's Unconditional Guarantee of Payment, all leases of the Authority's real property, wherever situated, including this Agreement and the Union Pacific Lease; and

(b) Kyle may assign this Agreement without the consent of the Authority to Kyle Railways, Inc. or any subsidiary owned wholly or in part by Kyle Railways, Inc., or to a successor acquiring all or substantially all of the assets of Kyle, but Kyle shall not be released from its obligations under this Agreement by reason of any such assignment.

9. Default. (a) It is agreed by the parties that time is of the essence of this Agreement. In the event that Kyle shall fail to make any of the rental or other payments provided for herein, then demand shall be made upon Kyle for payment. If Kyle fails to cure any such default within sixty (60) days of receipt of said demand, the Authority may terminate this Agreement and relet the Facilities without relinquishing its rights to pursue Kyle under the provisions of this Agreement. In such event, and after notice and in accordance with the laws of Kansas, the Authority may regain possession of the Facilities and recover from Kyle damages and exercise such other rights and remedies as provided to the Authority under the laws of Kansas. At Authority's option, the Authority may elect to continue this Agreement in effect for so long as the Authority does not terminate Kyle's right to possession, and the Authority may enforce all rights and remedies under this Agreement, including the right to recover rent.

(b) In the event of default by either of the parties of any of the terms or conditions of this Agreement other than default in making rental or other payments provided by this Agreement, the defaulting party shall be given sixty (60) days to cure any such default after notification by the other party of such default. In the event such default is cured within the specified time period, the non-defaulting party may declare this Agreement terminated, seek specific performance of the specific term or condition or exercise any

other remedy available to the parties under the laws of Kansas, except that if the default is such that it cannot reasonably be cured within said sixty-day period, such party shall not be in default if it commences and pursues diligently and in good faith, the curing of such default within the sixty-day period.

10. Notices. All notices or other communications hereunder shall be in writing and shall be delivered in person or by certified or registered mail, return receipt requested, postage prepaid, to the person specified herein as entitled to receive such notice, unless notice of a change of address has been given pursuant to this provision of this Paragraph 10:

To the Authority:

Chairman of the Board
Mid-States Port Authority
Post Office Box 612
Phillipsburg, Kansas 67661

and:

General Counsel
Mid-States Port Authority
Post Office Box 237
Topeka, Kansas 66601

To Kyle:

Kyle Railroad Company
Third & Railroad Avenue
P.O. Box 566
Phillipsburg, Kansas 67661

and:

President and Chief Executive
Officer
Kyle Railways, Inc.
Ventura Corporate Plaza
8687 E. Via De Ventura, Ste. 310
Scottsdale, Arizona 85258

All notices mailed shall be deemed given on the date received at the office of the party to whom notice is to be given, as evidenced by the registered or certified mail return receipt.

11. Taxes. To the extent that any of the Facilities are subject to ad valorem taxation or special assessments, Kyle agrees to pay said tax or special assessment upon presentation of the bill for the same. Kyle shall have the right to contest or defend against any such tax or assessment at its sole expense.

12. Insurance. Kyle agrees to procure and maintain without lapse and pay all premiums on policies of insurance as are normal and customary to insure the improvements and facilities which are normally and customarily insured by Kyle Railways, Inc. Kyle also shall procure such policies of liability insurance as are normal and customary in other operations of Kyle Railways, Inc., to cover any suits, actions or claims of any injuries received or damages sustained by any person, persons or property on account of any act, omission, neglect or misconduct of Kyle, its representatives, officers, employees or agents, and shall name the Authority, its officers and directors as additional insureds on any such policy.

The Authority agrees to procure and maintain a policy of liability insurance covering the acts and omissions of its employees, officers and directors and name Kyle as an additional insured.

13. Accounting Requirements. Kyle shall provide the Authority with an annual report of its operations and income and such other documentation that may be required of Kyle. At the annual meeting of the Authority, the Authority shall present its annual audit of its operations and accounts. All accounting and other records of Kyle made available to the Authority will be maintained by the Authority in strict confidence and will not be disclosed to third parties, except as disclosure is required by law, by the covenants made by the Authority in connection with the Series 1994 Bonds or by the governing Rules and Regulations of the Authority.

14. Abandonment or Sale of Railroad Facilities.

(a) If the parties mutually agree that continued operations of a segment of the Facilities has become so unprofitable as to significantly affect the continued operation of the entire rail line, then and in that event the parties may mutually agree to sell or abandon that segment of the line. The terms of any such abandonment or sale shall be agreed to between the parties, but in no event shall such agreement reduce the payment required by Paragraph 2 of this Agreement, unless the Authority's obligations under the Series 1994 Bonds have been correspondingly adjusted.

(b) Kyle agrees that, without the prior consent of the Authority, it will not exercise abandonment rights contained in 49 C.F.R. §1150, Subpart C. If the parties cannot reach agreement as provided in subparagraph (a) of this Paragraph 14, Kyle may apply to the ICC for an order allowing

abandonment of service on any segment of the Facilities. Such abandonment shall not affect the payment required of Kyle by Paragraph 2 of this Agreement.

(c) The net sale proceeds from any sale of the Facilities pursuant to subparagraph (a) or (b) shall be applied as a prepayment to reduce the indebtedness of the Authority on the Series 1994 Bonds.

15. Sale of Ancillary Property and Non-Operated Rail Property. (a) The parties understand and agree that there exists certain property adjacent to the Facilities which was acquired as non-rail or Ancillary Property and upon which is located the facilities of the various shippers along the line and some of which is vacant. The Ancillary Property which is presently leased may be sold by the Authority pursuant to purchase rights contained in the existing Lease but any such Ancillary Property not currently under a lease option agreement shall not be sold by the Authority without the prior consent of Kyle to such sale, which consent Kyle agrees to not unreasonably withhold. The net sale proceeds all sales of Ancillary Property shall be applied as a prepayment to reduce the indebtedness of the Authority on the Series 1994 Bonds. The Authority agrees to confer and consult with Kyle in the management of the Ancillary Property, including, but without limitation, on the rental of the Ancillary Property.

(b) The portion of the Property from Mahaska, Kansas, thence northeasterly to Fairbury, Nebraska, is not

currently being operated by either Kyle or Union Pacific and shall be called "Non-Operated Rail Property." The Authority recognizes the potential use of the Non-Operated Rail Property to Kyle and agrees not to sell, lease, sublease or otherwise deal with the same without the prior written consent of Kyle.

16. General Fund. (a) The Authority has established a fund into which all of the Authority's Revenues (as defined by the Indenture of Trust executed in connection with the Series 1994 Bonds), including all moneys obtained from the lease of Ancillary Properties, shall be deposited. Said fund is designated the "General Fund" and may be maintained in one or more accounts in the Authority's discretion. Except as otherwise required by the Indenture of Trust or by any other covenants made by the Authority in connection with the Series 1994 Bonds, the Authority shall apply the moneys in the General Fund only to:

(1) Payment of the reasonable administrative costs of the Authority, including, but not limited to, staff salaries, office rental, equipment rental, accountants' fees, consultants fees, attorney fees, insurance premiums and reasonable expenses incurred by any member of the Authority's Board of Directors;

(2) Payment of tax obligations when the same become due, whether or not any such tax obligation may be chargeable to a third party; but all reimbursements for such taxes shall be deposited in the General Fund; or

(3) Rehabilitation of the railroad facilities subject to this Agreement, special projects intended to enhance the value and usefulness of said railroad facilities or reduction of the payments required of Kyle by Paragraph 2 of this Agreement, except that the expenditure authorized by this subparagraph must be mutually agreed to by the parties.

(b) The General Fund shall be maintained at such levels as will provide an adequate reserve for the payment of any future administrative or tax obligations of the Authority. Upon the expiration of this Agreement, any funds remaining in the General Fund shall be used for those purposes enumerated in subparagraph (a)(3) of this Paragraph 16. The Authority represents and warrants to Kyle and covenants and agrees with Kyle that the Authority will not engage in any activities other than the management of the Property without the prior written consent of Kyle.

17. Union Pacific Lease. (a) The Authority has leased a portion of the Property located in Nebraska to Union Pacific. In the event Union Pacific terminates operations at anytime during the term of this Agreement, Kyle shall have the option to assume the operations over that portion of the Property upon the terms and conditions of this Agreement, including the option to purchase, except that the payment obligations provided by Paragraph 2 of this Agreement shall be adjusted to an amount which will provide full payment of the Authority's obligations under the Series 1994 Bonds. The Authority also agrees not to amend, modify or waive any of the

terms or provisions of the Union Pacific Lease without the prior written consent of Kyle. The Union Pacific rental payments shall be deposited directly to the General Fund.

(b) In the event Kyle shall terminate this Agreement prior to expiration of its term, Kyle agrees to assign any agreement it may have with the Union Pacific concerning rail operations between Limon and Denver, Colorado to the Authority.

18. Construction of Buildings and Other Structures.

From time to time, Kyle may construct buildings or other structures upon the properties of the Authority as are needed for the continued successful operation of rail operations. The Authority agrees to cooperate in the location and financing of any such structure, the same to become a fixture to the property.

19. Governing Law. This Lease shall be construed in accordance with the laws of the State of Kansas.

20. Environmental Protection. Kyle agrees to assume all obligations under environmental requirements applicable to the Facilities.

21. Government Approvals. The parties hereto agree to cooperate in obtaining all approvals, certificates or licenses necessary to the successful operation of the railroad contemplated by this Agreement.

22. Additional Documents. Each of the parties hereto agrees to and shall execute such additional documents and perform such other and additional acts as may be

reasonable and necessary to carry out the intent and purposes of this Agreement.

23. Authority and Consents. Each of the parties hereto shall deliver to the other a certified copy of an appropriate resolution of its governing board authorizing and approving execution of this Agreement for and on behalf of such party and each party further represents and warrants to the other that it has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement and that no approvals or consents of any persons or entities, governmental or otherwise, are necessary in connection with it, except those such as the ICC acknowledged by the terms of this Agreement.

24. Severability. If any of the terms, covenants or provisions of this Agreement are held by a court of competent jurisdiction to be void or ineffective, such invalidity shall not impair the remainder of said Agreement or the effectiveness of any of its other terms, covenants or provisions.

25. Force Majeure. The parties agree that they will carry out their obligations under this Agreement correctly and punctually. However, they further agree that neither party shall be liable to the other for any loss, injury, delay, damages or other casualty suffered or incurred by the other party due to strike, irregular industrial accident short of strike, riots, fires, storms, explosions, acts of God, war (declared or undeclared), supervening

legislation, governmental or other regulations and directives, or any other similar cause beyond the reasonable control of either party, and any failure or delay by either party in performance of any of its obligations under this Agreement due to any of the foregoing causes shall not be considered a breach of this Agreement.

26. Sole Agreement. This Agreement and the Appendix I attached hereto shall constitute the entire understanding and agreement of the parties concerning the subject matters of it and supersedes all prior negotiations, correspondence and agreements, oral and written.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year noted by each signature, to take effect on the date first above written.

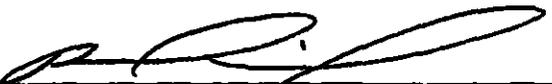
MID STATES PORT AUTHORITY

By: 
John Golden, Chairman of the Board

Date: 5-25-94

Witness: 

KYLE RAILROAD CO.

By: 
Rick Cecil, Executive Vice President

Date: 5-25-94

Witness: 

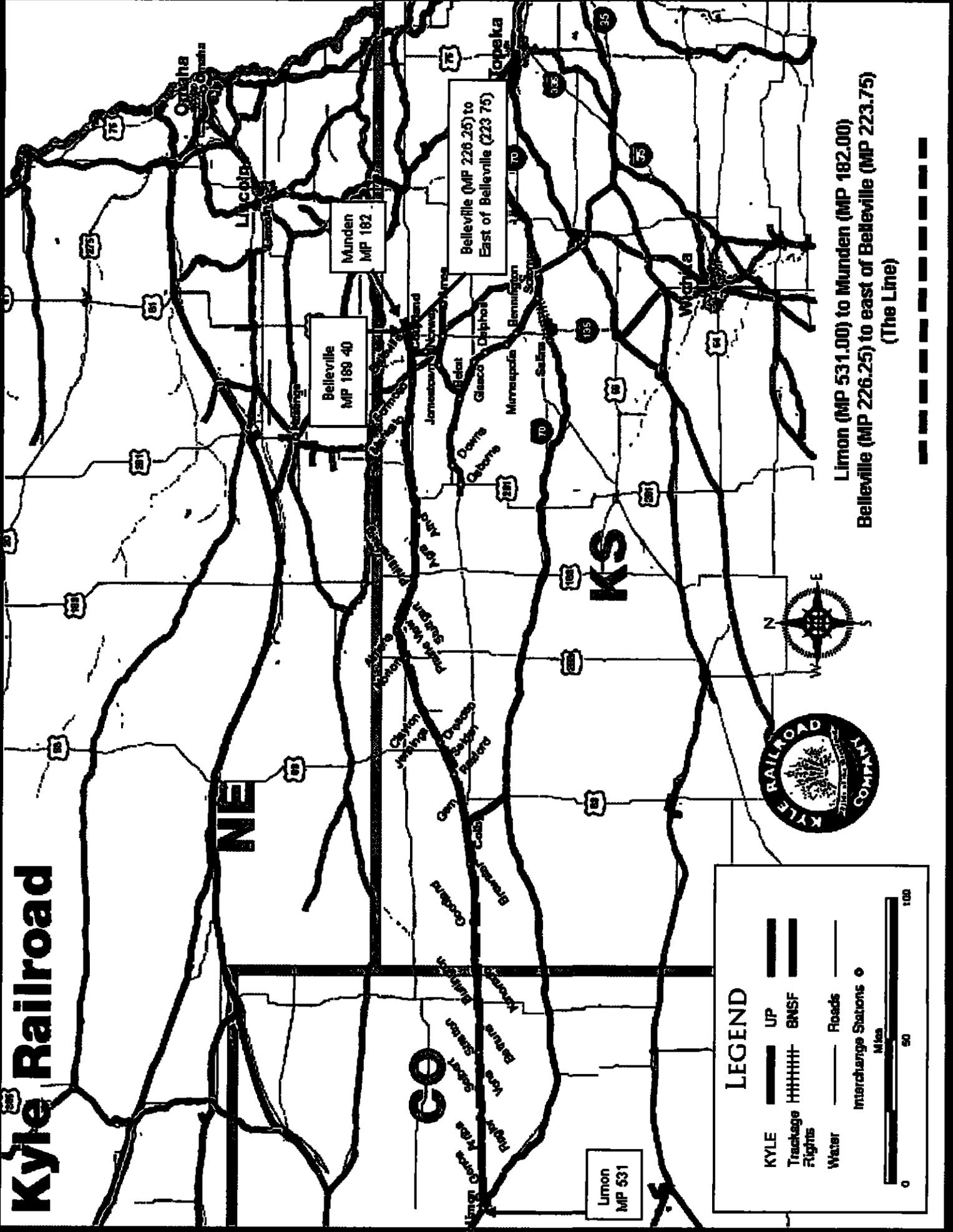
EXHIBIT E—MAP

Kyle Railroad

NE

CO

KS



Munden
MP 182

Belleville
MP 189.40

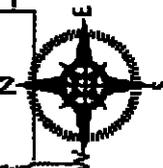
Belleville (MP 226.25) to
East of Belleville (223.75)

Limon
MP 531

LEGEND

- KYLE
- UP
- Trackage
- Flights
- BNSF
- Water
- Roads
- Interchange Stations
- Stations

Miles
0 50 100



Limon (MP 531.00) to Munden (MP 182.00)
Belleville (MP 226.25) to east of Belleville (MP 223.75)
(The Line)

