

**LAW OFFICES OF  
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December 16, 2010

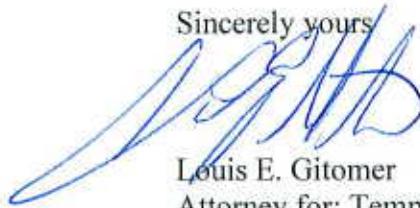
Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

**RE:** Finance Docket No. 35447, *Temple & Central Texas Railway, Inc. –  
Operation Exemption–City of Temple, TX*

Dear Ms. Brown:

Enclosed for efileing is a redacted version of the Railroad License and Operating Agreement between the City of Temple, Texas and the Temple & Central Texas Railway Company, Inc. Thank you for your assistance. If you have any questions, please call or email me.

Sincerely yours



Louis E. Gitomer  
Attorney for: Temple & Central Texas Railway,  
Inc.

Enclosure

## **RAILROAD LICENSE AND OPERATING AGREEMENT**

### **Former Georgetown Railroad Line Temple, Texas**

This Railroad License and Operating Agreement (“Agreement”) is made and entered into as of the 24 day of ~~November~~ November 2010 (“Agreement Date”), by and between the **CITY OF TEMPLE, TEXAS**, a Texas Municipal Corporation (“Licensor”) and **TEMPLE & CENTRAL TEXAS RAILWAY COMPANY, INC.**, a Texas Corporation (“TCTR” or “Licensee”).

#### **RECITALS:**

- A. Licensor has applied to the Surface Transportation Board for authority to acquire about 6.277 miles of rail line between “near Belton, TX, milepost 0.0, and Smith, TX, milepost 6.277, in Bell County, TX” (the “Line”) from the Georgetown Railroad Company.
- B. Licensor desires to provide for common carrier rail service to customers of rail service that may locate along the Line
- E. Licensee, a common carrier railroad company, desires to provide such service and shall obtain appropriate authorization from the Surface Transportation Board (“STB”) to operate along the Line.
- F. Upon receipt of such authority, Licensee will open discussions with Union Pacific Railway (UP) to make such necessary agreements to re-establish connection of the Line to the main line of UP and enter into the necessary Interchange Agreement with UP so that railroad traffic may be interchanged, delivered, received, and otherwise handled in accordance with standard railroad practices and the provisions of this Agreement.
- G. Licensor and Licensee will join in efforts to market the rail services on the Line to potential customers located or to be located along the Line and will share in revenues generated from rail service as set forth herein.
- H. Licensor and Licensee desire to set forth the terms and conditions pursuant to which Licensee will operate the Line.

#### **AGREEMENT:**

Now, therefore, it is mutually agreed by and between the parties hereto as follows:

1. LICENSOR GRANTS RIGHT.

1.1 In consideration of the covenants and agreements contained herein to be performed, kept and observed by Licensee, Licensor hereby grants to Licensee the exclusive license to provide Railroad Services (as herein defined) on the Railroad Facilities located on the Line. The "Railroad Facilities" are defined as (i) the trackage designated on the Line and the area within 15 feet of the centerline of each track, except where roadways or buildings, as permitted by Licensor, reduce such distance to less than 15 feet, (ii) railroad signs, switch mechanisms, other appurtenances associated with such trackage.

1.2 Licensor shall not grant to any third party any rights to provide Railroad Services on the Railroad Facilities on the Line during the Term of this Agreement.

2. LICENSEE'S OBLIGATION'S UNDER THIS AGREEMENT.

2.1 During the Term of this Agreement, Licensee agrees to perform the following services (collectively, "Railroad Services" (the term "Railroad Services" shall include any other specified services required by Licensee under this Agreement)):

(a) Safe, consistent and reliable rail service, which service shall be consistent with the providing of quality rail service as recognized in the rail service industry, to existing and potential customers located along the Line and assist in developing economic growth along the Line. All fees charged to users of services offered by Licensee shall be reasonably competitive with similar services offered by rail service providers in the rail service industry.

(b) Upon commencement of Rail Services, Licensee shall maintain adequate locomotives, equipment and staffing, as reasonable determined by Licensee, in order to maintain quality rail service as set forth above.

(c) Licensee shall use its best commercial efforts to develop the Railroad Facilities for (i) rail related services, which may include, but not be limited to, rail service to potential new customers, railcar switching, transload, bulk storage, warehouse and distribution services, container services, car cleaning, car storage, car repair, and locomotive repairs and remanufacture, and any other rail related services, provided that any such services shall be pre-approved by Licensor (such approval may require supplemental agreements entered into between Licensee and Licensor); and (ii) any other rail related activity to which the parties agree.

(d) Within a reasonable time following the Effective Date, Licensee shall conduct a site survey to identify any recommended track rehabilitation requirements within the Rail Facilities that should be undertaken to bring the trackage to FRA Class 1 standards.

(e) Licensee shall, upon commencement thereof, provide rail services as required by each individual customer that may locate along the Line.

(f) Following commencement of Rail Services, Licensee shall provide Licensor with monthly reports for (i) the number of carloads at the Railroad Facilities, (ii) number of switch moves at the Railroad Facilities, (iii) number of stored cars at the Railroad Facilities, (iv) the names of all users of the Railroad Facilities, (v) new business prospects and (v) any other information reasonably requested by Licensor regarding the Railroad Services.

(g) Following commencement of Rail Services on the Line, Licensee shall keep the Railroad Facilities in good repair and in a good and safe condition in conformity with the requirements of the regulations of the Federal Railroad Administration ("FRA"), as applicable, and all other applicable laws, codes or regulations. Such trackage will be maintained to FRA class I or better. For purposes of this section, such repairs include, but are not limited to, tie replacements, joint bar replacements, replacements of bolts, spikes, broken tie plates and fittings, and repair or replacement of cracked or broken rails, frogs and/or switch parts. In addition, Licensee shall keep the Railroad Facilities in a clean condition and keep all weeds mowed and trash and debris picked up and removed.

(h) Licensee shall provide reasonable assistance to Licensor and participate in, as requested by Licensor, any efforts to obtain federal, state or municipal funding for rail and related services on the Line.

(i) At such time as Rail Services commence, Licensee shall give all notices and conduct its operations so as to comply fully and completely with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Railroad Services, including those relating to safety, hazardous materials and equal employment opportunities; upon the request of Licensor, obtain all permits and licenses necessary for performance of the Railroad Services; pay all local, state and federal taxes; and pay all benefits, insurance, taxes and contributions for railroad retirement, Unemployment and Workers' Compensation which are measured by wages, salaries or other remunerations paid to Licensee's employees. Upon Licensor's request, Licensee shall furnish evidence satisfactory to Licensor that any and all of the foregoing obligations have been fulfilled.

(j) Following commencement of Rail Services, Licensee shall promptly remedy damage and loss caused in whole or in part by Licensee, a sub-contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Licensee is responsible, except damage or loss attributable to acts or omissions of Licensor (including other contractors, designers, and inspectors retained by Licensor, and their respective employees, subcontractors, and suppliers).

## 2.2 Payments under Agreement.

3. TERM, DEFAULT, and TERMINATION.

3.1 Subject to Section 2.1, this Agreement shall be effective on \_\_\_\_\_, 2010 (the "Effective Date"), and shall continue in full force and effect for a period of Five (5) years ("Term"). Provided that Licensee is not in default of its obligations under this Agreement as of the below specified time periods, Licensee shall have the right to extend the Term for two (2) consecutive periods of ten (10) years each by delivery of written notice to Licensor not less than one hundred and eighty days (180) prior to the end of the then existing Term (and not earlier than one (1) year prior to the end of the then existing Term). The failure of Licensee to deliver such written notice within the specified time period shall be deemed a waiver of the extension rights set forth in this Section.

3.2 If Licensee defaults in the performance of any covenant or agreement required by this Agreement for a period of thirty (30) days (fifteen (15) days for any monetary default) after written notice from the Licensor to the Licensee specifying such default, Licensor may, at its option, in addition to any other legal and/or equitable rights, terminate this Agreement by written notice; provided, however, that if such default cannot reasonably be cured within thirty (30) days (excluding monetary defaults), Licensor shall not terminate this Agreement if Licensee begins to cure the default within the thirty (30) day notice period and proceeds diligently to complete such cure; provided in no event shall such cure period exceed one hundred and eighty (180) days unless approved by Licensor, in writing. In addition to the foregoing rights, and without limiting such rights, upon any non-monetary default by Licensee, upon not less than ten (10) days prior written notice (except in the case of an emergency) to Licensee, Licensor may elect to cure such default and Licensee shall reimburse Licensor for all expenses incurred to complete such cure, which reimbursement shall be due within ten (10) days following Licensee's receipt of written demand from Licensor. The foregoing remedies are not exclusive; they are cumulative, in addition to any remedies now or later allowed by law, to any equitable remedies Licensor may have, and to any remedies Licensor may have under bankruptcy laws or laws affecting creditors' rights generally. The waiver by Licensor of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of the License Fee by Licensor subsequent to any breach hereof shall not be deemed a waiver of any proceeding breach other than a failure to pay the particular License Fee so accepted, regardless of Licensor's knowledge of any breach at the time of such acceptance of amount. Licensor shall not be deemed to have waived any term, covenant or condition unless Licensor gives Licensee written notice of such waiver.

4. INSURANCE.

4.1 Immediately upon commencement of Rail Services, the Licensee shall, at its own cost and expense, provide and procure Railroad Liability insurance and,

as applicable, Worker's Compensation or Federal Employer's Liability Act (FELA) insurance. This insurance shall be kept in force during the Term. All insurance required to be carried by Licensee hereunder shall be issued by responsible insurance companies which are rated by Best Insurance Reports as A:VII or better and licensed or authorized to do business in the State of Texas. Each policy shall name Licensor and any other party designated by Licensor as an additional insured, as their respective interests may appear. Each policy shall contain (i) a separation of insureds condition, and (ii) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Licensor and that any coverage carried by Licensor shall be excess insurance for Licensor's interest only. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Licensor on the Effective Date, and thereafter, within thirty (30) days after any demand by Licensor therefor. Licensor may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Licensee hereunder. No such policy shall be cancelable, materially changed or reduced in coverage except after thirty (30) days' written notice to Licensor and Licensor's lender. Licensee shall furnish Licensor with a certificate of renewal of any such policy at least ten (10) days prior to the expiration thereof. Licensee agrees that if Licensee does not take out and maintain such insurance, Licensor may (but shall not be required to) procure said insurance on Licensee's behalf and charge the Licensee the premiums, which shall be payable upon demand.

4.2 The Railroad Liability insurance providing bodily injury, including death, personal injury and property damage coverage shall have a combined single limit of at least \$5,000,000 each occurrence or claim and at all times an unimpaired aggregate limit of at least \$10,000,000 (such amounts shall be increased to customary industry standard amounts, as reasonably determined by Licensor, upon each extension of the Term). This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this Agreement, coverage for construction or demolition work on or near railroad tracks, and any other coverage requested by Licensor which are customarily required in the railroad service industry.

4.3 Workers' Compensation or FELA insurance shall cover the statutory liability as determined by the compensation laws of the State of Texas or FELA, as applicable, with a limit of at least \$1,000,000.

4.4 The Licensor shall, at its own cost and expense, provide and procure General Public Liability insurance to be kept in force during the Term. The General Public Liability insurance procured by the Licensor providing for bodily injury, including death, personal injury and property damage coverage shall have a combined single limit of at least \$5,000,000 each occurrence or claim and at all times an unimpaired aggregate limit of at least \$10,000,000.

5. NOTICES. All notices required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown below or such successor addresses as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail

return receipt requested, with confirmed receipt, or by facsimile transmission, addressed to the officers and addresses shown below. All notices shall be effective on the day following confirmed receipt of the letter.

Temple & Central Texas Railway Company, Inc.  
C/O Patriot Rail Corp.  
One Boca Place  
2255 Glades Road, Suite 342W  
Boca Raton, FL 33431  
(561) 443-5300  
Fax: (561) 443-5319

City of Temple, Texas  
2 North Main Street  
Temple, Texas 76501  
(254) 298-5600  
Fax: (254) 298-5459  
Attn: City Manager

6. CLAIMS AND LIENS FOR LABOR AND MATERIAL. The Licensee shall fully pay, when due and before any lien shall attach to the Railroad Facilities, if the same may lawfully be asserted, for all materials joined or affixed to, and labor performed upon, the property of the Licensor in connection with the maintenance, repair, and operation of the Railroad Facilities, and shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be created or enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee.

7. PROPERTY TAXES. The Licensee shall not be responsible or liable for any property or other taxes assessed on the Railroad Facilities by any governmental authority. Licensor shall indemnify, defend and hold Licensee harmless for any property taxes on the Railroad Facilities that are assessed to and/or paid by Licensee.

8. INDEMNITY.

8.1 To the fullest extent permitted by law, the Licensee shall indemnify, defend, and hold harmless Licensor, its consultants, subconsultants, related companies or agencies, and the officers, directors, partners, insurers, attorneys, shareholders, board members, employees, and agents of each and any of them ("**Indemnified Parties**"), against and from any and all claims, liabilities and damages arising under, by reason of, related, or incidental to this Agreement or any negligent performance of the Railroad Services, to the extent not caused by the negligence or willful misconduct of the Indemnified Parties. Such indemnification by the Licensee shall include, but not be limited to, the following:

(a) Liability or claims of liability arising by reason of injury or damage to persons (including death) and/or property (tangible or intangible) occurring as

a result of Railroad Services done pursuant to the terms of this Agreement;

(b) Liability or claims resulting directly or indirectly from the negligence or carelessness of the Licensee, its employees, or agents in the performance of the Railroad Services, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the Licensee, its employees, or agents;

(c) Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of the Licensee's, subcontractor's, or supplier's own employees or agents engaged in the Railroad Services resulting in actions brought by or on behalf of such employees against the Indemnified Parties;

(d) Liability or claims arising directly or indirectly from or based on the violation of any law or regulation, whether by the Licensee, its employees, or agents;

(e) Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the Indemnified Parties or any other parties by the Licensee, its employees, or agents;

(f) Liability or claims arising directly or indirectly from the willful misconduct of the Licensee, its employees, or agents;

(g) Liability or claims arising directly or indirectly from any breach of the obligations assumed in this Agreement by the Licensee; and

(h) Liability or claims arising directly or indirectly from, relating to, or resulting from a hazardous condition created by the Licensee, subcontractor, suppliers, or any of their employees or agents.

8.2 To the fullest extent permitted by law, the licensor shall indemnify, defend and hold harmless licensee, its consultants, sub-consultants, related companies or agencies, and the officers, directors, partners, insurers, attorneys, shareholders, board members, employees, and agents of each and any of them ("**Indemnified Parties**"), 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 fees in any way arising out of or connected with the physical or environmental condition of the Line prior to the date hereof (including, without limitation, any contamination in, on, under or adjacent to the Line by any hazardous or toxic substances or materials), or any federal, state or local law, ordinance, rule or regulation applicable thereto (including, without limitation, The Toxic Substances Control Act, The Comprehensive Environmental Response, Compensation and Liability Act, and The Resource Conservation and Recovery Act), including, without limitation, personal injury to or death of persons whomsoever including employees, agents or contractors of Licensee, Licensor or third parties, and damage to property of Licensee, Licensor or third parties.

9. REMOVAL OF LICENSEE EQUIPMENT, PERSONNEL AND PROPERTY UPON TERMINATION OF LICENSE. Prior to or upon the termination of this Agreement, howsoever, the Licensee shall, at Licensee's sole expense, remove its equipment, personnel, and other property from Licensor's premises and shall restore, to the reasonable satisfaction of the Licensor, such portions of such premises to as good a condition as they were in at the beginning of this Agreement, excepting normal wear and tear.

10. HAZARDOUS SUBSTANCES AND WASTES.

10.1 For the purpose of this Section, "**Hazardous Materials**" shall mean any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation, and "**Hazardous Materials Laws**" shall mean all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.

10.2 Licensee shall comply with Hazardous Material Laws in performing its Railroad Services. Without first obtaining the Licensor's written permission Licensee shall not treat or dispose of Hazardous Materials on the Railroad Facilities. If such permission is granted the Licensee shall obtain any necessary permits and identification numbers and provide the Licensor the identification numbers and copies of the permits. Licensee shall assume all responsibility for and shall indemnify, defend and hold harmless Licensor against all costs and claims associated with (i) a release or leak of any such Hazardous Materials caused by Licensee unless such event was caused by the negligence or willful misconduct of Licensor.

10.3 In addition, Licensee shall not install any above ground or underground storage tanks without first obtaining the Licensor's written permission. If such permission is granted the Licensee shall obtain any necessary permits, notify the proper authorities, and provide the Licensor with copies of such permits and notifications. Furthermore, Licensee shall assume all responsibility for and shall indemnify, defend and hold harmless Licensor against all costs and claims associated with a release or leak of any tank contents, unless such event was caused by the negligence or willful misconduct of Licensor.

10.4 If Licensee knows, or has reasonable cause to believe, that a Hazardous Material which have not been approved by Licensor have come to be located under or about the Line, other than as specifically provided herein or as previously

consented to by Licensor, Licensee shall immediately give Licensor written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such hazardous substance.

10.5 Licensee shall not be liable or responsible for any Hazardous Materials present at the Line prior to the Effective Date.

## 11. STATUS OF LICENSEE:

11.1 It is understood and agreed that Licensee (including Licensee's employees) is an independent Licensee and that no relationship of employer-employee exists between the parties hereto. Licensee's assigned personnel shall not be entitled to any benefits payable to employees of Licensor. Licensor is not required to make any deductions or withholdings from the compensation payable to Licensee under the provisions of this Agreement; and as an independent Licensee, Licensee hereby indemnifies and holds Licensor harmless from any and all claims that may be made against Licensor based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

11.2 If, in the performance of this Agreement, any third persons are employed by Licensee, such persons shall be entirely and exclusively under the direction, supervision, and control of Licensee. All terms of employment, including hours, wages, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Licensee, and Licensor shall have no right or authority over such persons or the terms of such employment.

11.3 It is further understood and agreed that as an independent Licensee and not an employee of Licensor, neither the Licensee nor Licensee's assigned personnel shall have any entitlement as a Licensor employee, nor the right to act on behalf of Licensor in any capacity whatsoever as agent, or to bind Licensor to any obligation whatsoever. Licensee, or its employees shall not be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by Licensor to employees of Licensor.

11.4 It is further understood and agreed that Licensee must issue W-2 and 941 Forms for income and employment tax purposes for all of Licensee's assigned personnel under the terms and conditions of this Agreement.

## 12. DISCONTINUANCE OR OTHER REGULATORY ACTIVITIES.

12.1 Upon the termination of this Agreement, Licensee shall file for necessary authorization from the STB or other regulatory authority, as may be appropriate, to obtain abandonment authority. Licensor shall bear the cost of such abandonment proceedings including, but not limited to filing fees and attorney's fees.

12.2 Licensee shall be solely responsible for any protective conditions or benefits imposed by any judicial, regulatory or governmental body, for the benefit of Licensee's employees or the employees of any subsidiary or affiliate of Licensee, or are otherwise required to be paid to such employees under Licensee's collective bargaining or other agreements, howsoever arising, including as a consequence of the approval of this Agreement, the exercise or performance by Licensor or Licensee of any rights or obligations hereunder, the termination of this Agreement, or Licensee's discontinuance of operations on the Rail Facilities.

12.3 At such time as such abandonment is authorized by the appropriate government agency or agencies, Licensor shall transfer title to the track and other track material located on the Line to Licensee. Licensee shall thereafter be given a reasonable time to remove and dispose of the track and other track material.

13. WAIVER OF BREACH. Except as set forth in this Agreement, the waiver by a party of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the other party shall in no way impair the right of the first party to avail itself of any subsequent breach thereof.

14. CONSENT. Except as set forth in this Agreement, wherever the consent, approval, judgment or determination of a party is required or permitted under this License, that party shall exercise good faith and reasonable business judgment in granting or withholding such consent or approval or in making such judgment or determination and shall not unreasonably withhold or delay its consent, approval, judgment or determination.

15. ENTIRE AGREEMENT. This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed herein.

16. MODIFICATION TO AGREEMENT. The provisions of this Agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this Agreement. Any agreement made after the Agreement Date and related to the subject matter contained herein shall be ineffective to modify this Agreement in any respect unless in writing and signed.

17. LICENSE NOT TO BE ASSIGNED. The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, which may be withheld in Licensor's sole discretion (Licensor agrees to not unreasonably withhold its consent to the collateral pledge of Licensee's interest in this Agreement to its lender), and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

18. **SUCCESSORS AND ASSIGNS.** Subject to the provisions of Section 21 hereof, this License shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

19. **CHOICE OF LAW.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Texas.

20. **FORCE MAJEURE.** Neither party shall be deemed to be in default of this Agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, lockouts, casualties, insurrections, acts of God, war, terrorist acts, court orders, Railroad Services stoppages, nuclear incidents, riots, public disorder, criminal acts or acts or omissions of other parties or entities, governmental regulations, or other such causes beyond the reasonable control of said party.

21. **LIMITATION ON LIABILITY.** Each of the Licensee and the Licensor agrees that the obligations incurred by the other party under this Agreement shall not constitute personal obligations of the members, partners, joint venturers, directors, officers, trustees, employees, policyholders or any other principals or representatives of such other party. Licensee further agrees that its recourse against the Licensor under this Agreement (including, without limitation, with respect to Licensor's indemnity of Licensee) shall be strictly limited to the Licensor's interest in the Rail Facilities, and that the Licensee shall have no recourse to any other asset of the Licensor, or of any member, partner, joint venturer, director, officer, trustee, employee, policyholder or any other principal or representative of the Licensor for the satisfaction of any of the Licensor's obligations hereunder.

22. **ARBITRATION.**

22.1 Any dispute arising between the parties hereto with respect to any of the provisions hereof which cannot be settled by the parties themselves within sixty (60) calendar days of either party giving the other notice of the dispute shall be settled, such question or controversy shall be submitted to and settled by a single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party. The arbitrator so selected shall be a person experienced in railroad matters and transportation law. If the parties are unable to agree on a single arbitrator, the party demanding such arbitration (the "Demanding Party") shall notify the other party (the "Noticed Party") in writing of such demand, stating the question or questions to be submitted for decision and nominating one similarly qualified arbitrator. Within twenty (20) days after receipt of said notice, the Noticed Party shall appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should the Noticed Party fail within twenty (20) days after receipt of such notice to name its similarly qualified arbitrator, the arbitrator for the Demanding Party shall select one for the Noticed Party so failing. The arbitrators so chosen shall select one similarly qualified additional arbitrator to compete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the \_\_\_\_\_ District of Texas.

22.2 Upon selection of the arbitrator, said arbitrator shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If the arbitrator declines or fails to act, the parties by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator shall issue the first decision or award upon any question submitted for arbitration, performance under this License Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

22.3 Each party shall pay the compensation, costs and expenses of its own witnesses, exhibits and counsel. The compensation, cost, and expenses of the single arbitrator shall be paid in equal shares by the parties.

22.4 The books, records, documents (however recorded or stored) of the parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator.

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

City of Temple, Texas

By Kim Foutz R. Jentz

Its: acting city mgr

Temple & Central Texas Railway Company, Inc.

By: Blay G. Gustin

Its: President & CEO

Approved as to form:

David Gardner  
Deputy City Attorney