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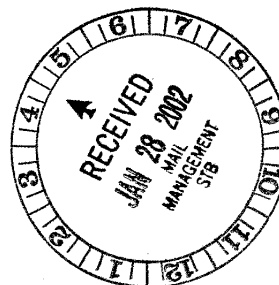
1800 Massachusetts Avenue, NW
Suite 200
Washington, DC 20036-1221
202.778.9000
www.kl.com

Tracie D. Spear
202.778.9390
Fax: 202.778.9100
tspear@kl.com

January 28, 2002

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



**Re: Finance Docket No. 34170
Utah Transit Authority - Acquisition Exemption --
Certain Assets of Union Pacific Railroad Company**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Utah Transit Authority** and a **Motion to Dismiss the Verified Notice of Exemption** dated January 28, 2002. A check in the amount of \$1,300.00, representing the appropriate fee for the Notice of Exemption, and a 3.5-inch diskette containing the text of the Notice and the Motion in WordPerfect 5.1 format also are enclosed. By separate letter being submitted herewith, we are requesting a waiver and refund of the enclosed filing fee. In addition, please note that we are requesting expedited consideration for the Motion for the reasons set forth therein.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Tracie D. Spear

Tracie D. Spear
Counsel for Utah Transit Authority

Enclosures

FILED

JAN 28 2002

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Office of the Secretary**

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1800 Massachusetts Avenue, NW
Suite 200
Washington, DC 20036-1221
202.778.9000
www.kl.com

Edward J. Fishman
202.778.9456
Fax: 202.778.9100
efishman@kl.com

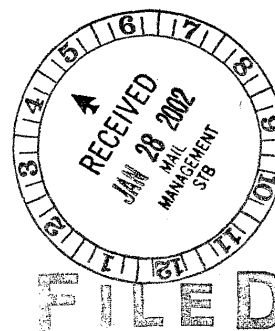
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**SURFACE
TRANSPORTATION BOARD**

**Re: Finance Docket No. 34170
Utah Transit Authority - Acquisition Exemption --
Certain Assets of Union Pacific Railroad Company**

Dear Secretary Williams:

This letter constitutes a request for waiver under 49 C.F.R. § 1002.2(e) of the \$1,300 filing fee submitted by Utah Transit Authority ("UTA") in connection with the verified notice of exemption that is being filed in the above-captioned proceeding. For the reasons discussed herein, UTA believes that it is entitled to a waiver and refund of that filing fee.

UTA is a public transit district created under Utah law. Among other functions, UTA is responsible for planning, financing, managing and developing certain passenger rail systems in the State of Utah. In furtherance of this responsibility, UTA has entered into an agreement with the Union Pacific Railroad Company ("UP") to acquire certain UP rights-of-way and related improvements in the State of Utah. UTA is acquiring this property in order to explore the feasibility of conducting passenger rail service thereon in the future. UTA has filed a motion to dismiss the notice of exemption in order to obtain a jurisdictional determination that its acquisition of the UP rights-of-way will not make UTA a rail carrier subject to the Board's jurisdiction.

Under 49 C.F.R. § 1002.2(e)(1), "filing fees are waived for an application or other proceeding which is filed by a federal government agency, or a state or local government entity." The regulation specifies that, for purposes of the fee waiver, the term "government entity" does not include a "quasi-governmental corporation or government-subsidized transportation

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company.” Id. In a recently issued policy statement, the Surface Transportation Board (“Board”) indicated that it would henceforth apply the fee waiver rule cited above as originally intended by its predecessor, the Interstate Commerce Commission (“ICC”). See Ex Parte No. 542 (Sub-No. 6), Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services- Policy Statement (STB served Dec. 6, 2000)(“Policy Statement”). In this regard, the Board stated that the fee waiver rule will apply to state and local government entities “only when they file on behalf of the general public” and that any state or local government entity filing in a proprietary capacity as an owner or proposed owner of a carrier or as a shipper will not qualify for the fee waiver. Id.

UTA respectfully submits that it is entitled to the fee waiver under 49 C.F.R. § 1002.2(e)(1). UTA is a public entity formed under the laws of the State of Utah. It is not a quasi-government corporation or government-subsidized transportation company. It is a state government entity that is responsible, among other functions, for managing and developing certain passenger rail systems in the State of Utah. As part of its public mandate, UTA is seeking Board authority to acquire right-of-way and related improvements from UP in order to explore the feasibility of conducting passenger rail operations thereon in the future. UTA filed the notice of exemption at issue in furtherance of this public purpose, and has filed a motion to dismiss the notice in order to obtain a jurisdictional determination that it is not subject to Board jurisdiction. The benefits from participation in this proceeding will flow to the general public in the State of Utah.

UTA is not acquiring the UP property in a proprietary capacity as a freight railroad or in an effort to facilitate continued freight rail service in these rail corridors. UP will continue to provide freight rail service on these lines. Therefore, UTA is not acting in the same capacity as a privately owned transportation entity. See Regulations Governing Fees For Services, 1 I.C.C.2d 60, 71 (1984)(concluding that governmental agency that owns or subsidizes transportation entity and comes before the agency in the same capacity as a privately owned transportation entity should be required to pay entire fee). For the above reasons, UTA submits that it is entitled to a waiver and refund of the filing fee.

If you have any questions about this request or require further information, please do not hesitate to contact the undersigned. Thank you for your consideration of this matter.

Respectfully submitted,



Edward J. Fishman
Counsel for Utah Transit Authority

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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of the Secretary

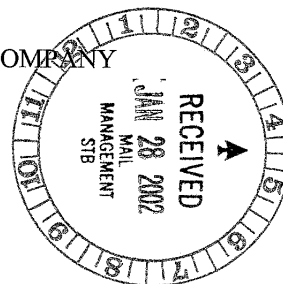
JAN 29 2002

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FINANCE DOCKET NO. 34170

UTAH TRANSIT AUTHORITY
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY

**UTAH TRANSIT AUTHORITY MOTION
TO DISMISS NOTICE OF EXEMPTION**



EXPEDITED CONSIDERATION REQUESTED

Kevin M. Sheys
Edward J. Fishman
Tracie D. Spear
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue -- 2nd Floor
Washington, DC 20036
(202) 778-9000

**ATTORNEYS FOR UTAH TRANSIT
AUTHORITY**

Dated: January 28, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34170

UTAH TRANSIT AUTHORITY
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY

**UTAH TRANSIT AUTHORITY MOTION
TO DISMISS NOTICE OF EXEMPTION**

I. INTRODUCTION

Pursuant to a Purchase and Sale Agreement between Utah Transit Authority ("UTA") and Union Pacific Railroad Company ("UP"), UTA will acquire UP's right, title and interest in certain railroad rights-of-way and related improvements located in the State of Utah. As relevant here, UTA will acquire the following segments of UP right-of-way totaling approximately 62.77 route miles: 1) the Salt Lake Subdivision - between approximately M.P. 754.31 in Bountiful, Utah and approximately M.P. 778.00 in Ogden, Utah; 2) the Provo Industrial Lead - between approximately M.P. P-775.23 in Point of Mountain, Utah and approximately M.P. P-762.00 in Hardy, Utah; 3) the Sharp Subdivision - between approximately M.P. P-752.41 in Provo, Utah and approximately M.P. P-757.25 in Lakota Junction, Utah; 4) the Tintic Industrial Lead - between approximately M.P. 0.00 in Springville, Utah and approximately M.P. 13.06 in Payson, Utah; 5) the Sugarhouse Spur - between approximately M.P. 0.00 and approximately M.P. 2.74 in Salt Lake City, Utah; and 6) the Bingham Industrial Lead - between approximately M.P. 6.60 in Bagley, Utah and approximately M.P. 11.81 (collectively, the "Subject Lines"). UP will retain

an exclusive, perpetual easement for purposes of providing freight rail service on the Subject Lines.¹

UTA has filed concurrently herewith a Verified Notice of Exemption (the "Notice") pursuant to 49 C.F.R. Section 1150.31, et seq. to acquire the Subject Lines. UTA hereby moves the Board to dismiss the Notice. UTA submits that, because of the nature and terms of the proposed transaction as described in the Notice and as set forth in the proposed Trackage Rights Agreement ("Trackage Rights Agreement") and proposed Quitclaim Deed ("Quitclaim Deed") attached hereto, this transaction is not subject to Board jurisdiction and consummation of the transaction will not make UTA a rail carrier.

II. STATEMENT OF FACTS

UTA is a non-carrier and a public transit district organized under Title 17A, Chapter 2, Part 10 of the Utah Code Annotated 1953. The jurisdictions presently served by UTA are Salt Lake, Davis, Weber, Utah, Box Elder and Tooele Counties. Currently, UTA provides light rail service as well as bus service. UTA receives funding from the federal government, state government, and locally through a sales tax.

¹ As part of the same transaction, UTA also will acquire UP's right, title and interest in the following portions of the width of UP rail corridor rights-of-way: 1) the easterly 20.00 feet of the Salt Lake Subdivision - between approximately M.P. 782.48 in Salt Lake City, Utah and approximately M.P. 818.05 in Ogden, Utah; 2) the westerly 20.00 feet of the Provo Subdivision - between approximately MP 705.71 at Lakota Junction and approximately M.P. 729.29; 3) the easterly 20.00 feet of the Provo Subdivision - between approximately M.P. 729.50 and approximately M.P. 745.50 in Salt Lake City, Utah; 4) the westerly 20.00 feet of the Sharp Subdivision - between approximately M.P. P-752.41 in Provo, Utah and approximately M.P. 750.18; 5) the easterly 20.00 feet of the Sharp Subdivision - between approximately M.P. P-749.99 in Provo, Utah and approximately M.P. 745.82 in Spanish Fork, Utah; and 6) the northerly 35.00 feet of the Bingham Industrial Lead between approximately M.P. 0.00 in Midvale, Utah and approximately M.P. 6.60 at Bagley, Utah. The acquisition of these portions of rail corridor rights-of-way does not constitute an acquisition of a line of railroad, and therefore is not subject to STB jurisdiction. See Sacramento Regional Transit District--Petition For Declaratory Order Regarding Carrier Status, Finance Docket No. 33796 (STB served July 5, 2000) (acquisition of railroad's excess portion of right-of-way for purpose of providing commuter passenger service does not require Board approval or otherwise make it a carrier subject to the Board's jurisdiction); Southern Pacific Transportation Company - Abandonment Exemption - Los Angeles County, CA, 9 I.C.C.2d 385, 390 (1993) ("[w]e have never asserted jurisdiction over the ability of railroads to allow non-carriers to conduct non-jurisdictional activities, such as rail commuter service, on their excess real estate when regulated rail service will not be affected thereby.").

After the acquisition, UTA plans to evaluate the feasibility of passenger rail operations over the Subject Lines. Under the Purchase and Sale Agreement, UTA will acquire, inter alia, UP's right, title and interest in the Subject Lines and certain associated improvements. UP will retain an exclusive, perpetual easement to use the Subject Lines to conduct freight rail service (the "Freight Easement"). See Quitclaim Deed, Paragraph (d).²

Pursuant to the Freight Easement, UP will retain the right 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 [UP's] freight rail operations." In addition, UP will retain the right to "construct, maintain and operate freight rail sidings and related facilities upon . . . the Property as reasonably necessary for [UP's] use and enjoyment of the [Freight Easement]." Thus, UP will retain the property rights necessary to conduct its rail carrier operations on the Subject Lines.

UTA and UP will enter into a Trackage Rights Agreement³ to govern their respective rights and obligations with respect to rail operations on the Subject Lines.⁴ The Trackage Rights Agreement provides that UTA will not have the right to operate freight rail service on any portion of the Subject Lines. See Trackage Rights Agreement, Section 2. The Trackage Rights Agreement gives UP the exclusive right to:

² The proposed Quitclaim Deed is attached hereto as Exhibit B.

³ The proposed Trackage Rights Agreement is attached hereto as Exhibit A. Although styled as a "Trackage Rights Agreement," Exhibit A is not an agreement between two rail carriers subject to 49 U.S.C. §11323. If there are any material changes to the Trackage Rights Agreement or the Quitclaim Deed prior to consummation of the proposed transaction, UTA will so advise the Board in writing.

⁴ The Trackage Rights Agreement does not apply to those portions of the Subject Lines on the Sugarhouse Spur and the Bingham Industrial Lead. However, UTA and UP intend to enter into substantially similar agreements with respect to such portions. For convenience herein, we use the term "Trackage Rights Agreement" to refer collectively to the Trackage Rights Agreement attached hereto and such substantially similar agreements applicable to the Sugarhouse Spur and the Bingham Industrial Lead.

- (a) set out, pick up or store freight cars, or switch freight cars upon the [Subject Lines], or any part thereof, as necessary...; and
- (b) serve any industry, team or house track now existing or hereafter requiring rail service along the [Subject Lines]; and
- (c) construct, maintain, replace, remove, use and operate existing and new industry tracks and related facilities on and across the [Subject Line] in order to fulfill UP's common carrier obligation to new and existing shippers and receivers of freight....

Trackage Rights Agreement, Section 2(a)-(c). UP currently provides freight service over the Subject Lines and will continue to do so after the proposed transaction is consummated.

Initially, UP will be responsible for dispatching trains over the Subject Lines. See General Conditions to Trackage Rights Agreement (the "General Conditions"), Sections 1.8 and 2.4.⁵ After UTA commences passenger operations on a segment of the Subject Lines (hereinafter sometimes referred to as the "UTA Changeover"), UTA will assume responsibility for dispatching on that segment. See General Conditions, Sections 1.8 and 2.4.

Section 2.4 of the General Conditions provides in pertinent part as follows:

The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of the Responsible Party,⁶ the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of the Responsible Party's authorized representatives and in accordance with such reasonable operating rules as the Responsible Party shall from time to time institute, but in the operation (including dispatching) and maintenance of the Joint Trackage, UP and UTA shall be treated equally. . . .

⁵ The General Conditions are incorporated by reference in the Trackage Rights Agreement and attached as Exhibit B thereto.

⁶ The TRA allocates various responsibilities to the "Responsible Party." The Responsible Party is defined as "UP before the UTA Changeover as to a segment of the [Subject Lines], and UTA after the UTA Changeover as to a segment of the [Subject Lines]." See General Conditions, Section 1.8.

General Conditions, Section 2.4.⁷

Generally, UTA and UP trains will operate on the Subject Lines during the same time periods and will be treated equally with respect to dispatching. However, UTA and UP will establish exclusive passenger and freight windows for operations over the segment of the Subject Lines between Point of Mountain, Utah (M.P. P-775.23) and Lindon, Utah (M.P. P-762.00). UTA will have the exclusive right to operate on that segment between the hours of 5:01 a.m. and 11:59 p.m., Monday through Friday, and all day Saturday and Sunday, and UP will have the exclusive right to operate on that segment between the hours of 12:00 midnight and 5:00 a.m., Monday through Friday, unless special permission is given by the dispatcher. See General Conditions, Section 2.4.⁸

Initially, UP will be responsible for maintenance, renewal and repair of the Subject Lines. After UTA commences passenger operations on a segment of the Subject Lines, UTA will assume responsibility for maintenance, repair and renewal on that segment. Section 2.1 of the General Conditions provides that the Responsible Party “shall have sole charge of the maintenance, renewal and repair of the [Subject Lines] with its own supervisors, labor, materials and equipment.” The Responsible Party will be required to maintain the Subject Lines on a consistent basis at no less than the track standard designated in the UP timetable in effect on the date that UTA gives notice of its intention to commence operations or construction on the Subject Lines. See General Conditions, Section 2.2. In addition, Section 2.3 of the General Conditions requires that the Responsible Party use reasonable and customary care, skill and

⁷ The only exception is with respect to the segment of the Subject Lines that extends between Point of Mountain, Utah (M.P. P-775.23) and Lindon, Utah (M.P. P-762.00), described below.

⁸ UTA most likely will operate light rail service on the Sugarhouse Spur. Therefore, the trackage rights agreement to be entered into with respect to the Sugarhouse Spur will provide in a similar fashion for temporal separation between UP and UTA operations with UP operating during a defined freight window.

diligence in the maintenance of the Subject Lines. Once UTA assumes responsibility for maintenance, it will be required to make its best efforts “to ensure that UP is given the same advance notice of maintenance plans and schedules as is provided to the UTA’s personnel.” See General Conditions, Section 2.3.

The Trackage Rights Agreement also specifies the rights and obligations of the parties with respect to changes in and/or additions to the Subject Lines. See General Conditions, Sections 2.1 and 2.2. Section 2.1 of the General Conditions states:

The Responsible Party...shall make such Changes in and/or Additions to the [Subject Lines] as shall be required by any law, rule, regulation or ordinance...[or] as the Responsible Party, in its sole discretion, shall deem necessary or desirable, provided that no material interference with the safe and efficient operation of the [Subject Lines] or UP’s industry tracks will result.

Under the Trackage Rights Agreement, UP will retain the right to make changes in and/or additions to the Subject Lines, including the right to replace or remove existing and new industry tracks and related facilities on and across the Subject Lines and the right to improve the condition of the Subject Lines to a condition in excess of the designated track standard. If UTA elects to make changes in and/or additions to the Subject Lines, it will be required to ensure that “no material interference with the safe and efficient operation of the [Subject Lines] or UP’s industry tracks will result.” See General Conditions, Section 2.1.

Under the applicable agreements, UTA will obtain the property and contract rights it requires to operate passenger service on the Subject Lines. UP will retain the property and contract rights it requires to continue to conduct its freight rail operations on the Subject Lines. Although it will own the Subject Lines, UTA will not have sufficient property or contract rights to materially interfere with UP’s freight rail operations or UP’s ability to continue to meet its rail

carrier obligations. UTA will not conduct freight rail operations on the Subject Lines, and it will not hold itself out as willing or able to do so.

III. ARGUMENT

Under 49 U.S.C. Section 10901, the Board has exclusive jurisdiction over the acquisition of a railroad line by a non-carrier (including a public entity such as UTA), where common carrier rights and obligations also are being transferred. Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Whether a particular transaction is an acquisition of a railroad line depends on whether the acquiring company is holding itself out to provide common carrier rail service and has the ability to provide common carrier rail service. Status of Bush Universal, Inc., 342 I.C.C. 550, 564 (1973). This is an objective test; the Board (like the former Interstate Commerce Commission ("ICC")) looks at what the acquiring entity will do as opposed to how it labels itself. Los Angeles County Transportation Commission -- Petition for Exemption -- Acquisition from Union Pacific Railroad Company, Finance Docket No. 32374 (STB served July 23, 1996) ("LACTC/UP") at 5; see United States v. California, 297 U.S. 175, 181 (1936).

Subtitle IV of Title 49 defines "railroad" to include "... the road used by a rail carrier and owned by it or operated under an agreement" 49 U.S.C. § 10102(6)(B). It defines "rail carrier" as a "person providing common carrier railroad transportation for compensation" 49 U.S.C. § 10102(5). The typical acquisition of a railroad line includes the conveyance of a property interest sufficient to permit the buyer to provide (or at least control) railroad transportation for compensation, and that interest forms the basis of the Board's jurisdiction over the transaction and the buyer. However, the Board (and the former ICC) have consistently

recognized that under certain circumstances the acquisition of the physical assets of a rail line is not subject to STB/ICC jurisdiction and does not make the buyer a rail carrier. Such precedent is applicable to and should govern the transaction proposed here.

In State of Maine, Department of Transportation -- Acquisition and Operation Exemption -- Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991) ("State of Maine"), the State of Maine, acting by and through its Department of Transportation ("MDOT"), sought an exemption to acquire certain railroad right-of-way and trackage from Maine Central Railroad Company ("MEC"), subject to MEC's retained easement for common carrier railroad operations. MDOT acquired the line for possible establishment of a public transit system using the acquired assets. MEC's retained easement included access rights for maintenance and renewal of the line and was permanent. As a result, MDOT's acquisition of the line's underlying physical assets did not impair freight railroad operations. The ICC found that no common carrier rights or obligations were transferred to MDOT, because nothing in the transaction disabled MEC's affiliate and lessee, Springfield Terminal Railroad ("STR"), from meeting its common carrier obligation, and STR could not cease to offer service on the line without ICC approval. For these reasons, the ICC saw "no reason to impose upon the purchaser of the underlying rail assets an additional common carrier obligation." State of Maine, 8 I.C.C.2d at 837.

In LACTC/UP, the Los Angeles County Transportation Commission ("LACTC") acquired and leased certain rail lines from UP for the purpose of establishing commuter rail service in the Los Angeles area. UP retained a freight rail operating easement that gave priority to LACTC's commuter operations in the event of any conflict with freight service. The easement required UP's service to be conducted in a manner that minimized disruption with all commuter operations and UP's right to conduct competitive or time sensitive service was

effective only during periods other than LACTC's scheduled service. LACTC/UP at 3. LACTC was given control of dispatching and maintenance on the line. Nonetheless, the Board found that other provisions of the easement agreement and the low volume of freight traffic on the rail line made it unlikely that freight operations would be unduly affected by the commuter rail priority. Accordingly, the Board held that LACTC's acquisition did not require Board approval. LACTC/UP at 6.

In Sacramento-Placerville Transportation Corridor Joint Powers Authority -- Acquisition Exemption -- Certain Assets of Southern Pacific Transportation Company, Finance Docket No. 33046 (STB served October 28, 1996), the Joint Powers Authority ("JPA") acquired the right-of-way and all improvements on a Southern Pacific ("SP") line segment. SP retained an exclusive and perpetual freight easement over the line. Under the terms of a shared use agreement, JPA was responsible for maintenance, management and dispatching on the shared track encumbered by the easement. SP had the right to monitor dispatching on the shared track, had the right to maintain the shared track if JPA failed to maintain it at FRA Class I standards, and was responsible for maintenance of track which JPA did not use. The Board ruled that JPA did not acquire carrier status in the transaction because it was unlikely that SP's freight service would be unduly affected. The Board noted that although JPA would control maintenance and dispatching on the shared track, SP's exclusive freight operating windows were of ample frequency and duration for SP to meet its common carrier obligations. The Board also noted that JPA had no power to require SP to discontinue or curtail freight service on the line. Accordingly, the Board held that JPA's acquisition was not subject to STB jurisdiction.

In Utah Transit Authority -- Acquisition Exemption -- Line of Union Pacific Railroad Company, Finance Docket No. 32186 (ICC decided December 23, 1992), UTA sought an

exemption and simultaneously filed a motion to dismiss the notice of exemption for acquisition of UP's right-of-way so that UTA could construct and operate light rail service. Pursuant to the transaction, UTA and the Freight Operator would share the right-of-way that UTA was to acquire.⁹ UTA and the Freight Operator would each conduct their own operations.

Pursuant to an Administration and Coordination Agreement, the Freight Operator would have the exclusive right to conduct freight service over the line. In addition, the Freight Operator would be responsible for maintenance and repair of trackage dedicated to freight service and UTA would be responsible for maintenance of trackage dedicated to passenger service. After the commencement of passenger operations, UTA would be responsible for maintenance of the shared trackage, subject to the Freight Operator's right to maintain the trackage if UTA failed to maintain it to at least current standards. Operations on the shared trackage would be divided into two periods - a passenger service preference period and a freight service preference period.

The ICC granted UTA's motion to dismiss the notice of exemption. The ICC concluded that the transaction did not impose restrictions which would prevent the freight rail carrier from fulfilling its common carrier obligation. Instead, UP would "retain and convey ... a permanent easement for common carrier freight operations, including the right to operate freight trains and all contracts, agreements, permits, licenses and easements relating thereto." Also, the Freight Operator retained the right to control all activities on the freight trackage. Accordingly, the ICC determined that the transaction fell within the ambit of State of Maine and other related cases.

Taken together, State of Maine and subsequent cases establish that an entity may acquire the physical assets of a rail line without becoming a carrier, provided that another entity retains sufficient interest to operate as a rail carrier on the line and has autonomy to conduct carrier

⁹ UP's retained permanent easement was transferred to another railroad (the "Freight Operator").

operations. Stated somewhat differently, if an acquisition of a rail line and trackage is subject to the existing operating interests of a common carrier and the acquiring entity does not control the carrier's operations, the acquiring entity is not a rail carrier subject to Board jurisdiction.

Like the transaction in the State of Maine case and the other cases discussed above, the transaction between UTA and UP includes several distinguishing and important features. Although UTA will acquire certain real property and related improvements, UTA will not acquire the property and contractual rights necessary to conduct or control common carrier freight operations on the Subject Lines. Instead, UP will retain such property and contractual rights on the Subject Lines. Although UTA will acquire track that constitutes part of a line of "railroad" as that word is statutorily defined, UTA will not acquire the right or ability to provide or control freight rail transportation thereon.

UTA's passenger rail service will not materially interfere with UP's ability to conduct rail freight service. UTA will acquire the Subject Lines, but UP will retain a perpetual, exclusive easement in the Subject Lines for freight railroad purposes and sufficient rights to control freight operations. The Freight Easement will enable UP to make changes to railroad, rail and railroad-related equipment, facilities and transportation systems on the Subject Lines necessary for UP's freight rail operations. In addition, UP will be able to construct, maintain and operate freight sidings and related facilities on and across the Subject Line as necessary for its continuing freight operations. The Freight Easement will ensure that even after UTA commences passenger rail operations on the Subject Lines, UP will still be able to conduct and control freight rail service thereon.

The Trackage Rights Agreement contains additional provisions to protect UP's freight railroad operations. At the outset, UP will be responsible for dispatching. After UTA assumes

responsibility for dispatching, it will be required to treat freight and passenger trains equally.

See General Conditions, Section 2.4. However, this requirement will not apply to the segment of the Subject Lines where UP and UTA will operate according to exclusive freight and passenger periods.

UTA and UP will operate during exclusive passenger and freight periods windows on the segment of the Subject Lines between Point of Mountain, Utah (M.P. P-775.23) and Lindon, Utah (M.P. P-762.00). Because of the exclusive freight and passenger windows, there will be no potential for competing track needs on this segment. See Utah Transit Authority -- Acquisition Exemption -- Line of Union Pacific Railroad Company, Finance Docket No. 32186 (ICC decided December 23, 1992).

The Trackage Rights Agreement also provides that UP initially will be responsible for maintenance. After UTA assumes responsibility for maintenance, it will be required to maintain the Subject Lines on a consistent basis at no less than the track standards designated in the UP timetable in effect on the date that UTA gives notice of its intention to commence operations or construction on the Subject Lines. See General Conditions, Section 2.2. Accordingly, the Subject Lines will continue to be maintained at the same standard as that implemented by UP. In addition, UTA will be required to use reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Subject Lines.

Under the Trackage Rights Agreement and the Freight Easement, UP retains the right to make changes in and/or additions to the Subject Lines. For example, UP retains the right to construct, operate and maintain existing and new industry tracks and related facilities on and across the Subject Lines. See Trackage Rights Agreement, Section 2(c). If UTA elects to make changes in and/or additions to the Subject Lines, it will be required to ensure that such changes

or additions do not interfere with the safe and efficient operation of the Subject Lines or UP's industry track. See General Conditions, Section 2.2. Thus, UTA's right to make changes in and/or additions to the Subject Lines will not materially interfere with UP's ability to upgrade its trackage or its overall ability to provide freight rail service to current and future freight customers on the Subject Lines.

In summary, UTA's acquisition of the Subject Lines will not constitute an acquisition of a railroad line subject to the Board's jurisdiction. UTA's ownership of the Subject Lines will not make UTA a rail carrier because UTA will not have the right to control freight rail service thereon and will not hold itself out as willing or able to provide freight rail service on the Subject Lines.

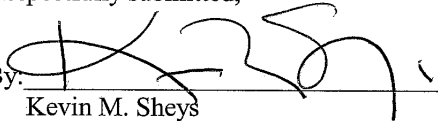
IV. EXPEDITED CONSIDERATION REQUESTED

UTA seeks expedited consideration of this motion by the Board. The parties intend to consummate the transaction that is the subject of this proceeding on May 30, 2002. In order to fully understand the consequences of this transaction, UTA respectfully requests that the Board issue and serve its determination on this motion prior to the scheduled consummation date.

V. CONCLUSION

For the reasons set forth above, UTA respectfully requests that the Board dismiss its Notice of Exemption filed herein for lack of jurisdiction.

Respectfully submitted,

By: 

Kevin M. Sheys

Edward J. Fishman

Tracie D. Spear

Kirkpatrick & Lockhart LLP

1800 Massachusetts Avenue – 2nd Floor

Washington, DC 20036

(202) 778-9000

**ATTORNEYS FOR UTAH
TRANSIT AUTHORITY**

Dated: January 28, 2002

LIST OF EXHIBITS

EXHIBIT A	UTA/UP Trackage Rights Agreement
EXHIBIT B	Quitclaim Deed

EXHIBIT A

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2002 ("Execution Date"), between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP"), and UTAH TRANSIT AUTHORITY, a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended ("UTA").

WITNESSETH:

A. UTA is the owner of certain lines of railroad extending between (1) Point of Mountain, Utah, Provo Industrial Lead, Mile Post 775.23, and Hardy (a/k/a Lindon), Utah, Mile Post 762.00, a distance of approximately 13.23 miles; (2) Provo, Utah, Sharp Subdivision, Mile Post 752.41, and Lakota Junction, Utah, Mile Post 757.25, a distance of approximately 4.84 miles; (3) Springville, Utah, Tintic Industrial Lead, Mile Post 0.00, and West of Payson, Utah, Mile Post 13.06, a distance of approximately 13.06 miles; and (4) two runaround tracks at North Salt Lake as further described in **Exhibit C** attached hereto and incorporated herein.

B. UP desires to obtain trackage rights upon said lines of railroad, for the sole purpose of providing freight service; and

C. UTA is agreeable to said trackage rights but only on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed between the parties as follows:

Section 1. TRACKAGE SUBJECT TO AGREEMENT.

Attached hereto, marked **Exhibit "A"** and by this reference incorporated herein, is a print dated _____, 2002, that depicts the portion of the lines of railroad of UTA over which UP is granted trackage rights ("Joint Trackage"), as further defined in the **Exhibit "B"** General Conditions of this Agreement, attached hereto and by this reference incorporated herein. If there are any inconsistencies between this Agreement and the Exhibit B General Conditions, the terms and conditions of this Agreement shall be deemed to control, except that the definition of "Joint Trackage" in Section 1.5 and the provisions of Section 2.4 of the General Conditions shall prevail.

Section 2. GRANT OF TRACKAGE RIGHTS.

Subject to the terms and conditions of this Agreement, UTA grants to UP the right to use the Joint Trackage for the operation of freight trains over the Joint Trackage, by itself or through its designees or assignees (which shall for all provisions of this Agreement, including without

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limitation Section 6 of Exhibit B hereto, be treated as UP), provided, however, that UP shall not grant any new trackage rights to third parties after the Effective Date. UP's use shall be in common with UTA and such other passenger railroad company or companies as UTA has heretofore admitted or may hereafter at any time admit to the joint use by passenger trains of any or all of the Joint Trackage. It is understood and agreed that UP shall have the right to designate a third party operator ("Operator") to exercise any of UP's rights under this Agreement. UTA shall have the right to approve the Operator, which approval shall not be unreasonably withheld, conditioned or delayed. All references herein to UP pertaining to the operation of freight trains shall apply to Operator. UP's designation of an Operator shall not relieve UP of its obligations under this Agreement.

It is understood and agreed that UP shall have the exclusive right to:

(a) set out, pick up or store freight cars, or switch freight cars upon the Joint Trackage, or any part thereof, as necessary, except that no freight cars may be stored on the main line trackage itself after the UTA Changeover; and

(b) serve any industry, team or house track now existing or hereafter requiring rail service along the Joint Trackage; and

(c) construct, maintain, replace, remove, use and operate existing and new industry tracks and related facilities on and across the Joint Trackage in order to fulfill UP's common carrier obligation to new and existing shippers and receivers of freight; provided that (i) UP obtains the prior approval of UTA to the construction of new industry tracks and related facilities, which approval shall not be unreasonably withheld, conditioned or delayed, (ii) if the construction of new industry tracks requires the construction of new UTA passenger rail facilities or modifications to existing UTA passenger rail facilities, such construction or modifications (and, as provided in Section 5 of this Agreement, certain increased maintenance costs) shall be at the sole cost of entities other than UTA; and (iii) at the sole cost of entities other than UTA, and at UTA's request, any industry tracks constructed after the date hereof to serve new shippers may be relocated as reasonably necessary for UTA's passenger rail operations, provided that such relocation does not materially impair the safety and efficiency of the industry track. It is understood and agreed for purposes of the cost allocation provisions of this Agreement that any party admitted to the Joint Trackage by UP, either by contract or by operation of law, is deemed to be UP.

Section 3. COMPENSATION.

After the UTA Changeover (as defined in Section 1.9 of the General Conditions), UP shall pay to UTA _____ for the use of the Joint Trackage (the "Trackage Fee"). Payment of the Trackage Fee shall be made pursuant to Section 3 of the General Conditions. The Trackage Fee shall be adjusted commencing January 1 of the first year after the UTA Changeover for changes in the Railroad Cost Recovery Index - West (excluding fuel) as found in Table C of the Quarterly Indexes of Chargeout Prices and Wage Rates (1977=100) in the AAR Railroad Cost

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Indexes publication, based on a comparison between the third quarter index for 2003 and the third quarter index for the first year after the UTA Changeover, for the first such annual adjustment, thereafter and annually each January 1 based on a comparison between the third quarter index for the first prior year and the third quarter index for the second prior year. If such index ceases to exist, the parties shall substitute a substantially similar index. The fee also shall be subject to (a) adjustment to reflect increased maintenance costs due to (i) UP operating more than an average of one train per day during any one year period, or (ii) Changes in and/or Additions to the Joint Trackage under Section 2.1 or Section 2.2 of the General Conditions (but not as to Changes in and/or Additions to the Joint Trackage that benefit only UTA or parties other than UP admitted to the Joint Trackage by UTA, or which are governmentally required because of UTA's operations on the Joint Trackage), and (b) revaluation every twenty (20) years, from the Execution Date.

Before the UTA Changeover, UP shall not be required to pay UTA for use of the Joint Trackage.

Section 4. TERM AND TERMINATION.

This Agreement shall become effective _____, 2002, and shall remain in effect for ninety-nine (99) years, unless earlier terminated by UP as to all or any portion of the Joint Trackage by UP giving UTA sixty (60) days notice of termination or, with respect to an abandonment, as earlier terminated as provided in Section 7.3 of Exhibit B.

Section 5. COORDINATION COMMITTEE.

UTA and UP shall establish a Coordination Committee consisting of at least two (2) representatives of each party. The Coordination Committee shall be a forum for the parties to share information, discuss matters submitted by one party to the other party for review and/or approval, and progress resolution of any issues between the parties with respect to this Agreement. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the parties that require prompt resolution.

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

WITNESS:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

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WITNESS:

UTAH TRANSIT AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

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EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS

- 1.1 "Annual" means covering the period of a calendar year.
- 1.2 "Changes in and/or Additions to" means work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement.
- 1.3 "Derailment" means the derailment or wreck of rail cars or engines.
- 1.4 "Equipment" means trains, locomotives, railroad cars, passenger cars, cabooses, vehicles and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance, renewal or repair of such railroad tracks.
- 1.5 "Joint Trackage" means the track structure of UTA as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of UTA and all Changes in and/or Additions to said track structure now or in the future located thereon as are required or desirable for the operation of the Equipment of the parties hereto.
- 1.6 "Loss" or "Losses" means all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys' fees) and expenses (including, without limitation, costs of investigation, defense expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature arising from or in connection with death of or injury to persons, including, without limitation, employees or tenants of the parties, or damage to or destruction of property, including, without limitation, property owned by either of the parties or their tenants.
- 1.7 "Property Accounts" means accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.
- 1.8 "Responsible Party" means UP before the UTA Changeover as to a segment of the Joint Trackage, and UTA after the UTA Changeover as to a segment of the Joint Trackage.
- 1.9 "STB" means the Surface Transportation Board of the United States Department of Transportation or any successor agency.
- 1.10 "UTA Changeover" means, as to each of the three (3) segments of the Joint

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Trackage, the date UTA first commences (or is deemed to have commenced) rail operations over, or construction operations on, the segment of the Joint Trackage, as determined under Section 2.13 below.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 The Responsible Party shall have sole charge of the maintenance, renewal and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. The Responsible Party, from time to time and at the sole cost and expense of parties other than the other party (except as otherwise provided in this Agreement), shall make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, and may make such Changes in and/or Additions to the Joint Trackage as the Responsible Party, in its sole discretion, shall deem necessary or desirable, provided that no material interference with the safe and efficient operation of the Joint Trackage or UP's industry tracks will result. Such Changes in and/or Additions to the Joint Trackage (except for industry track and related facilities constructed by UP under Section 2(c) of the Agreement) shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

If before the UTA Changeover, a Change in and/or Addition to the Joint Trackage or capital repair or replacement of any Joint Trackage is necessary for any reason (including, without limitation, catastrophic damage), and UP elects to perform such work after having provided UTA with the opportunity to review, comment on (including the need for such work, and the anticipated commencement date of UTA's operations or construction on the affected segment if known) and approve the proposed work, which approval shall not be unreasonably withheld, conditioned or delayed, the cost thereof shall be shared equitably between the parties giving consideration to the useful life of the Change in and/or Addition to the Joint Trackage or capital repair or replacement of the Joint Trackage in relation to the number of years until UTA intends to commence operations or construction on the affected segment, and the precipitating cause of the Change in and/or Addition to the Joint Trackage or capital repair or replacement of the Joint Trackage. If UTA's actual commencement date (as determined under Section 2.13 below) is earlier than the intended commencement date upon which UTA's share of such costs was based, then such share shall be increased (together with interest on the additional amount at the legal rate in Utah, from the date of substantial completion of the work until payment by UTA) to reflect the actual commencement date.

Notwithstanding the foregoing paragraph, UTA shall bear the entire cost of any governmentally required grade crossing, grade separation or track alignment improvement or addition to the Joint Trackage before the UTA Changeover, unless (i) such improvement or addition is required by the Federal Railroad Administration or (ii) UTA can demonstrate that such improvement or addition would not have been imposed if UTA, and not UP, were operating over the Joint Trackage. Except as otherwise provided in this paragraph, the cost of any governmentally required improvement or addition to the Joint Trackage before the UTA Changeover shall be shared equitably between the parties giving consideration to the useful life

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of such improvement or addition in relation to the number of years until UTA intends to commence construction of the UTA System on the affected portion of the Joint Trackage (if known) and the extent to which the improvement or addition will benefit UP.

2.2 Unless otherwise agreed by the parties, the Responsible Party shall keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date UTA gives UP notice of UTA's intention to commence operations or construction under Section 2.13 below, except that (a) prior to such notice being given, UP may maintain the Joint Trackage at whatever track standard, and make or decline to make such repairs and replacements to the Joint Facilities, as UP may determine at its sole discretion, and (b) in no event shall UP as the Responsible Party be required to perform any real property management functions other than to maintain the right-of-way under the track structure as necessary to keep and maintain the Joint Trackage at the track standard required under this Section 2.2 after UTA gives UP notice of UTA's intention to commence operations or construction under Section 2.13 below.

In the event that the other party desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, the Responsible Party will make such Changes in and/or Additions to the Joint Trackage if funded in advance by parties other than the Responsible Party and if no material interference with the safe and efficient operation of the Joint Trackage or UP's industry tracks will result. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage.

2.3 The Responsible Party shall employ or contract for all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. The Responsible Party shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing the same. If UTA is the Responsible Party, UTA shall make its best effort to ensure that UP is given the same advance notice of maintenance plans and schedules as is provided to the UTA's personnel, and shall perform all construction and maintenance in a manner that does not unreasonably interfere with the freight rail operations of UP.

2.4 Trackage rights granted under this Agreement shall give UP access to and joint use of the Joint Trackage. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of the Responsible Party, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of the Responsible Party's authorized representatives and in accordance with such reasonable operating rules as the Responsible Party shall from time to time institute, but in the operation (including dispatching) and maintenance of the Joint Trackage, UP and UTA shall be treated equally, except that with respect to the segment described in Recital A.1, UTA shall have the exclusive right to operate between the hours of 5:01 a.m., and 11:59 p.m., Monday through Friday, and all day Saturday and Sunday, and UP shall have the exclusive right to operate between the hours of 12:00 midnight and 5:00 a.m., Monday

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through Friday, unless special permission is given by the dispatcher. UP shall, at UP's sole cost and expense, obtain, install and maintain necessary communication equipment to allow UP's Equipment to communicate effectively with UTA's dispatching and signaling. UTA shall consult with UP prior to the adoption of any new communication or signaling systems to be employed on the Joint Trackage.

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

2.6 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage.

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

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

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

2.9 If, after the UTA Changeover, any Equipment of UP is bad ordered en route on the Joint Trackage and it is necessary that it be set out, and only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter be promptly removed from the Joint Trackage by UP. UTA may, upon request of UP and at UP's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of UTA while in any manner so engaged or while en route to or returning to UTA's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of UTA and Sole Property (as hereinafter defined) of UTA. However, should UTA's employees after repairing such bad ordered Equipment for UP move directly to perform service for UTA's benefit rather than return to UTA's terminal, then UP's exclusive time and liability will end when UTA's employees depart for work to be performed for UTA's benefit. Such repairs to UP Equipment shall be billed as provided for in Section 3 of these General Conditions.

2.10 If, after the UTA Changeover, Equipment of UP shall become derailed, wrecked or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by UTA, except that employees of UP may rerail UP's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of UP shall consult with and be governed by the directions of UTA. UTA reserves the right to rerail Equipment of UP when, in the judgment of UTA, UTA deems it advisable to do so to minimize delays and interruptions to train movement. The costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 6 of these General Conditions. Services provided under this Section 2.10 shall be billed in accordance with Section 3 of these General Conditions.

2.11 In the event, after the UTA Changeover, Equipment of UP shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among UP's employees, or due to mechanical failure of UP's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.9), or to any other cause not resulting from an accident or derailment (including the failure of UP to promptly repair and clear bad ordered Equipment pursuant to Section 2.9), and such Equipment is unable to proceed, or if a train of UP fails to maintain the speed required by UTA on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of UP's trains on the Joint Trackage, UTA shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew UP's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of rendering such assistance shall be borne by UP. Services provided under this Section 2.11 shall be billed in accordance with Section 3 of these General Conditions.

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2.12 UP shall pay to UTA cost and expenses incurred by UTA in the issuance of timetables made necessary solely by changes in the running time of the trains of UP over the Joint Trackage. If changes in running time of trains of UTA or third parties, as well as those of UP, require the issuance of timetables, then UP shall pay to UTA that proportion of the costs and expenses incurred that UP bears to the total number of parties changing the running time of their trains. If changes in running time of trains of UTA or third parties, but not those of UP, require the issuance of timetables, then UP shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.13 UTA shall not commence its rail operations or construction activities on any segment of the Joint Trackage until after UTA has given UP not less than one (1) years nor more than three (3) years notice of UTA's intention to commence operations or construction on the segment, and the planned date of such commencement. UTA shall give UP not less than sixty (60) days nor more than one hundred twenty (120) days notice of the date upon which UTA will actually commence rail operations or construction on the segment of Joint Trackage, and the commencement date stated in such notice shall be deemed to be the actual commencement date. If UTA fails to give such timely notice of commencement, or if UTA operates a passenger train or commences construction on the segment of the Joint Trackage before the commencement date stated in the notice of commencement, then UTA shall be deemed to have commenced rail operations or construction on the segment thirty (30) days before the date UTA actually operates a passenger train or commences construction on the segment.

2.14 Any passenger facilities ("Passenger Facilities"), including, without limitation, stations, platforms and parking lots, constructed by UTA in proximity to the Joint Trackage shall be sited to avoid interference with the safe and efficient operation of the Joint Trackage and any industry tracks and related facilities of UP. The right of way in proximity to Passenger Facilities and recreational trails shall be fenced at the sole cost of entities other than UP with the intent of preventing passengers/trail users from entering upon the track right of way.

Section 3. BILLING

3.1 Billing shall be on the basis of data contained in a billing form agreed to by the parties. Such billing form shall contain sufficient detail to permit computation of payments.

3.2 UTA will bill UP monthly for the Trackage Fee, within two months after the month covered by such bill, which bill UP shall pay within thirty days after receipt.

3.3 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not

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limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

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

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

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of a party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against the other party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 UP agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"), as such terms are defined in the federal Resource Conservation and Recovery Act, as amended, and the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. UP covenants that it shall not treat, release, store or dispose of any Hazardous Materials on the Joint Trackage. UP further agrees to furnish UTA (if requested) with proof reasonably satisfactory to UTA that UP is in such compliance. In the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials on the Joint Trackage by UP (including, without limitation, by explosion), UP shall give UTA prompt notice of such event, and at its sole cost and expense, promptly clean or remediate the Joint Trackage to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, UP shall promptly and fully pay such fine, penalty, cost or charge. UP shall be responsible for any leakage, spillage, release, discharge or disposal of any Hazardous Materials on the Joint Trackage by any third party UP admits to the Joint Trackage. UP shall indemnify, protect, defend, and hold harmless UTA, its trustees, officers, officers, employees, agents and contractors, from and against any and all liabilities or claims for all loss and damage arising as a result of leakage, spillage, release, discharge or disposal on the Joint Trackage by UP or by any third party it admits to the Joint Trackage. The provisions of this Section 4.2 are in addition to, and not in limitation of, the

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provisions of Section 6.1 hereof and Section 10 of the Sale Agreement, except that Losses with respect to personal injury (including bodily injury and death) shall be governed by Section 6.1(b) and (c) hereof.

Section 5. ARBITRATION

5.1 Controversies Subject to Arbitration. Any and all claims, disputes or controversies between UTA and UP arising out of or concerning the interpretation, application, or implementation of this Agreement that cannot be resolved by the parties through the Coordination Committee or by negotiations shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, except as otherwise provided in this Section 5. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the parties shall use the AAA's designated successor rules, and if the AAA does not designate successor rules, the parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

5.2 Selection of Arbitrator. In the event a claim, dispute or controversy arises, either party may serve a written demand for arbitration upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) days after the service of the demand, the matter shall be deemed submitted to arbitration. If within forty (40) days after service of the demand, the parties have not selected a single arbitrator, each party shall within an additional ten (10) days thereafter select an arbitrator. (In such case, if either party has not selected an arbitrator within ten (10) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy.) The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within ten (10) days of the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

5.3 Expedited Arbitration Schedule.

(a) In the event either party reasonably finds that the issues of any claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 5.2, an expedited arbitration procedure as set forth in this Section 5.3 solely for the purpose of obtaining a provisional remedy that by law or in equity could be imposed in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction or injunction).

(b) Within five (5) days after service of a demand for expedited arbitration, the parties shall agree on an arbitrator. If the parties fail to agree on an arbitrator within such five-day period, each party shall within two (2) days select an arbitrator. In such case, if either party has not selected an arbitrator within two (2) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim,

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dispute or controversy. The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within two (2) days of the deadline for the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

(c) The expedited arbitration hearing shall commence no later than ten (10) days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the day following the arbitration hearing.

(d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Sections 5.1 and 5.2; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

5.4 Pending Resolution. During the pendency of such arbitration proceedings, the business and the operations to be conducted, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

5.5 Cost of Arbitration. Each party solely shall bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration; provided, however, the arbitrator shall have the power to award attorneys' fees and costs to either party if the arbitrator determines in its reasonable discretion that the position of the other party to the arbitration was frivolous.

Section 6. LIABILITY

6.1 Liability.

(a) Except as otherwise expressly provided in subparagraphs (c)(i) and (e), the responsibility for Losses allocated to each party under this Section 6.1 is without regard to fault, failure, negligence, misconduct, malfeasance or misfeasance of any party or its employees, agents or servants. The allocation of responsibility for Losses under this Section 6.1 applies only to Losses proximately caused by incidents occurring on, or adjacent to, the Joint Trackage or any Passenger Facilities, and arising out of the parties' rail operations on the Joint Trackage or out of the use or presence of the Passenger Facilities.

(b) Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by that party regardless of the cause of such Loss or the fault of either party or whose train or other rolling stock was involved, except as otherwise provided in

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subparagraphs (c)(i) and (e). Consultants and contractors of a party, and any person who is on, or has property on, a train or other rolling stock operated by or for the account of a party or admitted to the Joint Trackage by a party (other than an employee of a party engaged in performing duties for that party), shall rebuttably be presumed to be an invitee of that party. It is a rebuttable presumption that persons at or adjacent to a UTA passenger station or other Passenger Facilities are invitees of UTA, except for persons in adjacent public streets (including public sidewalks) and employees engaged in performing duties for UTA.

(c) Except as provided in subparagraph (e) below, Losses arising out of personal injury (including bodily injury and death) to, or property damage directly suffered by any person who is not an invitee of UTA or UP (including, without limitation, UTA, UP, employees of UTA or UP while engaged in the performance of their duties as an employee, persons in adjacent public streets [including public sidewalks] and trespassers), shall be the responsibility of and borne and paid by the parties as follows:

- (i) When trains or other rolling stock of both UTA and UP, or no trains or other rolling stock of either party, were involved in the incident giving rise to the injury or damage, by both parties in proportion to their relative degrees of fault; provided, however, that UP shall be responsible for all damage to UTA's property arising from the leakage, spillage, release, discharge or disposal of any Hazardous Materials on the Joint Trackage (including, without limitation, by explosion) from UP trains or other rolling stock of UP operating on the Joint Trackage if UP's relative degree of fault is ten percent (10%) or greater.
- (ii) When trains or other rolling stock of only one party were involved in the incident giving rise to the injury or damage, by that party alone.
- (iii) When the incident giving rise to the injury or damage arises out of any breach by UP of this Agreement, by UP alone.

(d) If any of the provisions of this Section 6.1 would otherwise be prohibited by or unenforceable under the laws of the State of Utah (including a determination by a final judgment of a Utah Court with jurisdiction that indemnification under the circumstances involved is against the public policy of the State of Utah), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of a Utah Court with jurisdiction that any law or public policy of the State of Utah prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 6.1, those provisions shall be deemed to exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in this Section 6.1, if both parties were negligent.

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(e) "Excluded Conduct" shall mean conduct by a supervisory level or higher employee of one of the parties, which such conduct is alleged in a properly filed complaint by a plaintiff or plaintiffs as the basis for an award of exemplary or punitive damages under Utah law, and actually results in an award of exemplary or punitive damages by a jury after trial of the issues and exhaustion of judicial appeals which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any Loss resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear the Loss in proportion to its relative degree of fault and be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If a party asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct.

(f) In any case where a party is required under the provisions of this Section 6.1 to bear a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, directors, trustees, officers, agents, employees, shareholders, parent corporations and affiliated companies, or governmental entities from, against and with respect to any and all Losses which arise out of or result from the incident giving rise thereto. All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this Section 6.1, including, without limitation, salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

(g)(i) If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified party under this Section 6.1, the indemnified party shall, within thirty (30) days after actual notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 6.1 except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. The indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this Section 6.1 without either providing the indemnifying party with a full release with respect to such liability or obtaining the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed. If any claim or demand relates to a matter for which the parties, under the terms of this Section 6.1, are to share a Loss equally or in proportion to their relative degrees of fault, each party shall be entitled to select its own counsel and defend

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itself against the claim or demand at its sole cost and expense, and neither party shall make any settlement of any such claim or demand without giving the other party reasonable prior notice of the proposed settlement.

(ii) In the event any lawsuit is commenced against either party for or on account of any Loss for which the other party may be solely or jointly liable under this Agreement, the party thus sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof. If the party so notified is liable therefor under this Agreement, then, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from Losses in accordance with the liability allocations set forth in this Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.

(iii) Subject to the provisions of subparagraph (i) above, on each occasion that the indemnified party is entitled to indemnification or reimbursement under this Section 6.1, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party is entitled to indemnification under this Section 6.1 and the indemnifying party does not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

(iv) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 5 of this Agreement.

(h) The provisions of this Section 6.1 shall apply notwithstanding the provisions of Section 6.2. In no event shall the indemnification provisions of this Section 6.1 be limited to the insurance coverage required under Section 6.2.

(i) All statutory defenses and limitations applicable to UTA shall be retained by UTA with respect to parties other than UP, and none are intended to be waived with respect to parties other than UP by UTA under this Agreement, including, without limitation, the liability cap established in Title 63, Part 34, Utah Code Annotated 1953, as amended.

6.2 Insurance

(a)(i) UTA shall obtain and maintain general liability insurance, as further specified in subparagraph (ii) below, written on an "occurrence" basis, with minimum limits of One Hundred Million Dollars (\$100,000,000) per occurrence. Coverage for punitive damages shall be included, to the extent such coverage is permitted under Utah law. Insurance shall be

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placed with a company having a current Best's Insurance Guide Rating of at least A, or equivalent, and which is a carrier admitted as an insurer by the State of Utah, Department of Insurance. UTA may self-insure to an amount not to exceed Five Million Dollars (\$5,000,000), provided that total coverage limits (self-insurance plus excess liability insurance) are at least One Hundred Million Dollars (\$100,000,000) per occurrence, provided, however, that this sentence shall not inure to the benefit of UTA's successors or assigns absent the reasonable written consent of UP. In the event UP does not reasonably consent to self-insurance by a successor or assign of UTA, the self-insured amount for such successor or assign shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). The foregoing policy limits shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions. In any event, however, the total coverage (self-insurance plus excess liability) shall not be less than One Hundred Million Dollars (\$100,000,000). The foregoing self-insurance limit shall not exceed five percent (5%) of the total coverage limits (self-insurance plus excess liability insurance) maintained by UTA; provided, however, that the foregoing self-insurance limit may be increased by up to an additional five percent (5%) of the total coverage limits if UTA provides adequate security acceptable to and approved by UP for the increased self-insurance amount over and above the initial five percent (5%) limit.

(ii) UTA's insurance must be at least as broad as the current ISO Commercial General Liability Policy (CG 00 01) protecting insured parties against claims for bodily injury, death, property damage, explosion, collapse and underground, personal and advertising injury, and products-completed operations, with respect to all operations of UTA and UP. The insurance shall include blanket contractual coverage, including, without limitation, coverage for written, oral, and implied contracts and specific coverage for the indemnity provisions set forth in this Agreement. The insurance shall also include an endorsement deleting the exclusion for bodily injury or property damage arising out of construction or demolition operations within fifty (50) feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass, or crossing. Each policy obtained by UTA shall be endorsed to include UP an additional insured, utilizing ISO Form CG 20 26 ("Additional Insured-Designated Person or Organization") or equivalent endorsement satisfactory to UP.

(iii) UTA's insurance shall be primary with respect to its obligations under this Agreement and with respect to the interest of UP as an additional insured. Any other insurance maintained by an additional insured shall be excess of the coverage herein defined as primary and shall not contribute with it.

(iv) UTA's insurance shall be maintained for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days' prior written notice has been given to each insured and additional insured.

(v) Within ten (10) days prior to the UTA Changeover Date, UTA shall provide UP with certified copies of its policies, as well as certificates of insurance and

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endorsements evidencing the insurance required by this Section. Certificates of insurance shall be issued on the ACORD or equivalent form.

(vi) All statutory defenses and limitations applicable to UTA shall be retained by UTA with respect to parties other than UP, and none are intended to be waived with respect to parties other than UP by UTA by the acquisition of insurance by UTA or under this Agreement, including, without limitation, the liability cap established in Title 63, Part 34, Utah Code Annotated 1953, as amended.

(b)(i) UP maintains, and shall continue to maintain, a catastrophic risk management program, allowing for its diverse risk exposures and financial condition, and in keeping with risks assumed by corporations of established size and reputation and consistent with programs of other Class 1 Railroads [as defined in 49 CFR 1201, Subpart A, General Instruction 1-1(a)]. UP shall maintain at all times that this Agreement is in effect, and at its own cost and expense, insurance coverage as is customary under its established risk management program. UP warrants and agrees that said insurance coverage is, and shall be, at least as comprehensive in scope and amount as the insurance required to be carried by UTA under this Agreement. UTA shall be named as an additional insured on any such policies of insurance maintained by UP.

(ii) Within ten (10) days prior the Effective Date, UP shall provide UTA with certificates of insurance evidencing the insurance required by this subparagraph (b). Certificates of insurance shall be issued on the ACORD or equivalent form.

(iii) This subparagraph (b) shall not inure to the benefit of UP's successors or assigns, absent the reasonable written consent of UTA, unless the successor or assign is a Class 1 Railroad. In the event UTA does not reasonably consent to self-insurance by a successor or assign of UP that is not a Class 1 Railroad, said successor or assign shall obtain and maintain insurance of the type and amount, and upon the terms and conditions specified in this subparagraph (b); provided, however, that the self-insured amount for said successor or assign shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000).

(c) A failure of either party to maintain the insurance required by this Section 6.2 shall not relieve such party of any of its liabilities or obligations under this Agreement.

(d) Every policy of insurance required under this Section 6.2 shall include a waiver of all rights of subrogation against the party required under this Section 6.2 to be named as an additional insured.

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 UP and UTA shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authorizations from any governmental agency for the sanction of

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the Agreement and the operations to be carried on or conducted by UP thereunder. UTA and UP agree to cooperate fully to procure all such necessary consent, approval or authority. The parties acknowledge that no Surface Transportation Board approval is required with respect to this Agreement.

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

7.3 To the extent that UP may lawfully do so, and subject to the provisions of Section 11.1(f) and (g) of that certain Purchase and Sale Agreement between UTA and UP dated _____, 2002, UP reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of UTA, to elect to abandon its common carrier obligation as to all or any part of the Joint Trackage by giving six (6) months' prior written notice to UTA of its intention so to do ("Notice of Abandonment"). This Agreement shall terminate as to any portion of the Joint Trackage with respect to which UP has consummated an abandonment.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage occurring after the UTA Changeover, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) (as adjusted annually in the same manner as the fee as provided in Section 3 of the Agreement) for each occurrence shall be billed in addition to the compensation provided for in Section 3 of the Agreement and apportioned on the basis of the parties' respective number of trains operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence. If the occurrence takes place before the end of the first twelve (12) months after UTA commences regular passenger train service over the affected segment of the Joint Trackage, then the apportionment shall be based upon the projected number of trains for the twelve (12) month period after the last day of the month of occurrence. As soon as reasonably possible, UTA shall give UP notice (the "Catastrophe Notice") of the catastrophe and the estimated expense to repair damage or destruction caused by the catastrophe. If UP gives UTA notice of termination within ten (10) days after UTA gives UP the Catastrophe Notice, then UP shall not be required to bear its portion of such catastrophic expense under this Section 8.

If UTA, in its reasonable discretion, shall determine that damages to the Joint Trackage are so extensive that it would not be feasible to repair the Joint Trackage, then UTA shall have the right to terminate this Agreement as to the affected segment of the Joint Trackage, and UTA shall have no further obligation to UP with respect to such segment.

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Section 9. ASSIGNMENT

Except as provided in Section 3.4, this Agreement and any rights granted hereunder may not be assigned in whole or in part by UP without the prior consent of UTA, except that UP may assign this Agreement in whole or in part to (a) any Class I railroad to whom UP has granted trackage rights over the Joint Trackage before the Effective Date, and/or (b) any entity that succeeds UP through merger or consolidation. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 10. DEFAULT

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

10.2 If the default shall continue for an additional period of thirty (30) days after receipt of such notice of demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, either party shall resort to arbitration under the provisions of Section 5 of these General Conditions, provided, however, that the arbitrator shall not have the authority to amend, modify or terminate this Agreement.

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

Section 11. MISCELLANEOUS

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

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

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the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

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

11.4 Amendments. No modifications, amendments or changes herein or hereof shall be binding upon any party unless set forth in a document, duly executed and delivered by all parties hereto. No provision of this Agreement shall be altered, amended, revoked or waived except by an instrument in writing signed by the party to be charged with such alteration, amendment, revocation or waiver.

11.5 No Recordation. Without the prior written consent of both parties, no party may record this Agreement.

11.6 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below and receipt has been confirmed either telephonically or by facsimile, or (b) on receipt, if mailed to the party to whom notice is to be given by overnight courier or first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

EXHIBIT A

To UTA: UTAH TRANSIT AUTHORITY
3600 South 700 West
Salt Lake City, Utah 84119-0810
ATTN: General Manager
TELEPHONE: (801) 262-5626
FACSIMILE: (801) 287-4592

With a copy to:

UTAH TRANSIT AUTHORITY
3600 South 700 West
Salt Lake City, Utah 84119-0810
ATTN: General Counsel
TELEPHONE: (801) 287-4525
FACSIMILE: (801) 287-4520

To UP: UNION PACIFIC RAILROAD COMPANY
ATTN: Executive Vice President-Operations
1416 Dodge Street, Room 1230
Omaha, NE 68179
TELEPHONE: (402) 271-5633
FACSIMILE: (402) 271-6319

with a copy to:

UNION PACIFIC RAILROAD COMPANY
ATTN: Vice President-Law
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
TELEPHONE: (402) 271-5357
FACSIMILE: (402) 271-7107

11.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except have additional signature pages executed by other parties to this Agreement attached thereto.

11.8 Relationship of UP and UTA. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make UP and UTA partners or joint venturers, principal and agent, or employer and employee, or to render one party liable for any of the debts or obligations of any other party unless expressly so provided in this Agreement.

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11.9 Effect of Agreement. All negotiations relative to the matters contemplated by this Agreement are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth other than those incorporated in this Agreement.

11.10 Waiver. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

11.11 Time of Essence. Time is of the essence of this Agreement and of all parts hereof.

11.12 Governing Law. This Agreement shall be governed by the laws of the State of Utah.

11.13 Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto.

END OF EXHIBIT "B"

EXHIBIT B

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

Kathryn H.S. Pett, Esq.
Secretary and General Counsel
Utah Transit Authority
Office of General Counsel
3600 South 700 West
Salt Lake City, Utah 84199

SPACE ABOVE FOR RECORDER'S USE ONLY

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That 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, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does REMISE, RELEASE and forever QUITCLAIM unto UTAH TRANSIT AUTHORITY, a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended, Grantee, its successors and assigns, forever, all its right, title, interest, estate, claim and demand, both at law and in equity, of, in and to the real estate in the County of _____, State of Utah, more particularly described in **Exhibit A** attached hereto and hereby made a part hereof (the "Property"), together with:

(i) All right, title and interest of Grantor in any improvements located on the Property, including, without limitation, tracks, ties, signals, bridges, tunnels, culverts, trestles, switches, grade crossing materials, warning devices, ballast, subgrades, buildings, facilities, railroad communication and signal systems, wires, pipes, poles and all other trackage appurtenances except that Grantor excepts therefrom and reserves unto itself, its successors and assigns, the improvements listed on **Exhibit B** attached hereto and hereby made a part hereof; and

(ii) All right, title and interest of Grantor in any and all rights, privileges, easements and appurtenances to the Property, including, without limitation, all easements, rights-of-way, and other appurtenances used or connected with the beneficial use or enjoyment of the Property.

Grantor EXCEPTS from the Property hereby quitclaimed and RESERVES unto itself,

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its successors and assigns, forever, the following:

(a) all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered five hundred feet (500') or more below the surface of the Property, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property or to interfere with the use thereof by Grantee;

(b) a perpetual exclusive easement upon, over, across, under and through the Property to the extent reasonably necessary for the operation, use, replacement, renewal, maintenance and repair of the facilities listed on **Exhibit B** attached hereto and by this reference made a part hereof, and all related or appurtenant facilities, together with the right of reasonable ingress and egress to and from such facilities;

(c) perpetual exclusive easements over, under, across and upon the portion of the Property ("Communications Easement Property") ten feet (10') in width being five feet (5') on each side of the centerline of the existing Communications Equipment (as defined below) on the Property, together with the right of ingress, egress and access from and to the Communications Easement Property over and across the Property for purposes of exercising the easement rights reserved herein.

The communications easements reserved herein ("Communications Easements") shall allow Grantor, its successors and assigns, to enter upon, over and under the Communications Easement Property and every part thereof to construct, reconstruct, install, inspect, repair, maintain, enjoy, operate, use and/or remove existing and/or future communication lines and/or facilities including, but not limited to, fiber optic cables, conduits and related appurtenance (collectively, "Communications Equipment").] All Communications Equipment presently existing or hereafter constructed on the Communications Easement Property shall remain the personal property of Grantor.

Grantor shall have the right to grant, at its sole discretion, sub-easements, licenses and any other interests in the Communications Easement Property and to collect and retain the rents, issues and profits therefrom, and from any existing contracts.

Grantor hereby declares that all of the Property is held and shall be held, acquired, conveyed, hypothecated, and/or improved subject to these Communications Easements and the following restrictions (the "Restrictions"):

(i) Neither Grantee nor any successor or assign of Grantee shall place or make any improvement to the Communications Easement Property without obtaining the prior written approval of Grantor, its successors and assigns; provided, however, neither Grantee nor its successors and assigns shall make or cause to be made or constructed any permanent buildings, structures or fences whatsoever on the Communications Easement Property.

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(ii) Neither Grantee nor any successor or assign of Grantee shall develop, construct, operate, maintain, repair, renew or modify any Communications Equipment on any portion of the Property, except outside the Communications Easement Property and then only as necessary or desirable for use in the operation of a passenger rail system. The Restriction in this subparagraph (ii) shall survive notwithstanding any termination of the Communications Easements.

The Restrictions and these Communications Easements shall run with the land and shall be binding upon Grantee, its successors and assigns, and on all parties acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of Grantor, its successors and assigns.

(d) a perpetual, exclusive easement in, on, under, over and through the portion of the Property described below in this subparagraph (c), for purposes of conducting Grantor's freight rail operations and otherwise to fulfill Grantor's obligations as a common carrier railroad under applicable laws and regulations (the "Railroad Easement"). Grantor and its licensees, successors and assigns, shall have the right to use the Railroad Easement 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 Grantor's freight rail operations. The Railroad Easement shall include only the portion of the Property located within twelve and one-half feet (12.5') on either side of the center line of the railroad tracks on the Property as such tracks are located on the date hereof, together with access thereto across, and the right to construct, maintain and operate freight rail sidings and related facilities upon, all other portions of the Property as reasonably necessary for Grantor's use and enjoyment of the Railroad Easement, provided that in the exercise of Grantor's rights outside the area twelve and one-half feet (12.5') on either side of the centerline of such then-existing tracks, Grantor shall not unreasonably interfere with Grantee's use of the Property for passenger rail operations. Grantor shall be entitled to all revenues derived from all current and future agreements to which Grantor is a party affecting freight rail operations on the Property. Grantor acknowledges that Grantee shall have the right to allow third parties to cross at grade (i.e., without the need for construction of an overpass) the segment of the Property described in **Exhibit A-1**. The Railroad Easement shall terminate automatically as to a segment of the Property upon the effective date of an order, decision or notice of the Surface Transportation Board (or any successor agency) granting authority for Grantor to abandon all of its freight rail services on the involved segment of the Property. If the Surface Transportation Board (or any successor agency) issues a Certificate of Interim Trail Use or Abandonment or Notice of Interim Trail Use or Abandonment with respect to the Property, the Railroad Easement shall become subject to such Certificate or Notice. Upon the termination of the Railroad Easement as to a segment of the Property, Grantor shall, at the written request and expense of Grantee, execute and deliver to Grantee a recordable document terminating and quitclaiming to Grantee all of Grantor's right, title and interest in and to the Railroad Easement as to the involved segment of the Property. The foregoing provisions shall constitute covenants running with the land and shall bind and inure to the benefit of Grantor and Grantee and their respective successors and assigns;

EXHIBIT B

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD the lands described in **Exhibit A**, subject to the aforesaid exceptions and reservations, unto the 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, Grantor has caused these presents to be signed by its _____ and attested by its Assistant Secretary, and its corporate seal to be hereunto affixed the _____ day of _____, 200__.

Attest:

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

Assistant Secretary

By: _____
Title: _____