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Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. ~~34255~~
Portland & Western Railroad, Inc.
- Trackage Rights -
Union Pacific Railroad Company

268709



August 8, 2003

Dear Secretary Williams:

In accordance with the provisions of 49 C.F.R. 1180.4(g)(i) and 1180.6(a)(7)(ii), enclosed is a copy of the executed trackage rights agreement pertaining to the transaction that is the subject of this proceeding.

Please time stamp the extra copy of this letter to indicate receipt, and return it to me in the stamped self-addressed envelope provided for your convenience.

Respectfully,


ERIC M. HOCKY

Enclosure

GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON

FD 34367

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of August, 2003 by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP" or "Owner", and **WILLAMETTE & PACIFIC RAILROAD, INC.**, a New York corporation, and **PORTLAND & WESTERN RAILROAD, INC.**, a New York corporation, hereinafter collectively called "PNWR" or "User", and **ALBANY & EASTERN RAILROAD**, an Oregon corporation, hereinafter called "AERC".

WITNESSETH:

WHEREAS, UP is the owner and operator of certain lines of railroad on the Brooklyn Subdivision, including main line trackage between UP's Albany Yard, Milepost 691.24, and the point of connection with The Burlington Northern and Santa Fe Railway Company owned trackage (the former Oregon Electric Railroad and hereinafter "BNSF"), Milepost 691.53, in Albany, Oregon, a distance of approximately 0.29 miles and approximately 0.20 miles of rail line constituting the north leg of the wye track connecting the Toledo Branch Line to the UP main line near Milepost 691.35 (hereinafter defined as the "Joint Trackage"), and,

WHEREAS, UP and AERC entered into the Albany to Lebanon, Oregon Trackage Rights Agreement dated May 19, 1998 that terminated the assignment of the BNSF's Operating Agreement dated October 1, 1985, and provided trackage rights to AERC to use the Joint Trackage to access BNSF's Albany yard, and;

WHEREAS, UP and PNWR entered into a Shared Use Agreement For Albany Yard, dated February 20, 1993, as amended, under which PNWR is obligated to provide interchange tracks for the sole purpose of interchange between UP and the Willamette Valley Railroad Company, predecessor in interest to AERC, separate from interchange tracks between UP and PNWR, and;

WHEREAS, UP, PNWR, and AERC entered into an Intermediate Interchange Agreement dated May 19, 1998, that provided separate tracks to be used in the Albany Yard for the sole purpose of interchange between UP and AERC, and;

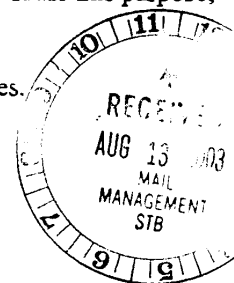
WHEREAS, PNWR and BNSF have entered into a lease agreement with BNSF effective as of December 29, 2002 where PNWR has assumed the operations of BNSF in Albany, and;

WHEREAS, PNWR desires to obtain operating rights from UP over the Joint Trackage (the "Trackage Rights") in order to access the BNSF's leased track and yard to provide for more fluid operations, and;

WHEREAS, UP is agreeable to granting said Trackage Rights to PNWR for this purpose, but only on the terms and conditions hereinafter set forth

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

AUG 13 2003

For
Record

Section 1. TRACKAGE SUBJECT TO AGREEMENT.

Attached hereto, marked Exhibit "A" and by this reference incorporated herein, is a print dated June 24, 2003, which depicts in red the portion of line of railroad of UP over which PNWR will be granted the Trackage Rights, this line of railroad is hereinafter referred to as the "Joint Trackage" (as further defined in Exhibit "B" of this Agreement, attached hereto and by this reference incorporated herein).

Section 2. GRANT OF OPERATING RIGHTS.

The General Conditions covering the grant of operating rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this Agreement shall arise, the provisions of this Agreement shall prevail. Subject to the terms and conditions of Exhibit "B" and this Agreement, UP grants to PNWR the non-exclusive right to use the Joint Trackage for the operation by its employees of Equipment (as defined in Exhibit "B" of this Agreement) that is in its account, or the account of AERC, while moving over the Joint Trackage in common with UP and such other railroad company or companies as UP has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered UP for the purpose of this Agreement.

It is understood and agreed that PNWR shall not have the right to:

(a) set out, pick up or store rail cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or

(b) serve any industry, team or house track now existing along the Joint Trackage; or

(c) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party, other than that traffic handled on behalf of AERC under its agreement with BNSF, which in the normal course of business would not be considered the Equipment of PNWR; provided, however, that the foregoing shall not prevent PNWR, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this Agreement.

(d) handle Equipment loaded with revenue freight for which UP has not or shall not receive line haul revenues (either under tariff, exempt, or contract arrangements), except for Equipment handled on behalf of AERC for delivery to BNSF, reciprocal switch traffic, and PNWR local traffic between PNWR stations adopted by UP and contractually subject to UP linehaul provisions unless authorized in writing by UP. Section 2.6 of the Shared Use Agreement for Albany Yard is hereby suspended during the term of this Agreement to allow for the interchange of BNSF traffic between PNWR and AERC.

(e) interchange, directly or indirectly, revenue freight rail cars or other Equipment with any

railroad other than UP.

(f) interchange, directly or indirectly, revenue freight rail cars or other Equipment from or to UP which does not have a prior or subsequent line haul movement on UP routed (A) solely over UP if such revenue freight rail cars or other Equipment are moving to or from destination or origin points served by UP, or (B) via UP's long haul route if such revenue freight rail cars or other Equipment are moving to or from destination or origin points not served by UP, except as otherwise provided in rail transportation contracts of UP or tariffs.

Upon execution of this Agreement, AERC shall suspend its rights under the Lebanon to Albany, Oregon Trackage Rights Agreement and work out its own arrangement to interchange its BNSF traffic to the PNWR at the Albany Yard for delivery to the BNSF's Oregon Electric Railroad Yard. The obligation to pay UP the annual UP Main Line Charge of \$700.00 as called for in this Agreement shall likewise be suspended.

Section 3. MAINTENANCE AND OPERATION OF TRACKAGE.

UP, at its expense, shall maintain the Joint Trackage except that PNWR shall maintain that portion of the Joint Trackage referred to herein as the north leg of the Toledo Branch wye track. Such normal maintenance shall include all expenses for maintaining tracks, signals, grade crossings, and other track related appurtenances, associated engineering costs, and repairs in any area where the repairs are the responsibility of a third party. In the event that for, operating convenience, necessity or emergency, UP permits or directs PNWR to use adjacent UP track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement.

Section 4. COMPENSATION.

UP and PNWR acknowledge that for the purposes of this Agreement, the compensation will be as follows.

1. PNWR shall assume the payment of the annual UP Main Line Charge of \$700.00, previously paid by AERC, that covers maintenance (normal and program) and operation, depreciation, taxes, and interest rental of the Joint Trackage relative to the movement of traffic by PNWR. The UP Main Line Charge will not be prorated and is due upon execution of this Agreement and annually thereafter.
2. PNWR shall designate Track Number 603 in the Albany Yard as the UP/AERC Interchange Track that is to be used solely for the interchange of rail cars between UP and AERC. This UP/AERC Interchange Track can be used for rail cars that are hauled or switched by PNWR on behalf of UP for delivery to or received from AERC. The UP/AERC Interchange Track shall not be used for rail cars that are interchanged between UP and PNWR, reciprocal switch traffic, or BNSF rail cars interchanged between AERC

and PNWR for BNSF linehaul. In addition, PNWR shall provide such additional trackage in the Albany Yard for the interchange between UP and AERC in the event Track 603 is insufficient to handle all of the rail cars being interchanged. AERC currently pulls rail cars from the interchange track in the morning at approximately 9:00 AM while UP pulls rail cars from the interchange track in the evening between 7:00 PM and 9:00 PM. AERC and UP agree to regularly pull rail cars from Track 603. However, if there are rail cars that are placed on Track 603 outside of the regularly scheduled interchange times, PNWR agrees to make tracks available in order for AERC to place their rail cars to be interchanged to UP.

3. PNWR shall ensure that Track Number 603 and all other tracks used in the Albany Yard for interchange purposes are maintained per FRA Class 1 standards and will accommodate the interchange of any number of hazardous rail cars.
4. The desired effect of this Agreement is to free up space in the Albany Yard to increase capacity and provide better equipment utilization. While there may be times when Items 2 and 3 above cannot be met due to an occasional operational problem, i.e. derailment, PNWR shall make its best efforts to clear up the problem that arises. Notwithstanding anything to the contrary herein, failure to meet the conditions set forth in Items 2 and 3 above three times or more in a consecutive fifteen-day period shall constitute default under this Agreement.
5. Pursuant to its lease agreement with BNSF effective as of December 29, 2002, PNWR performs reciprocal switching service on behalf of BNSF at Eugene, OR, American, OR, Albany, OR, and Salem, OR. UP is billed by BNSF for that reciprocal switching service. PNWR hereby agrees that it will not impose any charge above the reciprocal switch charge assessed against UP by BNSF for this service at the above locations or other similar locations that arise, and the reciprocal switch charge assessed against UP will not be any greater than the system wide reciprocal switch charge mutually agreed to between UP and BNSF.

Section 5. CONNECTIONS AND ADDITIONS.

UP and PNWR do not believe that any additional connections are necessary to conduct the operating rights described in this Agreement. If it is determined at some later date that an additional connection(s) is necessary, and UP in its sole discretion is agreeable to such connection(s), then the entire cost of construction of any such connection shall be at PNWR's sole expense. UP, at PNWR's expense, shall construct, own and maintain the part of any connection on UP's property.

Any future Additions (as defined in Exhibit "B" of this Agreement) to the Joint Trackage, such as, but not limited to, sidings, CTC, grade separations and new connections, shall be handled as up front expenditures. When any future Addition is made that is for the benefit of both parties, then both parties shall share in the cost of the Addition in the proportion which the number of its rail cars that are run over the Joint Trackage during the previous twelve month period immediately prior

to the date work on the project is commenced, bears to the total number of rail cars for both parties that are run over the Joint Trackage during the same period; provided, however, that in the event an Addition is necessitated by the additional use of the Joint Trackage by PNWR, then the entire cost thereof shall be paid by PNWR. Should any future Addition be for the sole benefit of UP, then UP shall pay the entire cost of such Addition.

Section 6. LIABILITY

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

Section 7. TERM AND TERMINATION.

Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit "B", this Agreement shall become effective July 2, 2003, subsequent to PNWR having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to PNWR, and shall remain in effect for a term of one (1) year and thereafter or until terminated by UP, PNWR or AERC upon ninety (90) days written notice.

Should the PNWR default under this Agreement as denoted in Section 4, Item 4, above, AERC shall have the right to terminate this Agreement upon thirty (30) days written notice received within ten (10) days of the default. Failure to provide notice of default by AERC within the prescribed time will require another default to occur before another notice can be submitted by AERC.

Should this Agreement be terminated as provided in this Section 7 or if PNWR defaults as provided in this Section 7 UP is authorized by PNWR to take any and all action UP deems necessary in the name of PNWR at the Surface Transportation Board ("STB") deemed necessary by UP to terminate and/or abandon any and all Trackage Rights which PNWR has under this Agreement. PNWR further agrees that PNWR hereby grants to UP the power of attorney to act on behalf of PNWR to terminate and/or abandon said Trackage Rights before the STB or any other applicable governmental agency or entity; and PNWR further agrees that it shall cooperate, concur with UP and shall not contest or in any way challenge UP's termination and/or abandonment of PNWR's Trackage Rights.

Notwithstanding the foregoing, in the event of termination of this Agreement, all rights of AERC and PNWR shall revert to the rights and conditions prior to the effective date of this Agreement.

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

WITNESS:

**WILLAMETTE & PACIFIC RAILROAD, INC.
PORTLAND & WESTERN RAILROAD, INC.**

By: _____
Title: _____

By: [Signature]
Title: PRESIDENT

WITNESS:

**ALBANY & EASTERN RAILROAD
COMPANY**

By: _____
Title: _____

By: [Signature]
Title: PRESIDENT

WITNESS:

UNION PACIFIC RAILROAD COMPANY

By: [Signature]
Title: Project Coordinator - Shortline
Development

By: [Signature]
Title: EVPO

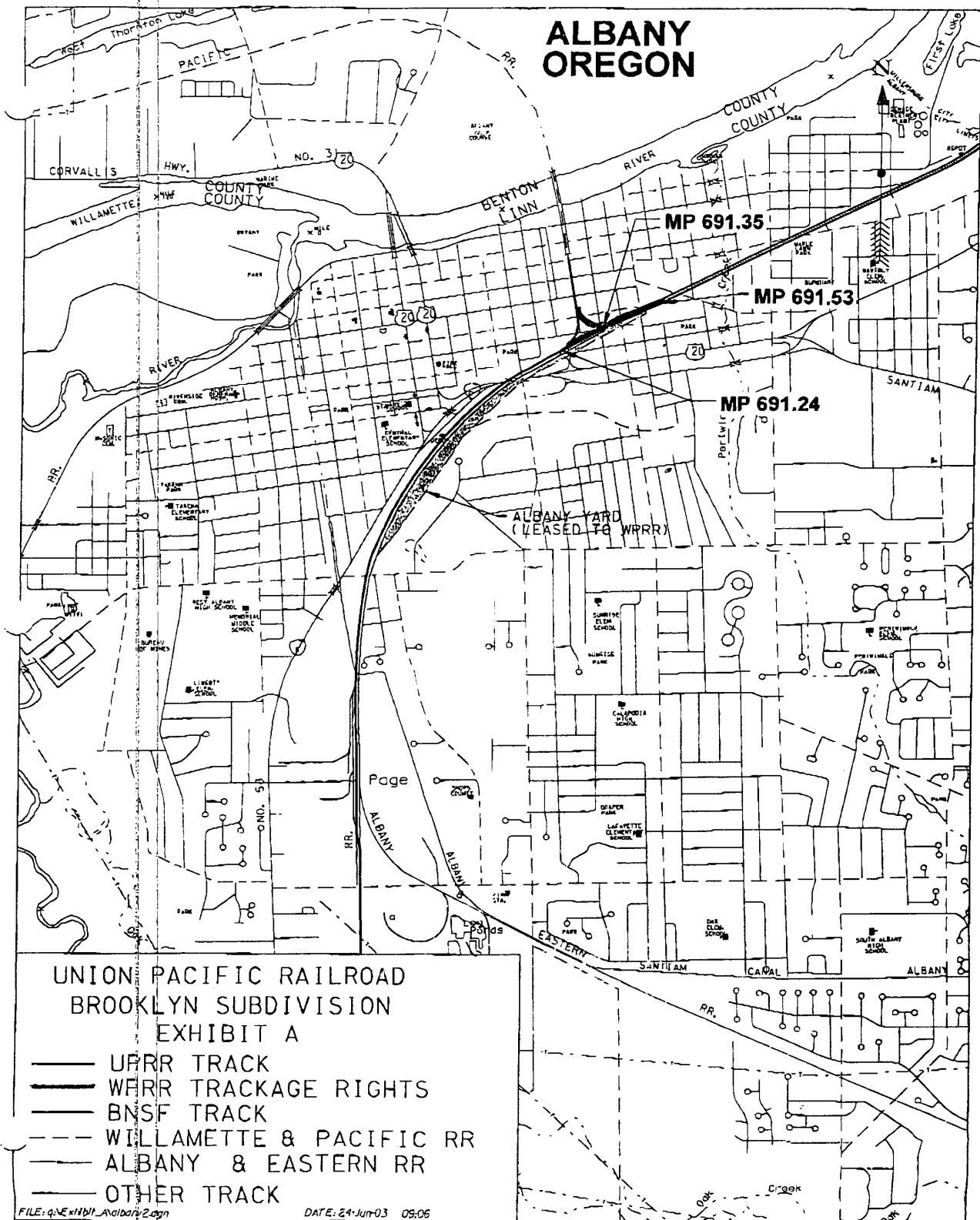


EXHIBIT "B"
GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement to which this Exhibit "B" is appended. The term "Agreement" will include this Exhibit "B".

1.2 "Owner" shall mean the party granting the right to use the Joint Trackage (as that term is hereinafter defined).

1.3 "User" shall mean the party granted by the Agreement the right to use the Joint Trackage. Where more than one party is granted by the Agreement the right to use the Joint Trackage, User shall mean those parties collectively.

1.4 "Joint Trackage" shall mean trackage of Owner as described in the Agreement including necessary right-of-way and appurtenances and support facilities thereof, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

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

1.6 "Annual" shall mean a calendar year.

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

1.8 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Surface Transportation Board, (hereinafter called "STB"), or any replacement of such system prescribed by the applicable federal regulatory agency and used by the parties hereto.

1.9 "Changes in and/or Additions to" and "Additions" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies as prescribed by the STB as of the effective date of the Agreement.

1.10 "GTM" shall mean gross ton mile, which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.11 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by

or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTMs Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.12 "Mill" shall mean one-tenth of a cent (\$0.001 US).

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

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 User shall construct, maintain, repair, and renew, at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right-of-way of User and to the clearance point in right-of-way of Owner. Owner grants to User a license over that portion of Owner's property between right-of-way line and clearance point in order for User to maintain such trackage. Owner shall construct, maintain, repair, and renew, at the sole cost and expense of User, and shall own the portions of the track connections between said tracks of the parties hereto between the headblock and clearance point located on the right-of-way of Owner.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage, which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes in and/or Additions to the Joint Trackage, which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction, become part of the Joint Trackage. User may request Changes in and/or Additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the Joint Trackage, which would permanently or materially impair the usefulness thereof to User.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended. Trains of the parties hereto shall be given equal dispatch, according to their class.

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

and in managing same. The Joint Trackage shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the parties and of such other railroad companies as Owner has heretofore admitted or may hereafter admit to use of the Joint Trackage. In the event there are conditions from time to time which require emergency slow orders with respect to any location on the main tracks comprised in the Joint Trackage, Owner shall, with reasonable promptness, repair such conditions so as to permit the removal of such emergency slow orders. Notwithstanding anything to the contrary contained in the Agreement, User shall not, by reason of Owner's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom. User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.5 All officers, agents, and employees of Owner engaged in the management, operation, and maintenance of the Joint Trackage shall perform their duties in a fair, impartial, and just manner.

2.6 User, at its expense, shall install and maintain upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage. User will not, however, be required to install any equipment or devices not in use on Equipment of Owner. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

2.7 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 of any kind, caused by or resulting from such interruption or delay.

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

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

2.10 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.11 User shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.12 The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 4 of these General Conditions.

2.13 In the event of release of Hazardous Materials caused by faulty equipment or third parties, cleanup will be conducted and total costs resulting therefrom shall be borne by the parties as stated in Sections 2.11 and 2.12 of these General Conditions.

2.14 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examination on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by owner to assist in operating trains of User over the Joint Trackage.

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

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

2.16 If any Equipment of User is bad ordered enroute on the Joint Trackage and it is necessary that it be set out, such bad ordered Equipment shall, after being promptly repaired, be

promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner after repairing such Equipment for User, move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight rail cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight rail cars that are car-owner responsibility items, as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor.

2.17 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of this Exhibit "B".

2.18 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.19 In the event any accident, derailment, or wreck, hereinafter called "derailment" involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law, hereinafter called "Hazardous Materials" shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately.

Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's rail cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to

observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of the General Conditions.

If Hazardous Materials must be transferred to undamaged rail cars, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged rail cars that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. BILLING DEFAULT

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

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, and payments shall be made subject to subsequent adjustment; provided no exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, with retirements and Additions being reflected as appropriate adjustments to valuation bases retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts, and records of each party hereto as are related to the subject matter of the 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 49 U.S.C. Section 11161 et seq. and the related regulations of the STB in 49 C.F.R. Part 1201, 1-5, et seq.

3.4 Should any amount become payable by Owner to User under the Agreement, the provisions of Section 3.1 through 3.3 of this Exhibit "B" shall apply with User as the billing party

and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make under the Agreement, or fail in any other respect to perform as required under the Agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by Owner to User, owner may at its election exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

Owner may waive such default subsequent, but no action of Owner in waiving any default shall effect any default of User or impair any rights of Owner resulting therefrom.

Section 4. COMPLIANCE WITH LAWS

4.1 User shall not treat, store or dispose of petroleum products or hazardous waste or hazardous substances, as defined in (i) the Resource Conservation and Recovery Act, as amended, or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage.

4.2 Responsibility for Environmental Claims (as defined in Section 4.6, below) as between the parties shall be borne as follows:

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

b) Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to Section 4.2.a, above.

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

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

involving Equipment operated by the party carrying Hazardous Materials.

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

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

4.5 In the event any cleanup, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively referred to herein as "Response Action"), neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action or interference with the other party's use of the Joint Trackage. Owner and its contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete such Response Action to the satisfaction of Owner; provided, however, that any Response Action (i) shall be undertaken and completed pursuant to a work plan (including a schedule) submitted to the other party for its review and, in the case of Owner, approval, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint Trackage. Either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under the Agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User and User shall provide Owner all information requested by Owner regarding any Response Action of User or any Environmental Claims for which User is responsible.

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

4.7 The liability and indemnity provisions of this Section 4 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision, or the Joint Trackage is abandoned and vacated by User.

4.8 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released

during such Derailment, and/or repairing the Joint Tracks or any other property damaged thereby shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 5 of this Exhibit "B".

Section 5. LIABILITY

5.1 For the purpose of this Section 5, the following definitions shall apply:

"Loss or Damage" shall mean without limitation all claims, liability, cost, and expense of every character including amounts paid under any State or Federal compensation law incident to loss or destruction of or damage to property and injury to and death of persons arising from the operation by the parties to the Agreement on the Joint Trackage.

"Joint Employees" shall mean one or more officers, agents, employees, or contractors of Owner while actually engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Property (as hereinafter defined) or in making Changes in and/or Additions thereto for the benefit of all of the parties hereto, or while preparing to engage in, enroute to or from, or otherwise on duty incident to performing such service. Such officers, agents, employees, or contractors shall not be deemed Joint Employees while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Joint Property" shall mean the Joint trackage and all Equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Trackage or in making Changed in and/or Additions thereto for the benefit of all the parties hereto, or while preparing to engage in, enroute to or from, or otherwise incident to performing such service. Such Equipment shall not be deemed "Joint Property" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the Parties hereto. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User. All such officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to repairing Equipment, re-railing, or clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment shall, for the purpose of this Section 5, be deemed the Sole Employees and/or Sole Property of the party bearing the cost of repair or of the other Loss or Damage of the wreck or derailment. Such officers, agents, employees, contractors, or Equipment while enroute from performing such repair, rerailing, or clearing of wrecks or derailments or renewing the Joint Property to perform another type of service shall not be deemed to be performing service incident to the instant repair, rerailing, or clearing of a wreck or derailment.

5.2 As between the parties hereto only, each party shall bear all cost of Loss or Damage to

its Sole Employees, patrons, invitees, and others on its Equipment, or on or about the Joint Property in transaction of business for or with such party, its Sole Property, or property in its care, custody, or control, except when the Loss or Damage is contributed to by the acts or omissions, negligent or otherwise, of the Sole Employees and/or Sole Property of one or more other parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, in which event the parties whose Sole Employees and/or Sole Property contributed to the same shall bear all of the costs of such Loss or Damage equally.

Loss or Damage to third parties, Joint Employees, or Joint Property contributed to by the acts or omissions, negligent, or otherwise of Sole Employees and/or by defects in the Sole Property of one or more of the parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by the party whose Sole Employees and/or Sole Property contributed to the same, or equally if more than one party's Sole Employee and/or Sole Property shall have contributed to the same. Loss or Damage to third parties, Joint Employees, or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be apportioned among all of the parties on the basis of their respective GTM Handled Proportion during the month in which such Loss or Damage occurred, or if the month of occurrence cannot be determined, then the month in which the Loss or Damage was first discovered.

5.3 It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist, or may be constructed. User agrees to accept all vehicular and pedestrian crossings in whatever condition they may be during the term of the Agreement and will not assert any claim, demand, or cause of action against Owner and will hold Owner harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian crossing accident on the Joint Trackage in which the engines, rail cars, or train of User only is involved.

5.4 For the purpose of this Section 5, Equipment of any third party railroad company or companies being detoured over the Joint Trackage and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

Equipment, and other property being handled for or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purpose of this Section 5.

Each party hereto agrees that the acts and decisions of the party hereto performing any management, maintenance, repair, renewal, removal, improvement, operation, or similar function of or for the Joint Property shall be deemed acts and decisions of a Joint Employee.

5.5 Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all suits for recovery of any such damages.

In case a suit shall be commenced against either party hereto for or on account of damages

for which the other party hereto may be solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the pendency of such suit and thereupon such other party may assume or join in the defense of such suit.

In the event that more than one of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefor, release from liability shall be taken for and in the name of all parties so liable. In the event of any settlement in excess of Fifty Thousand Dollars (\$50,000), the settling party shall notify the other parties prior to settlement. Failure of the settling party to so notify the other parties prior to settlement shall not relieve the other parties of their obligation under the settlement agreement, so long as the settling party's failure to notify did not prejudice the other parties and then only to the extent of such prejudice.

If a judgment shall be recovered against and satisfied by one party involving a liability which should under the Agreement be borne entirely or participated in by the other parties, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of the Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other parties to the extent to which the latter is indebted.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "Demanding Party") shall notify in writing the other party or parties to such dispute (the "Noticed Parties"), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Parties in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Parties shall each appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should any Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party and the arbitrators for the other Noticed Parties, if any, shall select one for the Noticed Party so failing and, if they cannot agree, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the Demanding Party is located upon application by any party after ten (10) days' written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator, to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence

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

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

6.2 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

Section 7. GOVERNMENTAL APPROVAL. ABANDONMENT

7.1 User shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

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

7.3 Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months prior written notice to User of its intention so to do.

If, at the time of such election, User is the only party (other than owner) having the right to use the Joint Trackage, Owner shall, concurrently with its Notice of Abandonment, and to the extent it is legally able to do so, give to User the option to purchase said Joint Trackage or the part or parts thereof to be abandoned at the net liquidation value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instrument, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

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

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

7.5 Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or the terms of the Agreement. However, in the event the parties agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties shall enter into a separate written agreement providing that User shall bear all cost and expense for any such retained or additional employees, including, without limitation, all cost and expense associated with labor protection payments which are made by Owner and which would not have been incurred had such retention or provision of employees for the sole benefit of User not been required.

Section 8. OTHER CONSIDERATIONS

8.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner, provided such admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in the Agreement. Such other companies presently or hereafter admitted to the use of the Joint Trackage or any part thereof by Owner shall be considered Owner for the purpose of the Agreement. User shall have no right to admit any person, firm, or corporation to the use of the Joint Trackage.

8.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and assigns, but no sale, assignment, mortgage, or lease by User of any interest or right given it under the Agreement, separate and apart from a corporate merger, sale, assignment, mortgage or lease of User's railroad in its entirety, shall be valid or binding without the prior written consent of Owner, which consent will not unreasonably be withheld.

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

8.4 All notices, demands, requested, or submissions Which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the Vice President of Operations of each company.

8.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

8.6 In the event there shall be any conflict between the provisions of this Exhibit "B" and the Agreement, the provisions of the Agreement shall prevail.

8.7 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement

END OF EXHIBIT "B"