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June 30, 2010

E-File

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

ENTERED
Office of Proceedings

JUN 30 2010

Part of
Public Record

Re: STB Finance Docket No. 35353, VFRC, LLC – Acquisition
Exemption – Union Pacific Railroad Company

Dear Ms. Brown:

Attached for filing is a Motion To Dismiss Notice of Exemption in this proceeding.

If you have any questions, please contact me.

Sincerely yours,



Karl Morell

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35353

**VFRC, LLC
--ACQUISITION EXEMPTION--
UNION PACIFIC RAILROAD COMPANY**

MOTION TO DISMISS NOTICE OF EXEMPTION

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**Attorneys for:
VFRC, LLC**

Dated: June 30, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35353

VFRC, LLC
--ACQUISITION EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

MOTION TO DISMISS NOTICE OF EXEMPTION

On February 22, 2010, VFRC, LLC ("VFRC"), a non-carrier, filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31, to acquire from Union Pacific Railroad Company ("UP") certain physical assets of a rail line and the right-of-way underlying the rail line located between UP Milepost 682.25, near Greenberry, and UP Milepost 687.6, near Corvallis, Oregon (the "Line"). VFRC hereby files its Motion to Dismiss the Verified Notice of Exemption on the grounds that the Surface Transportation Board ("Board") does not have regulatory authority over the involved transaction and consummation of that transaction did not render VFRC a common carrier. *See* STB Finance Docket No. 35252, *Regional Transportation District – Acquisition Exemption – Union Pacific Railroad Company in Adams, Boulder, Broomfield, and Weld, Colo.* (not printed), served June 29, 2010.

STATEMENT OF FACTS

VFRC is an affiliate of Venell Farms, Inc. ("Venell"). Venell is currently the only active rail customer on the Line which has been embargoed since June 2007. In order to restore rail service to the Line, Venell formed VFRC to acquire the physical assets of the

Line from UP. Because neither Venell nor VFRC have the ability or desire to provide rail operations, UP retained the exclusive perpetual freight easement (“Freight Easement”) on the Line and transferred the Freight Easement to Albany & Eastern Railroad Company (“AERC”). See STB Finance Docket No. 35355, *Albany & Eastern Railroad Company – Acquisition and Operation Exemption – Union Pacific Railroad Company and Willamette & Pacific Railroad, Inc.* (not printed), served March 11, 2010.¹

On May 20, 2010, VFRC and UP entered into an agreement whereby VFRC agreed to acquire UP’s right, title and interest in UP’s right-of-way underlying the Line (the “Right-of-Way”) together with any track, ties, ballast, other track materials, signals, switches, bridges, culverts and other personal property, fixtures and improvements on the Right-of-Way (the “Personal Property”). See Section 1 of the Line Sale Contract (“Contract”) attached as Exhibit 1.² UP retained, among other interests, the Freight Easement. See Section 1(b) of the Contract.³ The transaction was consummated on May 25, 2010.

The Right-of-Way was conveyed to VFRC by Quitclaim Deed. The Quitclaim Deed provides, in relevant part, that UP will retain:

“(a) the permanent, exclusive easement upon, over, under and across the Property, for purposes of conducting freight rail operations and otherwise to fulfill [UP’s] rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including

¹ AERC also sought authority to acquire from Willamette & Pacific Railroad (“WPRR”), the current operator of the Line, WPRR’s operating rights and obligations with respect to the Line. UP and WPRR retained limited overhead trackage rights over the Line.

² The purchase price has been redacted from the Contract. Should the Board require un-redacted copies of the Contract, VFRC will file them under seal.

³ Freight Easement is defined as “the exclusive perpetual freight easement on, over, under and through the Right-of-Way for the purpose of providing common carrier rail freight transportation thereon”. See second WHEREAS paragraph of the Contract.

the right to use the Property to provide freight rail service to all customers on or served from the Property, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations....”

Quitclaim Deed, attached as Exhibit B to the Contract.

In other words, UP retain the Freight Easement over the Line and transferred that Easement to AERC. VFRC did not acquire any rights to provide rail operations over the Line nor will VFRC hold itself out as willing or able to provide rail operations over the Line.

In turn, VFRC and AERC entered into an Operating Agreement which permits AERC to utilize the physical assets of the Line in exercising the rights and obligations conveyed by the Freight Easement. A copy of the Operating Agreement is attached as Exhibit 2.⁴

A map of the Line is attached as Exhibit 3.

ARGUMENT

It is well established that the acquisition of a rail line by a noncarrier, such as VFRC, requires approval by the Board under 49 U.S.C. § 10901. *Common Carrier Status of States, State Agencies*, 363 I.C.C. 132, 133 (1980), *aff'd sub nom., Simmons v. Interstate Commerce Commission*, 697 F. 2d 326 (D.C. Cir. 1982). *See also United States v. California*, 297 U.S. 175 (1936); *Iowa Term. R. Co. Acquisition and Operation*, 312 I.C.C. 546, 549 (1961). The Board, as well as its predecessor agency, the Interstate

⁴ The amount of the rental payment has been redacted from the Operating Agreement. Should the Board require unredacted copies of the Operating Agreement, VFRC will file them under seal.

Commerce Commission ("ICC"), however, have consistently recognized the distinction between the acquisition of a rail line by a noncarrier accompanied with the common carrier rights and obligations to provide rail service -- a transaction over which the Board has regulatory authority -- and the mere acquisition of all or part of the physical assets of the rail line where the common carrier rights and obligations are retained by the selling railroad or transferred to another entity -- a transaction over which the Board does not have regulatory authority. Compare *Southern Pacific Transp. Co. -- Abandonment*, 8 I.C.C. 2d 495 (1992), *aff'd Southern Pac. Transp. Co. -- Aban. -- L.A. County, CA*, 9 I.C.C. 2d 385 (1993) ("*Southern Pacific*") and *City of Austin, TX -- Acquisition -- Southern Pacific Transportation Company* (not printed), served November 4, 1986, with *Maine, DOT -- Acq. Exemption, Me. Central R. Co.*, 8 I.C.C. 2d 835 (1991) ("*State of Maine*") and *Utah Transit Authority -- Acquisition Exemption -- Line of Union Pacific Railroad Company* (not printed), served April 14, 1993 ("*Utah Transit*").

A "rail carrier" is defined as a "person providing common carrier railroad transportation for compensation...." 49 U.S.C. § 10102 (5). A "railroad" is defined to include "the road used by a rail carrier and owned by it or operated under an agreement...." 49 U.S.C. § 10102 (6). Consequently, a rail carrier or a railroad subject to the Board's jurisdiction is an entity that has assumed the common carrier obligation to provide rail freight service over a rail line. In other words, a rail carrier is not necessarily the owner of the rail line nor is the owner of a rail line necessarily a rail carrier. The acquirer of a rail line becomes a rail carrier only if it holds itself out to provide common carrier rail service and has the ability to provide common carrier rail service. See *Status*

of Bush Universal, Inc., 342 I.C.C. 550, 564 (1973); *State of Okla. Ex Rel., Dept. of Highways, Abandonment*, 324 I.C.C. 666 (1965).

In *State of Maine*, the State of Maine, acting by and through its Department of Transportation (“MDOT”), filed a notice of exemption to acquire the physical assets and underlying real property of a rail line from Maine Central Railroad Company (“MEC”). MEC retained a permanent easement for continued common carrier freight operations and the right to maintain, operate, and renew the rail line. In dismissing the notice of exemption, the ICC noted that it had regulatory authority over the acquisition of a rail line only where the common carrier rights and obligations were being transferred, in whole or in part. In concluding that it had no regulatory authority over the transaction, the ICC found that MEC retained the common carrier obligation and that the transaction did not impair MEC’s ability to fulfill its continuing common carrier obligation. *State of Maine* at 836-7.

In a long line of cases, the ICC and the Board reached the same result. *See e.g.*, Finance Docket No. 31971, *South Orient Railroad Company, LTD. -- Acquisition and Operation Exemption -- Line of The Atchison, Topeka and Santa Fe Railway Company* (not printed), served September 2, 1992 [transfer of rail line assets to a state transit authority found not subject to ICC regulatory authority where common carrier rights and obligations were transferred to another entity]; *Utah Transit* [transfer of rail line assets to a state transit authority found not subject to ICC regulatory authority where common carrier rights and obligations were transferred to a third party freight operator]; *Metro. Transit Auth. of Harris County, TX -- Declar. Order*, 9 I.C.C. 2d 559 (1993) [transfer of rail line assets and local commuter operating rights to metropolitan transit agency found

not subject to ICC regulatory authority where common carrier rights and obligations were retained by selling railroad]; Finance Docket No. 32452, *City of Oshkosh, WI and Wisconsin Central LTD. -- Petition for Declaratory Order* (not printed), served June 8, 1994 [transfer of real property underlying a rail line to city where the rail line will be relocated found not subject to ICC regulatory authority]; Finance Docket No. 32496, *Centex Rural Transportation District -- Acquisition Exemption -- Certain Assets of Centex Rail Link, LTD.* (not printed), served August 1, 1994 [transfer of rail assets to a state entity not subject to ICC regulatory authority where selling railroad retained the common carrier rights and obligations]; Finance Docket No. 32495, *Chicago Terminal Corporation -- Acquisition of Leasehold Exemption -- Elgin, Joliet & Eastern Railway Company* (not printed), served January 12, 1995 [acquisition of a leasehold interest in a rail line by a company not subject to ICC regulatory authority even though the company had ability to designate third party operators over rail line]; Finance Docket No. 32374, *Los Angeles County Transportation Commission -- Petition for Exemption -- Acquisition from Union Pacific Railroad Company* (not printed), served July 23, 1996 [sale and lease of rail line and grant of trackage rights for commuter operations to local transit authority not subject to the Board's regulatory authority where selling rail carrier retained common carrier rights and obligations over the line]; STB Finance Docket No. 33046, *Sacramento-Placerville Transportation Corridor Joint Powers Authority -- Acquisition Exemption -- Certain Assets of Southern Pacific Transportation Company* (not printed), served October 28, 1996 [transfer of rail line assets to a state agency for passenger rail service found not subject to the Board's regulatory authority where selling rail carrier retained the common carrier rights and obligations to provide freight rail service over the

line]; STB Finance Docket No. 33524, *Southwest Ohio Regional Transit Authority – Acquisition Exemption – Certain Assets of the Indiana & Ohio Railway Company* (not printed), served December 24, 1997 [acquisition of rail line assets by a political subdivision of a State found not subject to the Board’s regulatory authority where selling rail carrier retained the common carrier rights and obligations to provide freight rail service over the rail line]; STB Finance Docket No. 33529, *City of Charlotte, North Carolina – Acquisition Exemption – Certain Assets of the North Carolina Railroad Company* (not printed), served February 24, 1998 [acquisition of physical assets of rail line by city found not subject to the Board’s regulatory authority where selling railroad retained common carrier rights and obligations which were expected to be abandoned]; STB Finance Docket No. 34609, *State of Washington, Department of Transportation – Acquisition Exemption – Palouse River and Coulee City Railroad, Inc.* (not printed), served May 3, 2005 [acquisition of rail line assets by state agency not subject the Board’s regulatory authority where agency will not hold itself as a common carrier performing freight operations; and STB Finance Docket No. 35301, *Wisconsin Department of Transportation – Petition For Declaratory Order – Rail Lines In Janesville, Rock County WI* (not printed), served December 11, 2009 [transfer of rail line assets to state agency not subject to the Board’s regulatory authority where incumbent railroad retains exclusive right to provide common carrier rail operations over the line].

In summary, *State of Maine* and its progeny establish that an entity may acquire all or part of the physical assets of a rail line without becoming a rail carrier as long as the selling carrier retains, or another operator obtains, the common carrier rights to operate the line and the transaction does not interfere with or impede the ability of the operator to

provide rail service. It is only where the acquirer of the rail assets also acquires a right to provide rail freight service or where the transfer of the rail assets substantially affects the ability of the selling carrier to provide service as a common carrier that the Board and its predecessor have asserted regulatory authority over the transaction. *See Southern Pacific* [selling carrier did not retain its common carrier rights but acquired new rights from acquirer of rail assets and the retained rights were too circumscribed to permit selling carrier to carry out its common carrier obligation]; *Orange County Transp. -- Exempt. -- Atchison, T. & S. F. Ry. Co.*, 10 I.C.C. 2d 78 (1994) ("*Orange County*") [selling carrier did not retain sufficient ability to provide freight service].

The transaction between VFRC and UP is distinguishable from those in *Southern Pacific* and *Orange County*, and very similar to those in *State of Maine* and its progeny. The VFRC has simply acquired the Right-of-Way and Personal Property comprising the Line. In acquiring these physical assets, VFRC is not holding itself out as willing or able to provide freight rail service to the public on the Line. UP retained the exclusive freight rail easement over the Line and transferred that easement to AERC. A copy of the Freight Easement Deed and Agreement ("*Easement Deed*") is attached as Exhibit 4. VFRC has neither the desire nor the capability of providing common carrier rail service over the Line.

Moreover, AERC's ability to meet its newly acquired common carrier obligations over the Line will not be impaired by the involved transactions. AERC has acquired the exclusive and unrestricted right to provide rail freight service over the Line. *See Easement Deed*. The Operating Agreement grants AERC full and unrestricted use of the physical assets of the Line, subject only the overhead trackage rights retained by UP and

WPRR. See Sections 2 and 16 of the Operating Agreement. AERC's operations will not be relegated to specified service hours or otherwise impeded or restricted. AERC is responsible for dispatching operations over the Line and is solely responsible for the management of the Line. AERC has the exclusive right to upgrade, maintain and repair the Line. VFRC will pay for the initial upgrades and subsequent maintenance of the Line as well as any future upgrades and capital improvements authorized by VFRC. See Section 6 of the Operating Agreement. Consequently, unlike *Southern Pacific* and *Orange County*, the involved transaction does not place any material restrictions on AERC's right to provide freight service over the Line nor does the transaction between VFRC and AERC circumscribe AERC's ability to carry out its service obligations.

Finally, upon the expiration or termination the Operating Agreement, AERC is contractually obligated to transfer the Freight Easement to another entity to be chosen by VFRC. See Section 15 of the Operating Agreement.⁵

⁵ The new operator would, of course, have to obtain Board approval for the acquisition of the Freight Easement.

CONCLUSION

For the foregoing reasons, VFRC respectfully requests that the Board dismiss the Notice filed by VFRC on February 22, 2010, in this proceeding, because the involved transaction does not require Board authorization under 49 U.S.C. § 10901.

Respectfully submitted,



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Attorneys for VFRC, LLC

Dated: June 30, 2010

LINE SALE CONTRACT

THIS LINE SALE CONTRACT ("Contract") is entered into as of this 20th day of May, 2010 ("Execution Date"), between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP"), and VFRC, LLC, an Oregon Limited Liability Company ("Buyer").

RECITALS:

WHEREAS, VFRC desires to acquire that certain right-of-way known as the Bailey Branch from Milepost 687.6 near Corvallis to Milepost 682.25 near Greenberry, Oregon (the "Right-of-Way"), but only if it does not assume any common carrier obligation to provide freight rail transportation service thereon;

WHEREAS, Albany & Eastern Railroad Company, an Oregon corporation ("AERC"), subject to the approval of the Surface Transportation Board ("STB") desires to acquire the exclusive perpetual freight easement on, over, under and through the Right-of-Way for the purpose of providing common carrier rail freight transportation thereon (the "Freight Easement"); and

WHEREAS, UP desires to sell the physical assets of the Right-of-Way to VFRC and to transfer the Freight Easement to AERC.

The parties agree as follows:

Section 1. Purchase and Sale of the Property.

UP agrees to sell and VFRC agrees to purchase, on the terms and conditions of this Agreement, UP's right, title and interest in and to UP's right-of-way in Benton County, State of Oregon, extending from Milepost 687.6 near Corvallis, Oregon to Milepost 682.25 near Greenberry, Oregon, as shown on the attached print marked **Exhibit A and more particularly described on the attached **Exhibit B** (the "Right-of-Way"), together with any track, ties, ballast, other track materials, signals, switches,**

bridges, culverts and other personal property (but not including rolling stock, or communications equipment or facilities), fixtures and improvements on the Right-of-Way to the extent owned by UP (the "Personal Property"). The Right-of-Way and the Personal Property sometimes are collectively called the "Property".

EXCEPTING from this sale and RESERVING to UP, its successors and assigns, forever, the following:

(a) Roadways or utility lines that serve retained property, and railroad facilities to be retained by UP; and

(b) The Freight Easement.

The sale made pursuant to this Contract is subject to all applicable federal, state and local laws, orders, rules and regulations, and all outstanding rights whether or not of record or open and obvious on the ground.

Section 2. Purchase Price.

The purchase price for the Property is :

The Purchase Price shall be paid by VFRC to UP at Closing as defined in Section 4(a) by cashier's or certified check drawn on a reputable financial institution or by wire transfer of United States funds for immediate credit.

Section 3. Conditions Precedent to Sale.

The sale and purchase of the Property are subject to the following conditions precedent:

(a) Title Review. VFRC shall be responsible for assuring itself that the title to the Property is adequate for the continued operation of the Right-of-Way as a freight rail line. UP shall make available for VFRC's review, at UP's Real Estate Department in Omaha, Nebraska, and during UP's business hours, UP's records located at such office and pertaining to the title to the Property. UP shall have no obligation to cure any title

defects, except that at Closing, UP shall remove any liens against the Property of a definite and ascertainable amount that may be removed by the payment of money, other than liens created by VFRC.

(b) STB Authority. VFRC, at its sole cost and expense, shall acquire any necessary authority or exemption from the STB or its successor agency to acquire the Property, or obtain a ruling from the STB that the acquisition of the Property is not subject to the jurisdiction of the STB. Any conditions to STB authority or exemption shall be subject to UP's approval, which approval may be withheld at UP's sole and absolute discretion. UP shall cooperate with VFRC in connection with any hearings or submittals before the STB to obtain STB authority or exemption, but shall not be obligated to incur any cost or expense or to support any legal position which is not acceptable to UP.

(c) Labor Issues. UP shall assure itself, in its sole discretion, that the sale of the Property to VFRC or the transfer of the Freight Easement to AERC will not result in a work stoppage on UP or any of its affiliate's lines of railroad, and that there are no other labor issues which might jeopardize the anticipated benefits to UP of the sale of the Property.

(d) UP's Representations and Warranties. The representations and warranties of UP in Section 7(a) shall be true and correct.

(e) VFRC's Representations and Warranties. The representations and warranties of VFRC in Section 7(b) shall be true and correct.

Section 4. Closing.

(a) The sale and purchase of the Property shall close ("Closing") within 7 days after the Execution Date ("Closing Time"). If Closing does not occur during the Closing Time due to failure of a condition precedent in Section 3, then this Contract shall terminate and be without any further force and effect, and without further obligation of either party to the other. VFRC shall have no right to occupancy of or entry upon any portion of the Property, except as set forth in Section 3(a), until Closing.

(b) At Closing, VFRC shall deliver to UP the Purchase Price and the following documents referenced in Section 5 and 6 as duly executed by VFRC: Assignment and Assumption Agreement and Bill of Sale. Prior to closing, UP shall deliver to VFRC the following documents referred to in Section 5 as duly executed by UP (and, where appropriate, acknowledged): Quitclaim Deed, Assignment and Assumption Agreement, and Bill of Sale.

(c) Each party shall bear and pay any and all costs and expenses for document preparation and title expenses required by it.

(d) VFRC shall bear and pay any and all costs and expenses for any transfer taxes, fees, stamps, charges and all documentary, recording or filing fees, related to acquisition or transfer of the Property.

(e) Promptly after Closing, VFRC shall record the Quitclaim Deed, and give written notice to the other parties to the agreements assigned to VFRC under the Assignment and Assumption Agreement.

Section 5. Transfer and Operating Documents.

UP's right, title and interest in the Right-of-Way shall be transferred by UP to VFRC by Quitclaim Deed in the form of **Exhibit B** which is attached hereto and hereby made a part hereof; in the Personal Property by Quitclaim Bill of Sale in the form of **Exhibit C** which is attached hereto and hereby made a part hereof; and in the agreements identified in **Exhibit E** which is attached hereto and hereby made a part hereof, to the extent such agreements affect the Property, by Assignment and Assumption Agreement in the form of **Exhibit D** which is attached hereto and hereby made a part hereof.

In addition to the Exceptions and Reservations referenced in Section 1 of this Contract, VFRC acknowledges that the Right-of-Way may be subject to licenses and other third party rights that have not been disclosed by UP to VFRC. It is the

responsibility of VFRC to determine if any of these undisclosed rights exist. If any license or other third-party right that affects only the Property is identified after the Execution Date, UP's rights and obligations under such license or third-party right will be assigned to and assumed by VFRC at or after Closing.

Section 6. As Is; Release; Environmental Indemnity; and General Indemnity

(a) AS IS. VFRC AND ITS REPRESENTATIVES, PRIOR TO THE DATE OF CLOSING, WILL HAVE BEEN AFFORDED THE OPPORTUNITY TO MAKE SUCH INSPECTIONS OF THE PROPERTY AND MATTERS RELATED THERETO AS VFRC AND ITS REPRESENTATIVES DESIRE. VFRC ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS TO BE SOLD TO AND ACCEPTED BY VFRC IN AN "AS IS" CONDITION WITH ALL FAULTS. UP MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. IN PARTICULAR, BUT WITHOUT LIMITATION, UP MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE USE, CONDITION, TITLE, OCCUPATION OR MANAGEMENT OF THE PROPERTY, OR COMPLIANCE WITH APPLICABLE STATUTES, LAWS, CODES, ORDINANCES, REGULATIONS, REQUIREMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (WHETHER OR NOT OF RECORD), OR THE VOLUME, NATURE OR QUANTITY OF RAIL TRAFFIC. VFRC ACKNOWLEDGES THAT IT IS ENTERING INTO THIS CONTRACT ON THE BASIS OF VFRC'S OWN INVESTIGATION OF THE PHYSICAL AND ENVIRONMENTAL CONDITIONS OF THE PROPERTY, INCLUDING THE SUBSURFACE CONDITIONS, AND VFRC ASSUMES THE RISK THAT ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS MAY NOT HAVE BEEN REVEALED BY ITS INVESTIGATION. VFRC ACKNOWLEDGES THAT NOTWITHSTANDING ANY PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN REPRESENTATIONS, STATEMENTS, DOCUMENTS OR UNDERSTANDINGS, THIS CONTRACT CONSTITUTES THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THE PURCHASE AND SALE OF THE PROPERTY AND SUPERSEDES ANY SUCH PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN REPRESENTATIONS, STATEMENTS, DOCUMENTS OR UNDERSTANDINGS.

(b) RELEASE. FROM AND AFTER CLOSING, VFRC, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES UP, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE, PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT, AND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF UP, VFRC OR ANY THIRD-PARTY, AND DAMAGE TO PROPERTY OF UP, VFRC OR ANY THIRD-PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF UP, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

(c) ENVIRONMENTAL INDEMNITY. FROM AND AFTER CLOSING, VFRC SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS UP, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON,

UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO (INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT), AND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF UP, VFRC OR ANY THIRD PARTY, AND DAMAGE TO PROPERTY OF UP, VFRC OR ANY THIRD PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF UP, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

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

LIABILITY OF THE UP; PROVIDED, HOWEVER, THAT ALL COST INCLUDING COST FOR ANY PERSONAL INJURIES, DEATH OR PROPERTY LOSS, OR DAMAGES ARISING IN CONNECTION WITH TOXIC WASTE OR ENVIRONMENTAL CONDITIONS, SHALL BE GOVERNED BY THE PROVISIONS OF SUBSECTION (A), (B) AND (C) HEREOF.

(e) Trackage Rights Operations. Notwithstanding anything to the contrary in this Section 6, any UP liability resulting from UP's operations over the Property after the Closing shall be governed exclusively by the terms to the Trackage Rights Agreement dated May 25, 2010 between UP and AERC.

(f) Insurance. VFRC shall at its own sole cost and expense procure the insurance policies and insurance coverages specified on EXHIBIT F which is attached hereto and hereby made a part hereof and promptly pay when due all premiums for that insurance. Such minimum insurance coverage shall be kept in force by VFRC, or its successors, for so long as VFRC, or its successors, operates the Property and the Right-of-Way.

If VFRC fails to procure and maintain insurance as required, UP may elect to do so at the cost of VFRC.

The fact that insurance is obtained by VFRC shall not be deemed to release or diminish the liability of VFRC, including, without limitation, liability under the indemnity provisions of this Contract. Damages recoverable by UP shall not be limited to the amount of the required insurance coverage.

Section 7. Representations and Warranties.

(a) Representations and Warranties of UP. UP represents and warrants to VFRC as of the Execution Date, as follows:

(i) Organization. UP is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and qualified to do business in the State in which the Property is located.

(ii) **Enforceability.** Subject to the provisions of Section 4(c) and (d), this Contract and all documents executed by UP which are to be delivered to VFRC at the Closing are intended, provided VFRC had duly executed those documents requiring their respective signature, to be legal, valid and binding obligations of UP, and do not and will not at the time of Closing violate any provisions of any agreement or judicial order to which UP is a party or to which UP or the Property is subject.

(b) **Representations and Warranties of VFRC.** VFRC represents and warrants to UP as of the Execution Date, as follows:

(i) **Organization.** VFRC is a limited liability company duly organized under the laws of the State of Oregon, with full power and authority to enter into and comply with the terms of this Contract.

(ii) **Enforceability.** Subject to the provisions of Section 4(c) and (d), this Contract and all documents executed by VFRC which are to be delivered to UP are intended, provided UP has duly executed those documents requiring UP's signature, to be legal, valid and binding obligations of VFRC, and do not and will not at the time of Closing violate any provisions of any agreement or judicial order to which VFRC is a party or to which VFRC is subject.

(c) **STB Authority.** VFRC has a time frame reasonably expected to permit the Closing of this transaction within a reasonable time and to make all necessary filings at the STB required to comply with Section 3(b).

Section 8. Post-Sale Obligations. The following Post-Sale Obligations shall survive the Closing under this Contract and shall remain in full force and effect after Closing.

(a) UP will provide to VFRC all available valuation maps, track charts and related documents to the extent UP possesses same as soon as possible after Closing.

(b) **Option to Repurchase for Labor Actions.**

(i) If within 180 days after Closing, any of UP's labor organizations take any actions (including, without limitation, a strike or work stoppage) against UP or any of its affiliates as a result of this Contract, and UP is unable to negotiate a satisfactory settlement with such organizations, then UP shall have the option to repurchase the Property by giving VFRC written notice of its exercise of the option. Closing of the repurchase shall take place within thirty (30) days after VFRC's receipt of UP's notice.

(ii) The terms and conditions of the repurchase shall be the same as in this Contract for the sale of the Property, plus any capital improvements except that VFRC shall be required to remove from the title to the Property any liens, encumbrances or other outstanding rights created or permitted to be created by VFRC, and to remediate any contamination of the Right-of-Way first occurring after the Closing of the sale of the Property to VFRC.

(iii) At UP's election, a memorandum of UP's repurchase option shall be recorded at the Closing of the sale of the Property to VFRC.

(c) Upon the occurrence of any breach of any term hereof after Closing, the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach. If, upon the expiration of thirty (30) days from the receipt of such notice, the breach has not been cured and is a material breach, the injured party shall have the right, at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured party from resorting to any other remedy permitted at law or equity including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole. Failure of the injured party to demand or enforce a cure for breach in one instance or more shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

Section 9. CONDEMNATION AND CASUALTY

(a) **Condemnation.** If, prior to the Closing, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, VFRC and UP shall each have the unilateral right, exercisable by giving notice of such decision to the other party within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Contract, in which case the Deposit, if any, shall be returned to VFRC and VFRC and UP shall pay one-half (1/2) of the cost of cancellation of Escrow, if any, and neither party shall have any further rights or obligations under this Contract (other than the Surviving Obligations). If neither party elects to terminate pursuant to this Section 9, the net proceeds of condemnation awards payable to UP by reason of such condemnation shall be paid or assigned to VFRC upon Closing.

(b) **Casualty.** If, prior to the Closing, the Property shall be damaged by fire, flood, earthquake or other insured casualty to a material degree, that is, if the cost of restoration of the damaged Property exceeds twenty percent (20%) of the Purchase Price, UP shall notify VFRC to the extent of its knowledge and VFRC shall have the option either to (i) elect not to acquire the Property, in which case this Contract shall terminate, and the parties shall be relieved of all further rights and obligations with respect thereto or (ii) to acquire the Property, subject to such casualty, without adjustment in the Purchase Price and otherwise in accordance with the terms and provisions of this Contract, but VFRC shall be entitled to all insurance proceeds paid by an insurer on account of such casualty which would otherwise accrue to UP. VFRC shall give written notice to UP of any election pursuant to this Section 9(b) within thirty (30) business days following receipt by VFRC of any written notice of such casualty. Failure of VFRC to make such election within said period shall be deemed an election to proceed to purchase the Property pursuant to clause (ii) above. If prior to the Closing, the Property suffers a casualty other than to an extent entitling VFRC to elect not to acquire the Property pursuant to this Section 9(b), VFRC shall close the transaction contemplated by this Contract in accordance with the terms hereof as though such casualty had not occurred, except that UP shall, at Closing, pay or assign to VFRC any

net insurance proceeds paid or payable to UP in respect thereof. Risk of physical loss to the Property on and after the Closing shall be borne by VFRC.

Section 10. MISCELLANEOUS PROVISIONS.

(a) Entire Agreement. This Contract constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, oral or written, between the parties concerning the subject matter of this Contract.

(b) Amendment. No modification, addition or amendment to this Contract shall be effective unless such modification, addition or amendment is in writing and signed by the parties.

(c) Assignment. This Contract shall be binding upon, and inure to the benefit of the parties hereto and their respective successors, heirs, administrators and assigns, except that VFRC's interests under this Contract may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without UP's prior written approval. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void and VFRC shall be deemed in default hereunder.

(d) Governing Law. This Contract shall be governed by the laws of the State of Oregon.

(e) Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

(f) Exhibits. The Exhibits attached to and referred to in this Contract are incorporated into this Contract by reference.

(g) Notices and Knowledge. Any notices required or desired to be given under this Contract shall be in writing and personally served, given by overnight express

delivery, or given by mail. Telecopy notices shall be deemed valid only to the extent they are (i) actually received by the individual to whom addressed and (ii) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

UP: UNION PACIFIC RAILROAD COMPANY
ATTN: Senior Director-Interline Marketing
1400 Douglas Street, Mailstop 1350
Omaha, Nebraska 68179
Telephone: (402) 544-4791
Facsimile: (402) 233-2460

With copy to: UNION PACIFIC RAILROAD COMPANY
ATTN: Mack H. Shumate, Jr.
101 North Wacker Drive, Suite 1920
Chicago, IL 60606
Telephone: 312/777-2055
Facsimile: 312/777-2065

VFRC: VFRC, LLC
30742 Venell Place
Corvallis, Oregon 97333
Telephone: (541) 752-2446
Facsimile:

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

(h) Unless specifically provided otherwise in this Contract, knowledge attributable to UP shall be limited to that which is to the knowledge of an officer of UP at the level of Vice President or above.

(i) **Severability**. If any provision of this Contract is illegal, invalid or unenforceable under present or future laws, then it is the intention of the parties that the remainder of the Contract shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

(j) **Time is of the Essence**. Time is of the essence of this Contract.

(k) **Merger**. The provisions of this Contract shall merge into the deed to be delivered by UP to VFRC and shall not survive the Closing, except for the provisions of Sections 6, 7, 8 and 10.

(l) **No Brokers**. The negotiations relative to the transactions contemplated in this Contract have been conducted by the parties without the intervention of any person which would give rise to any valid claim against either party for brokerage commissions or other like payment. Each party, to the extent it may lawfully do so, shall indemnify, defend and hold harmless the other party against and from all claims for brokerage commission or other like payment arising out of the transactions contemplated by this Contract and occasioned by the actions of such indemnifying party.

(m) **Non-Foreign Status**. UP, Federal ID No. 94-6001323, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by VFRC. A certification prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached hereto as **Exhibit B-1** and is hereby made a part hereof.

(n) **Professional Fees and Costs**. If any legal or equitable action, arbitration, bankruptcy, reorganization or other proceeding is brought or undertaken, or an attorney retained to enforce this Contract or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Contract, then the successful or prevailing party or parties in such undertaking (or the party that would prevail if an action were brought) shall be entitled to recover reasonable attorney's fees, expert witness fees, court costs and other expenses, in addition to any other relief to which such party may be entitled.

(o) **Contract Expenses.** The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Contract and in closing and carrying out the transactions contemplated by this Contract.

(p) **Satisfaction or Waiver of Contingencies.** The consummation of the Closing shall be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

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

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

(s) **Effect of Headings.** The headings of the paragraphs of this Contract are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

(t) **Number and Gender.** When required by the context of this Contract, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

(u) **Joint and Several Liability.** In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as parties under this Contract.

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

(w) Negotiated Terms. The parties agree that the terms and conditions of this Contract are the result of negotiations between the parties and that this Contract shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Contract.

(x) Recitals and Exhibits. The recitals and contents of all Exhibits to this Contract are incorporated by reference and constitute a material part of this Contract.

(y) Confidentiality. It is understood and agreed that all information, studies and reports relating to the environmental condition of the Property obtained by VFRC will be subject to the state open records law. However, to the extent legally permissible, (i) all information, studies and reports relating to the environmental condition of the Property obtained by VFRC, either by the observations and examinations of its agents and representatives or as disclosed to it by UP, shall remain confidential and VFRC shall not disclose any such matters to any person or governmental agency except as unconditionally required by law and (ii) if the transaction contemplated herein fails to close for any reason, VFRC shall deliver and return to UP, at no cost to UP, all such information, reports and studies, and VFRC shall make no further distributions or disclosures of any such information, reports and studies. The provisions of this Section shall survive the termination of this Contract.

(z) Not an Offer. The submission of this Contract to VFRC for review or signature does not constitute an offer to sell the Property to VFRC nor the granting of an option or other rights with respect to the Property to VFRC. No Contract with respect to the purchase and sale of the Property shall exist, and this writing shall have no binding force or effect, until executed and delivered by UP and VFRC.

(aa) Survival. VFRC and UP acknowledge and agree that in the event of the termination howsoever of this Contract, the obligations of and indemnity, to

the extent allowed by law, by VFRC, and its respective agents and contractors, shall not be limited, impaired or otherwise affected by any termination of this Contract as a result of such termination.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the Execution Date.

Attest:

UNION PACIFIC RAILROAD COMPANY

By: C. J. Meyer

By: Tom K. Love

Title: ASSISTANT SECRETARY

Title: Assistant Vice President - Real Estate

Attest:

VFRC, LLC

By: Paul Venable

By: Gay Bull

Title: Manager

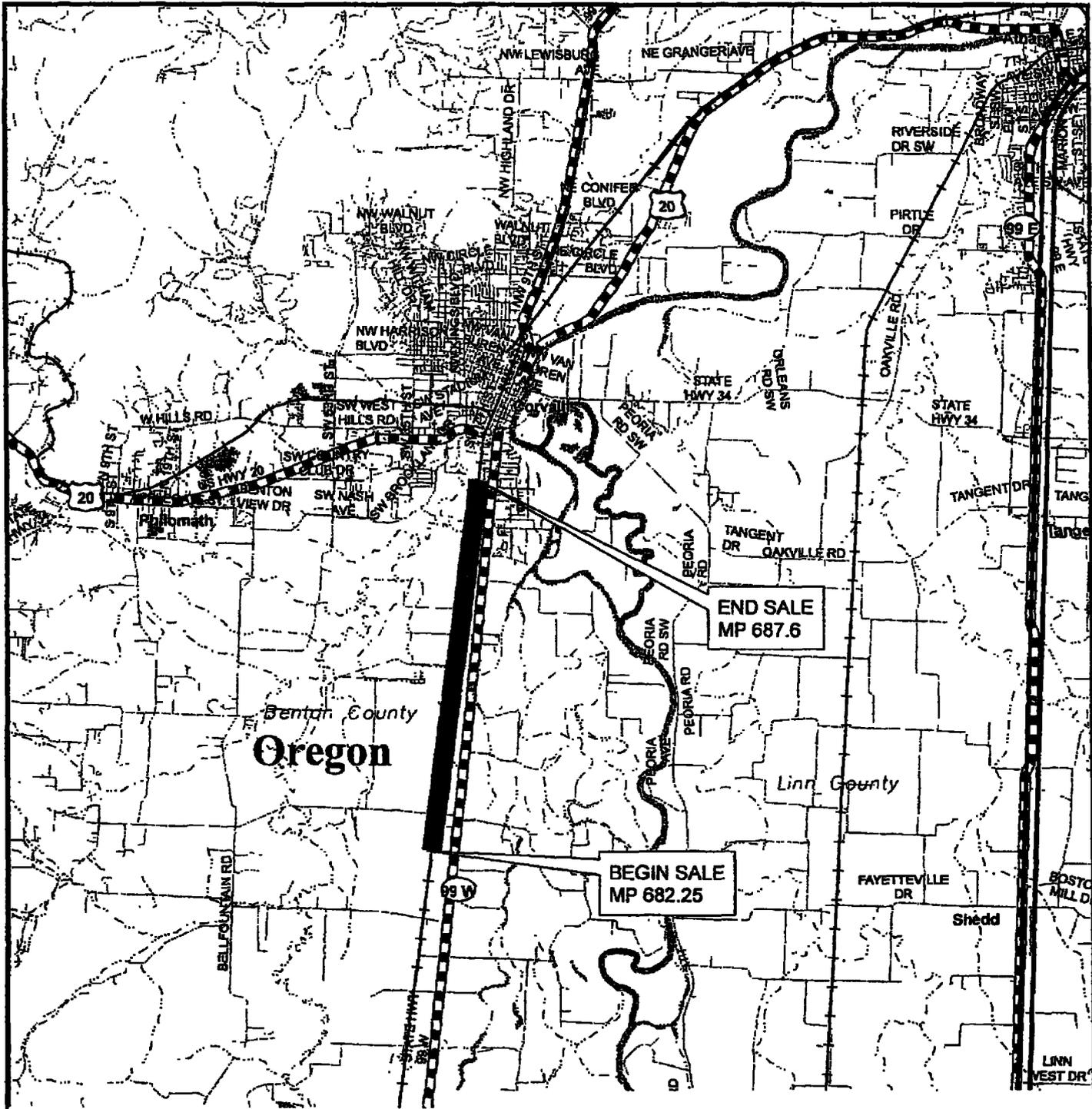
Title: manager

EXHIBIT LIST

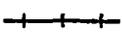
- EXHIBIT A - PRINT OF RIGHT-OF-WAY**
- EXHIBIT B - QUITCLAIM DEED TO RIGHT-OF-WAY**
- EXHIBIT B-1 - CERTIFICATION OF NON-FOREIGN STATUS**
- EXHIBIT C - QUITCLAIM BILL OF SALE**
- EXHIBIT D - ASSIGNMENT AND ASSUMPTION AGREEMENT**
- EXHIBIT E - LIST OF AGREEMENTS TO BE ASSIGNED AND ASSUMED**
- EXHIBIT F - CONTRACT INSURANCE REQUIREMENTS**

EXHIBIT A

Print of Right-of-Way



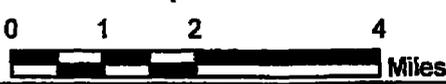
Legend

-  UPRR LINES TO BE SOLD
-  OTHER UPRR LINES
-  OTHER RAILROADS
-  PRINCIPAL HIGHWAYS
-  OTHER ROADS

BAILEY BRANCH

MP 682.25 TO MP 687.6
 TOTAL OF 5.35 MILES
 IN BENTON COUNTY, OREGON = 5.35 MILES

**VFRC, LLC Purchase of
 Union Pacific Bailey Branch (WPRR Lessee),
 Milepost 682.25 to Milepost 687.6**



QUITCLAIM DEED

Document Number

**COVER SHEET
FOR
RECORDATION
OF
QUITCLAIM DEED
FROM
UNION PACIFIC RAILROAD COMPANY

TO
VFRC, LLC**

Recording Area

Name and Return Address

Parcel Identification Number (PIN)

(When applicable)

QUITCLAIM DEED

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, Grantor, (formally, known as Southern Pacific Transportation Company, a Delaware corporation) in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto VFRC, LLC an Oregon Limited Liability Company, Grantee and unto its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") situated in Benton County, State of Oregon, as more particularly described in Exhibit A, hereto attached and hereby made a part hereof.

Grantor EXCEPTS from the Property hereby quitclaimed and RESERVES unto itself, its successors and assigns, forever, the following:

(a) the permanent, exclusive easement upon, over, under and across the Property, for purposes of conducting freight rail operations and otherwise to fulfill Grantor's rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Property to provide freight rail service to all customers on or served from the Property, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations (the "Freight Easement"); and

(b) roadways or utility lines that serve retained property.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD the Property, subject to the aforesaid exceptions and reservations, unto Grantee, its successors and assigns, forever.

Grantor and Grantee intend by this instrument that Grantor quitclaim to Grantee any after-acquired title to the Property which arises in favor of Grantor from and after the date hereof.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the 25th day of May, 2010.

Attest:

UNION PACIFIC RAILROAD COMPANY

By _____

Printed Name: _____

Printed Name: _____

Title: Assistant Secretary

Title: _____

(Seal)

Union Pacific Railroad Company

Benton County, Oregon

Exhibit "A"

All that portion of the West Side Branch, track and right of way, of the Union Pacific Railroad Company (formerly the Southern Pacific Transportation Company), as now located that extends northerly from railroad branch mile post 682.25, to mile post 687.60, and being situate in, over and across the following legal subdivisions of Benton County, Oregon:

| Subdivision | Section | Township | Range | Meridian |
|---|---------|----------|-------|------------|
| NE 1/4 | 3 | 13S | 5W | Willamette |
| J. M. Newlin D. L. C. Chas Hodges D. L. C. Thomas Norris D. L. C. #58 | 34 | 12S | 5W | Willamette |
| Thomas Norris D. L. C. #58 Samuel Gage D. L. C. #57 | 27 | 12S | 5W | Willamette |
| Samuel Gage D. L. C. #57 Harvey Young D. L. C. #56 | 22 | 12S | 5W | Willamette |
| Harvey Young D. L. C. #56 D. L. C. #48 David Butterfield D. L. C. #47 | 15 | 12S | 5W | Willamette |
| D. L. C. #48 David Butterfield D. L. C. #47 | 10 | 12S | 5W | Willamette |
| David Butterfield D. L. C. #47 J. C. Alexander D. L. C. #46 | 11 | 12S | 5W | Willamette |

Union Pacific Railroad Co.
Real Estate Department
Omaha, NE.
File 2341-96
3/15/2008 T.D.A.

CERTIFICATION OF NON-FOREIGN STATUS

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

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY is not a disregarded entity as defined in Section 1.445.2(b)(2)(iii) of the Internal Revenue Code;
3. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
4. UNION PACIFIC RAILROAD COMPANY'S office address is 1400 Douglas Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

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

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

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

By:

Title:

Date:

Quitclaim Bill of Sale

BILL OF SALE

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP") for and in consideration of One Dollar (\$1.00) and other valuable consideration does hereby sell, quitclaim, transfer and deliver to VFRC, LLC, an Oregon Limited Liability Company ("Buyer"), its successors and assigns, UP's ownership interest in and to the following described personal property, to wit:

[See attached Exhibit A for description of personal property and location.

UP, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE TITLE, OWNERSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING UNDERSTOOD THAT THE BUYER IS PURCHASING THE PERSONAL PROPERTY DESCRIBED ABOVE IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS.

IN WITNESS WHEREOF, the UP and Buyer have each duly executed this instrument as of the 25th day of May, 2010.

UNION PACIFIC RAILROAD COMPANY

By _____

Title: _____

VFRC, LLC

By *[Signature]* _____

Title: *manager* _____

Union Pacific Railroad Company

Benton County, Oregon

Exhibit "A"

All that portion of the West Side Branch, track and right of way, of the Union Pacific Railroad Company (formerly the Southern Pacific Transportation Company), as now located that extends northerly from railroad branch mile post 682.25, to mile post 687.60, and being situate in, over and across the following legal subdivisions of Benton County, Oregon:

| Subdivision | Section | Township | Range | Meridian |
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| NE 1/4 | 3 | 13S | 5W | Willamette |
| J. M. Newlin D. L. C. Chas Hodges D. L. C. Thomas Norris D. L. C. #58 | 34 | 12S | 5W | Willamette |
| Thomas Norris D. L. C. #58 Samuel Gage D. L. C. #57 | 27 | 12S | 5W | Willamette |
| Samuel Gage D. L. C. #57 Harvey Young D. L. C. #56 | 22 | 12S | 5W | Willamette |
| Harvey Young D. L. C. #56 D. L. C. #48 David Butterfield D. L. C. #47 | 15 | 12S | 5W | Willamette |
| D. L. C. #48 David Butterfield D. L. C. #47 | 10 | 12S | 5W | Willamette |
| David Butterfield D. L. C. #47 J. C. Alexander D. L. C. #46 | 11 | 12S | 5W | Willamette |

Union Pacific Railroad Co.
Real Estate Department
Omaha, NE.
File 2341-96
3/15/2008 T.D.A.

ASSIGNMENT AND ASSUMPTION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter the "Assignor") does, for valuable consideration, effective as of the date hereof assign, transfer and set over unto VFRC, LLC, an Oregon Limited Liability Company (Assignee"), all of the Assignor's right, title and interest in, to and under each and all of the agreements shown in **Exhibit 1**, hereto attached and hereby made a part hereof.

Assignor and Assignee understand and agree that this Assignment is conditional and does not become fully and finally effective until 120 days from the date hereof, and that Assignor reserves the right to revoke this Assignment as to any contract or agreement listed in **Exhibit 1** by giving written notice to Assignee within such 120 days that a particular agreement should not be included in this Assignment. Assignor may, in such manner, revoke this Assignment as to any such agreement or contract, ab initio, in whole or in part if it shall determine that any such agreement does not affect, or only partially affects, the property transferred this date by Assignor to Assignee. Assignor represents that, to the best of its knowledge, the agreements shown on **Exhibit 1** are all that pertain to or affect the "Property" as described in that certain Line Sale Contract between the parties dated, as of May 20, 2010 covering the sale of the Right of Way from Milepost 687.6 near Corvallis to Milepost 682.25 near Greenberry, Oregon. In the event, however, other contracts or agreements affecting the aforementioned trackage are subsequently discovered by Assignor, Assignor will promptly execute an assignment of same to Assignee using the form of this Assignment.

In addition, it is understood and agreed that:

1. One or more of the agreements or contracts listed in **Exhibit 1** may affect, pertain to or cover the aforesaid Property, as well as property and/or right-of-way not sold by Assignor to Assignee, and this Assignment shall only be effective to partially assign Assignor's interest therein to the extent that such agreement or contract pertains to the Property. Any future payments due from third parties thereunder shall be

collected by Assignor and the Assignor shall pay to the Assignee its pro rate portion thereof.

2. This Assignment is subject to all of the terms and conditions of the aforesaid Line Sale Contract.

Subject to the above, Assignee hereby accepts the assignment of the agreements shown on **Exhibit 1**, assumes all of the duties, obligations and liabilities of Assignor thereunder, and agrees to release the Assignor, its successors and assigns, from any and all obligations arising out of, or pursuant to, the agreements or applicable portions thereof herein assigned from and after the effective date hereof.

THIS ASSIGNMENT shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns. No provision hereof shall be construed as intended for the benefit of any third party.

Dated as of: May 25, 2010.

Attest:

UNION PACIFIC RAILROAD COMPANY,
A Delaware corporation,

By: _____
Title: _____

(Seal)

Attest:

VFRC, LLC

Pam Verrell

By: *[Signature]*
Title: *manager*

| AUDIT | PARTY NAME | PURPOSE | COUNTY | CITY | ST | MP START | ANNUAL AMT | DISPOSITION | CONTAINED |
|---------|--------------------------------|----------|--------|-----------|----|----------|------------|-------------|-----------|
| S206456 | PACIFIC POWER & LIGHT CO | Wire | Benton | CORVALLIS | OR | 686.21 | \$0 | Assigned | Totally |
| S190277 | PACIFIC NORTHWEST BELL | Wire | Benton | CORVALLIS | OR | 682.8 | \$0 | Assigned | Totally |
| S160822 | PACIFIC POWER & LIGHT CO | Wire | Benton | CORVALLIS | OR | 685.29 | \$0 | Assigned | Totally |
| S156514 | SCHROCK SEED CO | Pipeline | Benton | DRY CREEK | OR | 682.76 | \$0 | Assigned | Totally |
| S163955 | QWEST CORPORATION | Wire | Benton | CORVALLIS | OR | 682.77 | \$0 | Assigned | Totally |
| S712932 | PACIFIC NORTHWEST BELL | Wire | Benton | DRY CREEK | OR | 685.8 | \$0 | Assigned | Totally |
| S206461 | CORVALLIS CITY OF | Pipeline | Benton | CORVALLIS | OR | 686.21 | \$0 | Assigned | Totally |
| S206462 | CORVALLIS CITY OF (DEED 63382) | Pipeline | Benton | CORVALLIS | OR | 686.94 | \$0 | Assigned | Totally |
| SPX2180 | PACIFIC NORTHWEST BELL | Wire | Benton | CORVALLIS | OR | 682.77 | \$0 | Assigned | Totally |
| S712933 | PACIFIC NORTHWEST BELL | Wire | Benton | DRY CREEK | OR | 658.4 | \$0 | Assigned | Totally |
| S188312 | PACIFIC NORTHWEST BELL | Wire | Benton | CORVALLIS | OR | 687.02 | \$0 | Assigned | Totally |
| SPA2864 | UNITED STATES OF AMERICA | Pipeline | Benton | DRY CREEK | OR | 684 | \$0 | Assigned | Totally |

EXHIBIT "E"

LIST OF AGREEMENTS TO BE ASSIGNED AND ASSUMED

| AUDIT | PARTY NAME | PURPOSE | COUNTY | CITY | ST | MP START | ANNUAL AMT | DISPOSITION | CONTAINED |
|---------|--------------------------|----------|--------|-----------|----|----------|------------|-------------|-----------|
| S206456 | PACIFIC POWER & LIGHT CO | Wire | Benton | CORVALLIS | OR | 686.21 | \$0 | Assigned | Totally |
| S190277 | PACIFIC NORTHWEST BELL | Wire | Benton | CORVALLIS | OR | 682.8 | \$0 | Assigned | Totally |
| S160822 | PACIFIC POWER & LIGHT CO | Wire | Benton | CORVALLIS | OR | 685.29 | \$0 | Assigned | Totally |
| S156514 | SCHROCK SEED CO | Pipeline | Benton | DRY CREEK | OR | 682.76 | \$0 | Assigned | Totally |
| S163955 | QWEST CORPORATION | Wire | Benton | CORVALLIS | OR | 682.77 | \$0 | Assigned | Totally |
| S712932 | PACIFIC NORTHWEST BELL | Wire | Benton | DRY CREEK | OR | 685.8 | \$0 | Assigned | Totally |
| S206461 | CORVALLIS CITY OF | Pipeline | Benton | CORVALLIS | OR | 686.21 | \$0 | Assigned | Totally |
| | CORVALLIS CITY OF (DEED | | | | | | | | |
| S206462 | 63382) | Pipeline | Benton | CORVALLIS | OR | 686.94 | \$0 | Assigned | Totally |
| SPX2180 | PACIFIC NORTHWEST BELL | Wire | Benton | CORVALLIS | OR | 682.77 | \$0 | Assigned | Totally |
| S712933 | PACIFIC NORTHWEST BELL | Wire | Benton | DRY CREEK | OR | 658.4 | \$0 | Assigned | Totally |
| S188312 | PACIFIC NORTHWEST BELL | Wire | Benton | CORVALLIS | OR | 687.02 | \$0 | Assigned | Totally |
| SPA2864 | UNITED STATES OF AMERICA | Pipeline | Benton | DRY CREEK | OR | 684 | \$0 | Assigned | Totally |

**Union Pacific Railroad
Contract Insurance Requirements**

Sale of Branch Line

Buyer shall, at its sole cost and expense, procure and maintain from the date of sale to the expiration of applicable State(s) and Federal statutes of limitations allowing for claims against the seller (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$8,000,000 each occurrence and an aggregate limit of not less than \$8,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage), for a period of 7 years after the Closing Date.

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

Other Requirements

D. All policy(ies) required above must include Railroad as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or a substitute form providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Buyer's liability under the indemnity provisions of this Agreement.

E. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

F. Prior to purchase of the property, Buyer shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

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

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

CORVALLIS LINE OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement") is made this 25th day of May, 2010 ("Effective Date"), between VFRC, LLC ("VFRC"), an Oregon Limited Liability Company and Albany & Eastern Railroad Company, an Oregon corporation ("AERC").

WHEREAS, VFRC has acquired from Union Pacific Railroad Company ("UP") the physical assets of a line of railroad, including but not limited to right-of-way, roadbed and trackage from Milepost 687.60 near Corvallis to Milepost 682.25 near Greenberry, all in Benton County, Oregon (the "Line"); and

WHEREAS, UP retained the exclusive freight easement on the Line ("Freight Easement") and has transferred that Freight Easement to AERC while, at the same time, retaining overhead trackage rights on the Line; and

WHEREAS, Willamette & Pacific Railroad, Inc. ("WPRR") has terminated that portion of its lease with UP pertaining to the Line, and has transferred its operating rights on the Line to AERC, while retaining overhead trackage rights on the Line; and

WHEREAS, VFRC and AERC have agreed that AERC will operate the Line pursuant to its Freight Easement on the following terms; and

WHEREAS, AERC has obtained authority from the U.S. Surface Transportation Board ("STB") to acquire the Freight Easement and provide railroad common carrier service on and over the Line.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration, and intending to be legally bound, the parties agree as follows:

SECTION 1. PROPERTY RIGHTS.

AERC shall utilize its Freight Easement rights to operate railroad service over the Line. VFRC shall have the right to lease, license or use the right-of-way on the Line for non-railroad purposes, provided that any such use shall not unreasonably interfere with AERC's rail operations.

SECTION 2. USE.

- 2.1. AERC shall use and occupy the Line solely for the purpose of providing and maintaining common carrier and/or contract railroad freight service. In no event shall AERC provide passenger service on the Line.
- 2.2. Subject to the overhead trackage rights retained by UP and WPRR, AERC shall have the exclusive right to conduct railroad operations on the Line and to place

rails, ties, and ballast and all other railroad related facilities thereon. VFRC shall not grant to any third party any rights whatsoever to conduct such railroad operations during the Term of the Agreement, unless earlier terminated.

- 2.3. AERC shall provide rail freight service over the Line to the Venell Farms facility at Greenberry, Oregon, which service shall include interchange of rail traffic with WPRR, under the terms and conditions of the Rail Transportation Contract of even date herewith between AERC and Venell Farms and other applicable tariffs or exempt quotes.
- 2.4. Subject to the prior written approval of VFRC, AERC may, at its sole cost and expense, install additional track, yards, or other structures that it deems necessary or convenient to provide railroad service to other shippers that may be or become located adjacent to or near the Line. Subject to the prior written approval of VFRC, AERC may, at its sole cost and expense, remove track, yards and other facilities when such facilities are no longer necessary or convenient to provide such railroad service.

SECTION 3. RENTAL PAYMENT.

AERC shall pay to VFRC as a result of providing rail freight operations on the Line. Payment to VFRC shall not include The rental payments shall be due monthly, by the fifteenth (15) day of the month for the previous month's rental payment (based upon revenues actually collected by AERC during the previous month). Payment of Rental and any other payment due and payable from AERC under this Agreement shall be subject to a late payment charge of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) or the maximum interest permitted by applicable law, if lower, on balances past due over thirty (30) days. AERC shall be entitled (but shall not be obligated to assert) a right of offset against rental payments due under this Section 3 with respect to any sums otherwise due and owing to AERC by VFRC. This Section 3 shall be renegotiated in the event a new shipper locates along the Line and utilizes AERC's services.

SECTION 4. APPROVAL OF STRUCTURES.

Prior to erecting any track, yards or other structures on the Line, AERC shall submit the plan to, and secure approval in writing of, VFRC, which approval shall not be unreasonably withheld. VFRC shall not erect or place or allow to be erected or placed on the Line any buildings, structures, fixtures or obstructions of any kind, either temporary or permanent, within twenty-five (25) feet of the center line of any track, nor shall any such buildings, structures, fixtures or obstructions be placed within five hundred (500) feet of any grade crossing, provided nothing in the foregoing shall be construed to permit any clearance which is less than the minimum required by any applicable law or regulation.

SECTION 5. ORDINANCES AND REGULATION.

AERC shall comply with any and all applicable ordinances, rules, regulations, requirements and laws of any governmental authority having jurisdiction over railroad structures and operations on the Line. VFRC shall comply with any and all applicable ordinances, rules, regulations, requirements and laws of any governmental authority having jurisdiction over any non-railroad structures on the Line.

SECTION 6. MAINTENANCE.

- 6.1. AERC shall upgrade the Line and the WPRR Interchange and Access Tracks (as those terms are defined in that certain Interchange Agreement by and between AERC and WPRR, dated May 25, 2010) (including, but not limited to, bridge repairs) to Federal Railroad Administration ("FRA") Class 1 condition at the sole cost and expense of VFRC. VFRC shall provide, at VFRC's sole cost and expense, all rail, other track materials, ties and ballast necessary to upgrade the Line and the Interchange and Access Tracks to FRA Class 1 condition. Any other costs incurred by AERC in upgrading the Line and the Interchange and Access Tracks shall be paid for at the sole cost and expense of VFRC subject to the prior approval of VFRC. Once the Line is upgraded, AERC shall inspect, maintain and repair the rail-related structures on the Line and the Interchange and Access Tracks at the sole cost and expense of VFRC. AERC shall keep and maintain the Line at FRA Class 1 condition, and a minimum speed of ten (10) m.p.h., subject to conditions of force majeure, and temporary slow orders related to track maintenance. AERC shall not be responsible for any additional track upgrades or other capital improvements. Any additional track upgrades and other capital improvements shall be the sole responsibility of VFRC. Notwithstanding anything to the contrary in this Section 6.1, any additional track upgrades or other capital improvements made by AERC without the prior approval of VFRC shall be at the sole cost and expense of AERC.

- 6.2 All payments for maintenance (to the extent AERC performs track maintenance approved by VFRC) or other changes associated with operations on the Line and the Interchange and Access Tracks (other than freight transportation charges) shall be paid by VFRC to AERC within thirty (30) days after receipt of a bill therefore. As between AERC and VFRC, the cost of clearance of AERC wrecks on the Line shall be split among the parties with AERC paying eighty (80) percent and VFRC paying twenty (20) percent, except to the extent such wrecks are caused, in whole or in part, by AERC's failure to properly maintain the track and track structures, in which case AERC shall pay one hundred percent (100%) of such costs. UP and WPRR wrecks shall be cleared as provided in those railroads' trackage rights agreements and the clearance costs shall be paid for by UP, WPRR or VFRC as provided in those agreements. Bills for maintenance and clearance of wrecks shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by AERC at the time any work is performed by AERC.

- 6.3** In the event any new rail customers locate along the Line after the Effective Date of this Agreement, the parties shall renegotiate the terms of this Section 6.

SECTION 7. REPRESENTATIONS AND WARRANTIES.

The parties hereby represent and warrant the following to each other:

7.1 AERC represents and warrants to VFRC that:

- (i) AERC has taken all proceedings or corporate action required to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.
- (ii) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated herein, will (a) conflict with or result in a breach of any provision of AERC's articles of incorporation or bylaws, (b) violate any order, writ, injunction, decree, or, to the best knowledge of AERC, any statute, rule or regulation applicable to AERC or the Line, or (c) contravene or conflict with the authority under which AERC is doing business or with the provisions of any existing indenture or agreement of AERC.
- (iii) This Agreement, when and as executed and delivered, will constitute a valid and binding obligation of AERC enforceable against AERC in accordance with its terms, subject only to the application of bankruptcy laws or equitable principles.

7.2 VFRC represents and warrants to AERC that:

- (i) VFRC has taken all proceedings or corporate action required to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.
- (ii) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated herein, will (a) conflict with or result in a breach of any provision of VFRC's bylaws, (b) violate any order, writ, injunction, decree, or, to the best knowledge of VFRC, any statute, rule or regulation applicable to VFRC or the Line, (c) terminate or adversely affect any permit, license or authorization of any government authorities used by or required of VFRC relating to the Line, or (d) contravene or conflict with the authority under which VFRC is doing business or with the provisions of any existing indenture or agreement of VFRC.
- (iii) This Agreement, when and as executed and delivered, will constitute a valid and binding obligation of VFRC enforceable against VFRC in accordance

with its terms, subject only to the application of bankruptcy laws or equitable principles.

- (iv) VFRC is not a party to any action, suit, arbitration, governmental investigation or other administrative proceeding pending or, to the knowledge of VFRC, threatened, which challenges VFRC's right to own the Line or AERC's ability to conduct rail freight operations on the Line during the Term of this Agreement.

SECTION 8. INGRESS AND EGRESS.

Each party shall have the right to use in common with the other party, existing driveway(s), roadway(s) or other facilities designated as a means of ingress to and egress from the Line and facilities thereon.

SECTION 9. MECHANICS LIENS.

Subject to VFRC's obligations to reimburse AERC, as provided above, AERC shall pay all debts incurred and shall satisfy all liens of contractors, subcontractors, mechanics, laborers and materialmen with respect to any construction, alteration, improvement and/or repair in and to the Line authorized by AERC and arising out of or incidental to AERC's operations over, and maintenance of, the Line and AERC shall indemnify, defend and hold VFRC harmless against all legal costs and charges, including attorney's fees reasonably incurred in any suit involving a lien which AERC caused or permitted to be filed against the Line, the enforcement thereof or encumbrance caused by the same with respect to the Line or any part thereof.

SECTION 10. INDEMNIFICATION.

The parties agree to indemnify and hold each other harmless as follows:

- 10.1 Indemnification by AERC. VFRC, its agents, directors, officers and employees, shall not be held liable for any claims, liabilities, costs or expenses (including reasonable attorney's fees) for damage to any property, personal injuries or deaths caused by or resulting from any acts or omissions of AERC, its agents, employees, independent contractors or otherwise by AERC's provision of rail freight service over the Line after the Effective Date, other than liabilities caused, in whole or in part, by the acts or omissions of VFRC. AERC agrees to indemnify and hold harmless VFRC against any of the foregoing liabilities (subject to the foregoing exceptions). In the event that any liabilities are caused by the acts or omissions of both AERC and VFRC, the parties shall equally share and be held liable for any such claims, liabilities, costs or expenses, regardless of the degree of fault by either party and notwithstanding any state laws governing contributory negligence.
- 10.2 Indemnification by VFRC. AERC, its agents, directors, officers and employees, shall not be held liable for any claims, liabilities, costs or expenses (including

reasonable attorney's fees) for damage to any property, personal injuries or deaths caused by or resulting from (i) any acts or omissions of the operator(s) (including UP and WPRR) providing rail freight service over the Line, (ii) any violation of any Environmental Law (defined below) occurring before the Effective Date, or (iii) any third party claims relating to the ownership or operation of the Line before the Effective Date. VFRC agrees to indemnify and hold harmless AERC against any of the foregoing liabilities.

10.3 AERC's Environmental Indemnification. From and after the Effective Date, AERC shall, to the maximum extent permitted by law, indemnify and save harmless VFRC, its affiliates, their employees, agents, officers, successors and assigns, from and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, fines, punitive damages, losses, costs, liabilities and expenses, including attorney's fees (collectively, "environmental costs"), caused by AERC with respect to the environmental condition of the property on the Line (including, without limitation, any contamination in, on, under or adjacent to the property on the Line by any hazardous or toxic substance or material), or any federal, state or local law, ordinance, rule or regulation applicable thereto (including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act) ("Environmental Law"), and including, without limitation, personal injury to or death of persons whomsoever including employees, agents or contractors of AERC, VFRC or any third party.

10.4 Survival. The parties' obligations under this Section 10 shall survive the termination of this Agreement.

SECTION 11. INSURANCE.

AERC shall provide and maintain in effect during the term and any continued term hereof, a policy of commercial general liability insurance and public liability insurance and railroad protective liability insurance including contractual liability covering liability assumed by AERC under this Agreement. Said insurance shall be issued by companies and in form reasonably acceptable to VFRC and shall provide for limits of liability of not less than \$10 million per occurrence and \$10 million in the aggregate. Such coverage shall name VFRC as an insured or an additional insured, and any exclusion for work on or within 50 feet of railroad property shall be removed. AERC shall furnish to VFRC certificates of all required insurance policies. All policies shall be endorsed to provide not less than thirty (30) days notice to VFRC of any cancellation thereof and of any material change in coverage. The providing of said insurance coverage's shall not be deemed a limitation on the liability of AERC as provided in this Agreement, but shall be additional security therefore.

SECTION 12. MILEAGE AND CAR HIRE.

All mileage and car hire charges accruing on cars in AERC's trains on the Line shall be assumed by AERC and reported and paid by it directly to the owner of such cars, unless specified to the contrary in any applicable tariff, exempt quote or transportation contract.

SECTION 13. TERM.

The Term of this Agreement shall be from the Effective Date, through and including December 31, 2019 ("Initial Term") unless sooner terminated in accordance with the provisions of Section 14 or by written agreement of both parties. After the Initial Term, this Agreement shall automatically renew for successive five (5) year terms ("Renewal Terms") unless terminated by either party upon ninety (90) days advance written notice prior to the end of the Initial Term or any Renewal Term.

SECTION 14. TERMINATION.

- 14.1 Notwithstanding anything to the contrary herein, either party shall have the right to terminate this Agreement on ninety (90) days written notice to the other party in the event such other party has materially breached the terms or conditions of this Agreement; provided, however, such termination may not be effectuated so long as the breaching party is making good faith efforts to cure the breach and has, in fact, cured the breach within ninety (90) days of the notice of termination.
- 14.2 AERC and Venell Farms, the parent of VFRC ("Venell Farms") shall enter into a five (5) year Transportation Contract on or prior to the Effective Date of this Agreement providing for, among other things, carload rates and minimum volume requirements ("Initial Transportation Contract"). In the event AERC and Venell Farms are unable timely to enter into a new five (5)-year Transportation Contract prior to the expiration of the Initial Transportation Contract, either party shall have the right to terminate this Agreement on thirty (30) days written notice to the other party. The rates and minimum volume requirements set forth in the Initial Transportation Contract and any renewed Transportation Contracts shall be adjusted by mutual agreement of the parties.
- 14.3 VFRC may terminate this Agreement in the event AERC files, or has filed against it, any petition or action for relief under any creditor's laws (including bankruptcy, reorganization, or similar actions), either in state or federal court, or becomes insolvent, or has a receiver appointed for its assets, or makes an assignment for the benefit of creditors. Upon the occurrence of an event under this Section 14.3, VFRC may terminate this Agreement by giving one day's written notice to AERC.
- 14.4 AERC may terminate this Agreement in the event VFRC files, or has filed against it, any petition or action for relief under any creditor's laws (including bankruptcy, reorganization, or similar actions), either in state or federal court, or

becomes insolvent, or has a receiver appointed for its assets, or makes an assignment for the benefit of creditors. Upon the occurrence of an event under this Section 14.4, AERC may terminate this Agreement by giving one day's written notice to VFRC.

SECTION 15. ASSIGNMENT OF FREIGHT EASEMENT

At the expiration of the Initial Term or a Renewal Term of this Agreement pursuant to Section 13, or upon termination of this Agreement pursuant to Section 14, AERC shall immediately assign the Freight Easement to an entity chosen by VFRC. In the event AERC fails timely to assign the Freight Easement to VFRC's designee, AERC: (1) hereby irrevocably grants VFRC a power of attorney to seek authority from the STB to abandon the Freight Easement at the sole cost and expense of AERC; and (2) shall pay, as liquidated damages, \$100 per day from the termination date of this Agreement until the effective date of the STB's decision authorizing the abandonment of the Freight Easement.

SECTION 16. AERC'S OBLIGATIONS.

During the term of this Agreement, AERC shall have the right, and shall be obligated, to do the following:

16.1. AERC shall provide rail freight service over the Line, which services shall include, without limitation, providing the following:

- (i) common carrier rail service upon reasonable request therefor;
- (ii) the locomotive and crews sufficient to provide the common carrier rail freight service on the Line;
- (iii) the accounting services required for revenue settlement and car hire with other rail carriers.

16.2 Subject to the reimbursement provisions in this Agreement, AERC shall pay all general operating expenses it incurs in connection with providing rail freight service over the Line.

SECTION 17. FORCE MAJEURE.

If either party is unable to meet its obligations hereunder as a result of acts of God, war, terrorism, insurrection, derailments, floods, strikes, failure of WPRR to provide adequate facilities or adequate crews and equipment for interchange with AERC, or any like causes beyond its reasonable control, that party's obligations, and those of such other party affected by such force majeure event, will be suspended for the duration of same; provided, however, that the parties will make all reasonable efforts to continue to meet their respective obligations during the duration of the force majeure event; and, provided further, that the party declaring a force majeure event shall promptly notify the other party of the same (including its anticipated duration), the nature of the force majeure event, and when it is completed. The suspension of any

obligation owing to a force majeure event will neither cause the term of this Agreement to be extended nor affect any rights accrued under this Agreement prior to the force majeure event.

SECTION 18. ASSIGNABILITY.

Except as otherwise provided in Section 15, neither VFRC nor AERC shall assign or transfer this Agreement or any interest arising thereunder without the prior written consent of the other party, except that no consent shall be required where an assignment is to a parent or an affiliate corporation or successor in interest of all, or substantially all, of the assets or equity ownership of such party by way of a merger, sale or consolidation. Subject to the provisions of this Section 18, this Agreement shall bind and inure to the benefit of the parties, their successors and permitted assigns.

SECTION 19. NOTICES.

All notices, requests, demands, directions and other communications provided for hereunder shall be in writing and shall be delivered by hand, facsimile, or overnight commercial courier to the applicable party at the address indicated below:

Albany & Eastern Railroad Company
110 Industrial Way
Lebanon, Oregon 97355
Phone: (541) 259-6470

VFRC, LLC
30742 Venell Place
Corvallis, Oregon 97333
Phone: (541) 752-2446

or, as to each party, at such other address as shall be designated by such party in written notice to each other party complying to delivery with the terms of this Section 19. All such notices shall be effective when delivered to the applicable party by hand, upon transmittal to the applicable party by facsimile, or if by overnight commercial courier, when delivered by the courier.

SECTION 20. TAXES.

VFRC shall be responsible for payment of all real estate taxes associated with the Line. AERC shall be responsible for payment of any personal property taxes associated with its locomotives operating on the Line.

SECTION 21. UP AND WPRR OPERATIONS.

AERC shall not be responsible for the costs of any UP or WPRR trackage rights operations on the Line. The assessment of charges against UP or WPRR with respect to any

such operations, that shall be set forth in the Overhead Trackage Rights Agreements between AERC and UP and WPRR. Any such fees paid by UP or WPRR shall be forwarded to VFRC.

SECTION 22. CONFIDENTIALITY.

The parties shall not disclose the terms of this Agreement to a third party except:

- (i) To a parent, affiliate or subsidiary corporation;
- (ii) As may be required by law, including STB filing requirements;
- (iii) Any auditor(s) used in the regular course of business by the parties provided such auditor shall agree in writing to uphold the confidentiality of all information disclosed to them on behalf of itself and its employees; and
- (iv) Upon written approval of all parties hereto.

SECTION 23. WAIVER.

The failure to enforce any provision of this Agreement shall not be construed as a waiver of that provision, or a subsequent or continuing default.

SECTION 24. SEVERABILITY.

If any one or more of the provisions contained in this Agreement shall be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not effect any other provisions of this Agreement but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

SECTION 25. AMENDMENTS.

This Agreement may not be amended except in writing signed by all parties to this Agreement.

SECTION 26. BOOKS AND RECORDS.

AERC shall retain all records associated with operations on the Line for a period of three (3) years. VFRC shall have the right to audit such records for the purpose of confirming compliance with the terms of this Agreement, upon reasonable notice to AERC. Such audit shall be performed during normal business hours at the location where the applicable records are normally kept.

SECTION 27. NO THIRD PARTY BENEFICIARIES.

This Agreement and each and every provision throughout are for the exclusive benefit of the parties to this Agreement and not for the benefit of any third party.

SECTION 28. GOVERNING LAW.

This Agreement shall be a contract made under and governed by the internal laws of the State of Oregon applicable to contracts made and to be performed entirely within such State.

SECTION 29. COUNTERPARTS.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

SECTION 30. GOVERNMENTAL AUTHORITY.

The effectiveness of this Agreement is contingent upon AERC obtaining operating authority for the Line from the STB on terms acceptable to AERC. The effectiveness of this Agreement is also dependent on VFRC obtaining a determination from the STB that no STB authority is required for its purchase of the Line from UP.

SECTION 31. ENTIRETY.

This Agreement constitutes the entire Agreement and merges and supersedes all prior understandings and representations between AERC and VFRC concerning the subject matter hereof.

SECTION 32. ARBITRATION

In all matters relating to the interpretation and compliance of this Agreement, the parties agree to submit disputes to arbitration by a single arbitrator of the American Arbitration Association in Lane County, Oregon, in accordance with the Rules of that Association. The costs of the arbitrator shall be split equally between the parties. Each party shall bear its own attorney's fees. Any determination or award resulting from this arbitration shall be binding on the parties as the sole and exclusive remedy for any dispute between the parties. The parties consent to the entry of judgment in accordance with the decision of the arbitrator by any court having jurisdiction in the matter when an arbitrator's decision is properly made and entered. Any award shall be subject to the defenses set forth under Oregon law.

ARTICLE 33. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. Execution and delivery of this Agreement by facsimile or electronic transmission shall be deemed for all purposes to be due execution and delivery by the undersigned.

[Remainder of this page left blank intentionally – Signature page follows]

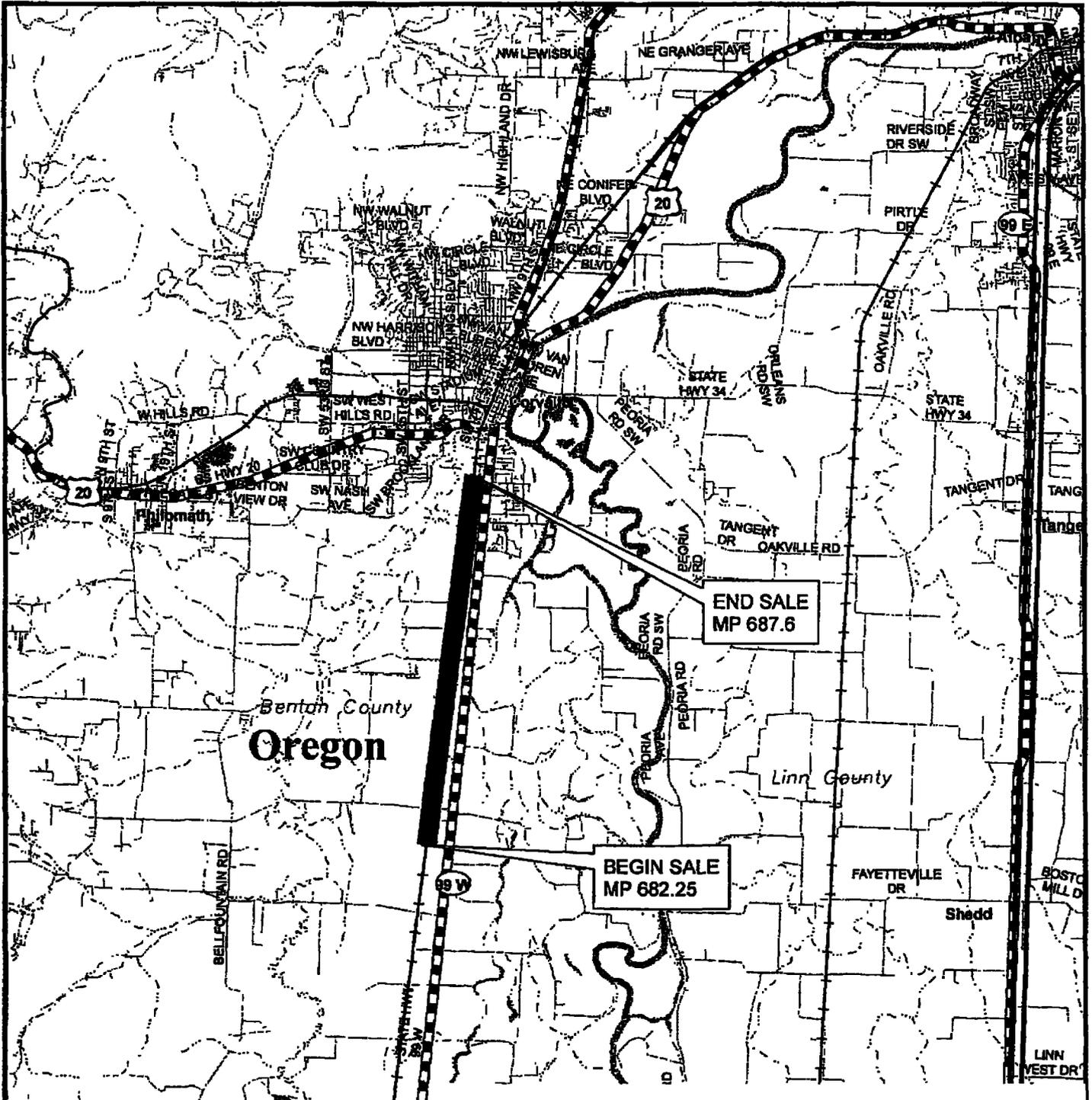
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date referenced herein.

ALBANY & EASTERN RAILROAD COMPANY,
an Oregon corporation

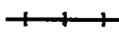
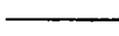
By: 
Name: Rick Franklin
Its: President

VFRC, LLC,
an Oregon Limited Liability Company.

By: 
Name: Larry Venek
Its: Member Manager



Legend

-  UPRR LINES TO BE SOLD
-  OTHER UPRR LINES
-  OTHER RAILROADS
-  PRINCIPAL HIGHWAYS
-  OTHER ROADS

BAILEY BRANCH

MP 682.25 TO MP 687.6
 TOTAL OF 5.35 MILES
 IN BENTON COUNTY, OREGON = 5.35 MILES

**VFRC, LLC Purchase of
 Union Pacific Bailey Branch (WPRR Lessee),
 Milepost 682.25 to Milepost 687.6**

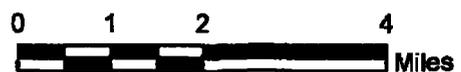


EXHIBIT 4

**WHEN RECORDED RETURN TO
AND MAIL TAX NOTICES TO:**

Albany & Eastern Railroad Company
110 Industrial Way
Lebanon, Oregon 97355
Phone: (541) 259-6470

SPACE ABOVE FOR RECORDER'S USE ONLY

FREIGHT EASEMENT DEED AND AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

That, effective as of May 25, 2010 ("Effective Date"), **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, Grantor, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to it duly paid by **ALBANY & EASTERN RAILROAD COMPANY**, an Oregon corporation, Grantee, the receipt whereof is hereby acknowledged, quitclaims, subject to Grantor's retained overhead trackage rights as provided for in the Overhead Trackage Rights Agreement as hereinafter defined, to Grantee, its successors and assigns, a permanent, exclusive easement upon, over, under and across the lines of railroad between Grantor's Milepost 687.6 near Corvallis, and Milepost 682.25 near Greenberry, all in Benton County, Oregon, more particularly described in **Exhibit A** attached hereto and hereby made a part hereof (the "Property"), for purposes of conducting freight rail operations and otherwise to fulfill Grantor's rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Property to provide freight rail service to all customers on or served from the Property, and to operate, use, construct, reconstruct, maintain, repair, replace, relocate and/or remove existing and/or future railroad, rail, and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations (the "Freight Easement.")

This Freight Easement is made subject to the retained Overhead Trackage Rights Agreement dated May 25, 2010, between Grantor and Grantee (the "Overhead Trackage Rights Agreement"). By its execution of this Freight Easement Deed and Agreement, Grantee, effective as of the Effective Date, for itself, successors and assigns, assumes and agrees to perform the obligations as a common carrier freight railroad under applicable federal laws and regulations and all obligations to the shipping public with respect to the Property. Grantee agrees to indemnify, defend and hold harmless Grantor from and against any losses, actions, causes of action, damages, costs or expenses arising out of or in any manner relating to Grantee's breach of any of Grantee's obligations under the foregoing sentence. With respect to the period of time prior to the Effective Date, Grantor agrees to indemnify, defend and hold harmless Grantee from and against any losses, actions, causes of action, damages, costs or expenses arising out of or in any manner relating to Grantor's failure

to perform the obligations as a common carrier freight railroad under applicable federal laws and regulations and all obligations to the shipping public with respect to the Property.

THIS FREIGHT EASEMENT ALSO MADE SUBJECT TO:

- (1) Standard exceptions of a Title Company in its title policies issued in the State of Oregon;
- (2) Special taxes or assessments for improvements not yet completed, if any;
- (3) Installments not due at the date hereof of any special tax or assessment for improvements completed, if any;
- (4) General taxes, if any, for the tax year prior to the year in which the Deed is delivered and subsequent years;
- (5) Building, building lines and use or occupancy restrictions, zoning and building laws or ordinances, and other laws, ordinances, requirements, limitations, restrictions, regulations and codes which are or may be imposed upon the property by any governmental authority having jurisdiction thereof;
- (6) Roads and highways, if any;
- (7) Judgment liens; however, any judgment against Grantor which may appear of record as a lien against the property shall be settled and satisfied by Grantor if and when it is judicially determined to be finally valid, and Grantor shall indemnify Grantee for all loss arising out of Grantor's failure to have such judgment lien so settled and satisfied. This provision shall survive the Closing and the delivery of the Deed;
- (8) Covenants, conditions and restrictions of record, and recorded licenses and easements;
- (9) The rights of any owner of the mineral estate in said property, if any.
- (10) Rights of any government agencies, public or quasi-public utilities for use, maintenance, repair, replacement and reconstruction of existing driveways, roads and highways, conduits, sewers, drains water mains, fiber optics cables and/or communication systems, gas lines, electric power lines, wires, and other utilities and easements;
- (11) Acts by, through or under Grantee;

The right, title and interest in the easement granted to Grantee herein over any portion of the Subject Property shall terminate, cease and determine upon the occurrence of all of the following: (i) Grantee's abandonment of rail freight transportation service over such portion of the Subject Property pursuant to a final order of the United States Surface Transportation Board ("STB Abandonment Order"); (ii) recording in the

offices of the Register of Deeds for the county or counties in which such portion of the Subject Property is located of a copy of the STB Abandonment Order; (iii) recording in the offices of the Register of Deeds for such county or counties of Grantee's notice of termination of the easement; and (iv) recording in the offices of the Register of Deeds for such county or counties of Grantee's notice of consummation of the STB Abandonment Order.

Grantee and its representatives, prior to the Effective Date, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Grantee and its representatives desire. Grantee shall take the freight easement in an "as is, where is" condition with all faults and without any express or implied warranties, including but not limited to any warranties of merchantability, fitness for particular purpose or volume or quality of traffic on the Property.

From and after the Effective Date, Grantee, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges Grantor, its affiliates, their employees, agents, officers, successors and assigns, and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, losses, costs, liabilities and expenses, including attorney's fees in any way arising out of or connected with the known or unknown, existing physical or environmental condition of the Property (including, without limitation, any contamination in, on, under or adjacent to the Property by any hazardous or toxic substance or material), or any federal, state or local law, ordinance, rule or regulation applicable thereto (including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Recovery Act) including, without limitation, personal injury to or death of persons whomsoever including employees, agents or contractors of Grantor, Grantee or any third party, and damage to property of Grantor, Grantee or any third party. The foregoing shall apply regardless of any negligence or strict liability of Grantor, its affiliates, their employees, agents, officers, successors or assigns.

Grantee, by its execution of this Easement Deed and Agreement, agrees for itself, its successors and assigns, to observe each and all of the terms, conditions, limitations, and covenants in this Freight Easement Deed and Agreement.

This Freight Easement Deed and Agreement constitutes covenants running with the land and the Freight Easement and shall bind and inure to the benefit of Grantor and Grantee and their respective successors and assigns.

In the event that certain lease, dated December 30, 1992, by and between Grantor and the Willamette & Pacific Railroad, Inc. ("WPRR Lease") is terminated with respect to all or any of Grantor's trackage between Milepost 687.6 and Corvallis, Oregon ("UP Trackage"), Grantor shall require that any successor lessee of the UP Trackage take assignment of that certain Interchange Agreement dated May 25, 2010, by and between Grantee and the Willamette & Pacific Railroad, Inc.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be duly executed as of the 25th day of May, 2010.

GRANTOR:

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

Attest:

C. J. Meyer
Assistant Secretary

(Seal)

By: Tom K. Jones

Title: Assistant Vice President - Real Estate

GRANTEE:

**ALBANY & EASTERN RAILROAD ,
COMPANY, a Oregon corporation**

Attest:

Secretary

(Seal)

By: _____

Title: _____

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be duly executed as of the 25th day of May, 2010.

GRANTOR:

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

Attest:

Assistant Secretary

(Seal)

By: _____
Title: _____

GRANTEE:

**ALBANY & EASTERN RAILROAD,
COMPANY, a Oregon corporation**

Attest:

Myles L. Tobin

Secretary

(Seal)

By: *[Signature]*
Title: *President*

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 25th day of May, 2010, before me, Notary Public in and for said County and State, personally appeared Tony K. Love and C.J. Meyer who are the AVP - Real Estate and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



Gregg A. Larsen
Notary Public

(Seal)

STATE OF OREGON)
) ss.
COUNTY OF BENTON)

On this 25th day of May, 2010, before me, Notary Public in and for said County and State, personally appeared Rick Franklin and _____ who are the President and the _____ Secretary, respectively, of Albany & Eastern Railroad Company, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Ginny Udey
Notary Public

(Seal)



Union Pacific Railroad Company

Benton County, Oregon

Exhibit "A"

All that portion of the West Side Branch, track and right of way, of the Union Pacific Railroad Company (formerly the Southern Pacific Transportation Company), as now located that extends northerly from railroad branch mile post 682.25, to mile post 687.60, and being situate in, over and across the following legal subdivisions of Benton County, Oregon:

| Subdivision | Section | Township | Range | Meridian |
|---|---------|----------|-------|------------|
| NE 1/4 | 3 | 13S | 5W | Willamette |
| J. M. Newlin D. L. C. Chas Hodges D. L. C. Thomas Norris D. L. C. #58 | 34 | 12S | 5W | Willamette |
| Thomas Norris D. L. C. #58 Samuel Gage D. L. C. #57 | 27 | 12S | 5W | Willamette |
| Samuel Gage D. L. C. #57 Harvey Young D. L. C. #56 | 22 | 12S | 5W | Willamette |
| Harvey Young D. L. C. #56 D. L. C. #48 David Butterfield D. L. C. #47 | 15 | 12S | 5W | Willamette |
| D. L. C. #48 David Butterfield D. L. C. #47 | 10 | 12S | 5W | Willamette |
| David Butterfield D. L. C. #47 J. C. Alexander D. L. C. #46 | 11 | 12S | 5W | Willamette |

Union Pacific Railroad Co.
Real Estate Department
Omaha, NE.
File 2341-96
3/ 15/ 2008 T.D.A.