

BALL JANIK LLP

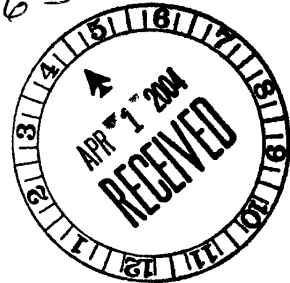
A T T O R N E Y S

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FILED

APR 1 - 2004

**SURFACE
TRANSPORTATION BOARD**

April 1, 2004

BY HAND DELIVERY

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423-0001

ENTERED
Office of Proceedings

APR - 1 2004

Part of
Public Record

Re: STB Finance Docket No. 34489, Stillwater Central Railroad, Inc. --
Trackage Rights Exemption -- The Burlington Northern And Santa
Fe Railway Company

Dear Secretary Williams:

Attached for filing with the Board please find the original and ten copies of the Verified Notice of Exemption pursuant to the provisions of 49 C.F.R. § 1180.2(d)(7) covering the trackage rights agreement between Stillwater Central Railroad, Inc. and The Burlington Northern And Santa Fe Railway Company. Enclosed is a check in the amount of \$950 to cover the filing fee.

Also attached is a 3.5-inch diskette formatted for WordPerfect containing the Notice of Exemption.

Please time and date stamp the extra copy of the Notice and return it with our messenger.

Respectfully submitted,

Karl Morell

Karl Morell

FEE RECEIVED

APR 1 - 2004

Enclosure

**SURFACE
TRANSPORTATION BOARD**

FILED

APR 1 - 2004

**SURFACE
TRANSPORTATION BOARD**

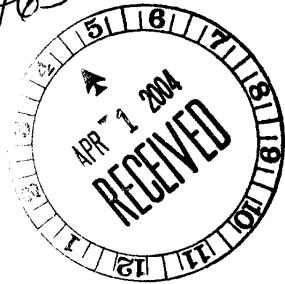
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34489

STILLWATER CENTRAL RAILROAD, INC.
-- TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)



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Office of Proceedings

APR -1 2004

Part of
Public Record

FILED
APR 1 - 2004
SURFACE
TRANSPORTATION BOARD

Dated: April 1, 2004

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorney for:
STILLWATER CENTRAL
RAILROAD, INC.

FEE RECEIVED

APR 1 - 2004

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34489

STILLWATER CENTRAL RAILROAD, INC.
-- TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)



Stillwater Central Railroad, Inc. ("SCRR"), submits this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7), for trackage rights over a segment of rail line owned by The Burlington Northern And Santa Fe Railway Company ("BNSF"). The parties have entered into a written agreement for overhead trackage rights which are not sought as a responsive application in a rail consolidation proceeding. A redacted copy of the Trackage Rights Agreement is attached for placement in the public docket. An unredacted copy of the Agreement is being submitted under seal accompanied by a Request for Protective Order.

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4(g), SCRR submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

The agreement between SCRR and BNSF grants SCRR restricted overhead trackage rights between BNSF milepost 426.9, at Cherokee Yard in Tulsa, Oklahoma, and BNSF milepost

437.0, in Sapulpa, Oklahoma, a distance of 10.1 miles. The use of the trackage rights line by SCRR is limited to the overhead movements of unit trains of cement.

Name and address of tenant railroad:

Stillwater Central Railroad, Inc.
315 W. 3rd Street
Pittsburg, Kansas 66762

Questions regarding this transaction are to be addressed to SCRR's counsel:

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

(a)(1)(ii) Consummation Date

By virtue of paragraph 13 of the Trackage Rights Agreement, the Agreement becomes effective on date this Notice of Exemption becomes effective, or seven days after the filing date.¹

(a)(1)(iii) Purpose Sought to be Accomplished

The Trackage Rights Agreement enables SCRR to interchange unit trains of cement with its affiliate the South Kansas & Oklahoma Railroad at BNSF's Cherokee Yard in Tulsa.

(a)(5) List of States in which the Party's Property is Situated

SCRR operates in the State of Oklahoma. The involved trackage rights are located in the State of Oklahoma.

¹ The Trackage Rights Agreement was signed by the parties on December 15, 2001. Due to an inadvertent oversight, SCRR failed to file for the necessary approval or exemption from the Board. SCRR recently became aware of this oversight while negotiating an extension of the Agreement with BNSF.

(a)(6) Map

A map illustrating the trackage rights is attached as Exhibit A.

(a)(7)(ii) Agreement

A redacted copy of the Trackage Rights Agreement is attached as Exhibit B. An unredacted copy of the Agreement is being submitted under seal accompanied by a Request for Protective Order.

Labor Protection

SCRR is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in Norfolk and Western Ry. Co. – Trackage Rights – BN, 354 I.C.C. 605 (1878), as modified by Mendocino Coast Ry., Inc. – Lease and Operate, 360 I.C.C. 653 (1980).

Environmental and Historic Matters

Environmental and historical impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, an environmental and historical report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4) and .8(b)(3).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", written over a horizontal line.

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorney for:
STILLWATER CENTRAL
RAILROAD, INC.

Dated: April 1, 2004

VERIFICATION

STATE OF KANSAS

)

)

ss.

COUNTY OF CRAWFORD

)

I, A.E. McKechum, being duly sworn depose and state that I am Ass't Secretary

Stillwater Central Railroad, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

A.E. McKechum
[Name]

SUBSCRIBED AND SWORN TO before me this 31st day of March, 2004, in the County of Crawford, State of Kansas.

Jamera Hanson

11-12-2004

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

STB FINANCE DOCKET NO. 34489

STILLWATER CENTRAL RAILROAD, INC.
-- TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

The Burlington Northern And Santa Fe Railway Company ("BNSF") has agreed to grant restricted overhead trackage rights to Stillwater Central Railroad, Inc. ("SCRR"), over the trackage of BNSF located between BNSF milepost 426.9, at Cherokee Yard in Tulsa, OK, and BNSF milepost 437.0, at Sapulpa, OK, a distance of 10.1 miles.

The trackage rights will be consummated on or after April 8, 2004.

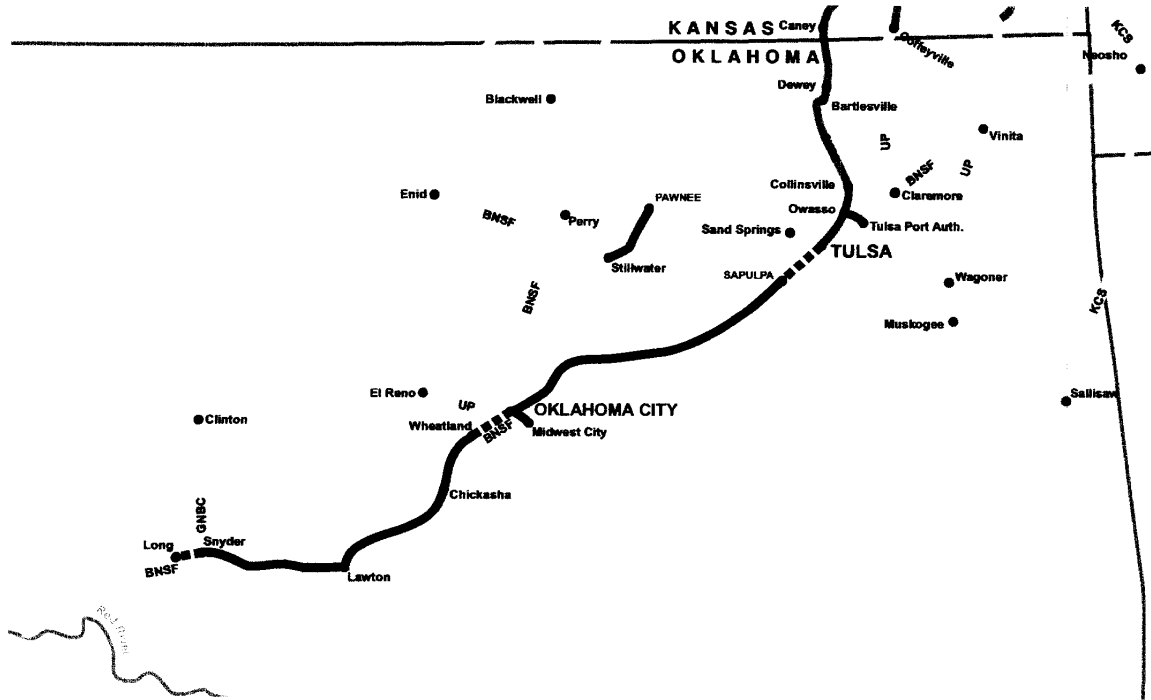
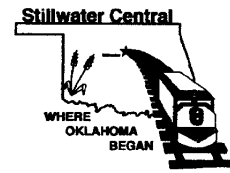
This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,

Vernon A. Williams
Secretary

EXHIBIT A



LEGEND:

Stillwater Central RR (SLWC)

Trackage Rights

Interchanges

- BNSF - PAWNEE, SAPULPA, OKLAHOMA CITY, SNYDER
- UP - OKLAHOMA CITY
- GNBC - SNYDER

**TEMPORARY TRACKAGE RIGHTS AGREEMENT BETWEEN THE
BURLINGTON NORTHERN AND SANTA FE RAILWAY AND
STILLWATER CENTRAL RAILROAD COMPANY**

AGREEMENT made this 15TH day of December, 2001, between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter referred to as "**BNSF**" and **STILLWATER CENTRAL RAILROAD COMPANY**, a Oklahoma corporation, hereinafter identified as "**SLWC**".

WITNESSETH:

WHEREAS, BNSF owns and operates a rail line which extends from milepost 426.9 at Cherokee Yard in Tulsa, OK to milepost 437.0 in Sapulpa, OK, a distance of 10.1 miles. SLWC desires to obtain Temporary Trackage Rights over this section of track.

WHEREAS, BNSF understands the fact that WATCO owns the South Kansas & Oklahoma Railroad (SKOL) which connects to the BNSF at milepost 426.9 and that WATCO owns the Stillwater Central Railroad, (SLWC) which connects to the BNSF at milepost 437.0. BNSF also understands that the State of Oklahoma owns the property that the SLWC operates over. BNSF acknowledges these Temporary Trackage Rights will allow the SKOL & SLWC to connect for the duration of this agreement.

NOW, THEREFORE, BNSF agrees to grant SLWC contractual Temporary Trackage Rights over the stated trackage owned by the BNSF between milepost 426.9 at Cherokee Yard in Tulsa, OK to milepost 437.0 in Sapulpa, OK, a distance of 10.1 miles subject to the terms and conditions contained within this agreement.

A. Attached hereto, marked as Exhibit A, and by this reference incorporated herein, is a print dated December 12, 2001, which depicts the portion of line of railroad of BNSF over which SLWC will be granted trackage rights hereinafter referred to as the "Joint Track" (as further defined in Exhibit B of this agreement, attached hereto and by this reference incorporated herein.)

B. The General Conditions covering the grant of trackage rights are set forth in Exhibit B. If any conflict between Exhibit B and this agreement shall arise, the provisions of this Agreement shall govern. Subject to the terms and conditions of Exhibit B, SLWC agrees, at its sole cost and expense, to prepare and file such documents as may be required to secure exemption approval by the Surface Transportation Board of the United States Department of Transportation ("STB") or other appropriate governmental authority having jurisdiction. BNSF hereby grants to SLWC the nonexclusive right to use the Subject Track as shown in Exhibit "A", for the limited operation of its trains, locomotives, cabooses and cars with its own employees and equipment, in its account, in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter

at any time in the future admit to the joint use of all or part of the Subject Track.

The parties wish to establish and define the terms and conditions under which said trackage rights shall be exercised in this agreement; therefore, it is mutually agreed by and between the parties as follows:

- 1) BNSF and SLWC agrees that the Temporary Trackage Rights agreement will be effective on the date last signed and will terminate July 1, 2004, and
- 2) BNSF and SLWC also agree that both parties will jointly file, and jointly support the termination of this agreement on July 1, 2004. SLWC agrees that if for any reason this agreement is not terminated on July 1, 2004, the new Trackage Rights price effective July 2, 2004 will be \$ [REDACTED] per car.
- 3) BNSF and SLWC agrees that the Temporary Trackage Rights is limited only to unit trains of cement from [REDACTED] to [REDACTED] in [REDACTED]; and a unit train is defined as carloads of a single commodity moving on a single bill of lading.
- 4) Subject to the terms and conditions contained herein, BNSF grants to SLWC the nonexclusive Temporary Trackage Right to use the Joint Trackage for the operation of its unit trains, locomotives, cars and cabooses with its own employees and equipment over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage, it being understood and agreed that SLWC shall not have the right to:
 - A. Set out, pick up, store cars, or switch industries upon the Joint Trackage, or any part thereof,
 - B. Serve any industry, team or house track now existing or hereafter located along the Joint Trackage. Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars over or upon the Joint Trackage, or any portion thereof.
- 5) BNSF, at its expense, shall maintain the Joint Trackage and provide for dispatching in an as available slot manner with other BNSF trains. It is understood that BNSF will use its best efforts to comply with SLWC service requests but makes no guarantee as to the operation of Equipment according to schedule. BNSF hereby reserves the right to use said right-of-way and trackage at any time for any purpose. SLWC shall abide by all regulations, rules, restrictions and orders of BNSF.
- 6) BNSF and SLWC agree to enter into a track lease whereby BNSF leases to SLWC trackage sufficient for storing 25 loaded cars within BNSF's North Yard at Oklahoma City. The rate for this track lease is \$ [REDACTED] per foot per year.
- 7) SLWC agrees to pay to BNSF the following;

A. The sum of \$ [REDACTED] per load and \$ [REDACTED] per empty car of cement that moves between Tulsa and Sapulpa, OK

B. BNSF will provide switch service to [REDACTED] in [REDACTED] at the rate of \$ [REDACTED] per load.

8) SLWC agrees to construct trackage in BNSF'S Cherokee Yard to allow traffic to bypass the other BNSF yard tracks. This new track shall be known as the "Tulsa Runaround Track" and shall be constructed at the sole expense of SLWC, and/or parties other than BNSF, to be completed by July 1, 2004. The Tulsa Runaround Track shall be owned exclusively by BNSF. If the Tulsa Runaround Track is not constructed by July 1, 2004 and, if for any reason, the agreement is not terminated on July 1, 2004, the Trackage Rights price shall be adjusted as provided in paragraph 2 above.

9) SLWC shall operate its engines and trains over the Joint Trackage with its own train and engine service employees, but before said employees are assigned or permitted to operate engines and trains over the Joint Trackage, and from time to time thereafter as and when requested by BNSF, they shall be required to pass the rules examinations required by BNSF of its own employees. BNSF shall have the right to delegate to SLWC officers the conduct of such examinations. Notwithstanding any such examination, SLWC shall be responsible for seeing that its employees are qualified and have taken all such rules examinations. An operating Safety Rule violation committed by SLWC on the Joint Track will be grounds to terminate this agreement. Such termination will be directed by the Division Superintendent without recourse of SLWC.

10) INDEMNIFICATION

A. SLWC agrees to release BNSF from any claims arising from the performance of this Agreement which SLWC or any of its employees, subcontractors, agents or invitees could otherwise assert against BNSF, except to the extent such claims are caused by the wanton, willful, and/or intentional acts or the gross negligence of BNSF and/or its employees agents, or officers.

B. SLWC shall indemnify and hold harmless BNSF for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including BNSF's and SLWC'S officers or employees, and for loss and damage to property belonging to any person, arising in any manner from SLWC'S or any of SLWC'S sub contractor acts or omissions or failure to perform any obligation hereunder. THE LIABILITY ASSUMED BY SLWC SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, AND EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT CAUSED BY THE WANTON, WILLFUL, AND /OR INTENTIONAL ACTS OR THE GROSS NEGLIGENCE OF BNSF AND/OR ITS EMPLOYEES, AGENTS, OR OFFICERS.

C. THE INDEMNIFICATION OBLIGATION ASSUMED BY SLWC SHALL

INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST BNSF BY ANY EMPLOYEE OF SLWC CLAIMING TO BE ANY EMPLOYEE OF BNSF UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

D. SLWC accepts BNSF's property and the track including any bridges, structures or grade crossings in their present condition and hereby assumes the risk of any injury to and death of persons and damage to or destruction of property resulting from the condition of or any defects anywhere in or upon BNSF's property, regardless of whether such condition or defects are known or unknown, apparent or latent, and regardless of whether such condition or defects existed at the commencement of this Agreement or at some later time.

E. SLWC further agrees, at its expense, in the name and on behalf of BNSF, that it shall adjust and settle all claims made against BNSF, and shall, at BNSF's discretion, appear and defend any suits or actions at law or in equity brought against BNSF on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by SLWC under this Agreement for which BNSF is liable or is alleged to be liable. BNSF shall give notice to SLWC, in writing, of the receipt or pendency of such claims and thereupon SLWC shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against BNSF, BNSF may forward summons and complaint or other process in connection therewith to SLWC, and SLWC, at BNSF's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless BNSF from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

F. In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring SLWC to indemnify BNSF to the fullest extent permitted by applicable law. THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR SLWC TO INDEMNIFY BNSF FOR BNSF'S ACTS OF NEGLIGENCE EXCEPT AS PROVIDED ABOVE.

G. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

H. SLWC shall pay all fines, penalties, costs and expenses imposed upon or incurred by BNSF by reason of any violation by SLWC of the Safety Appliance or other State or Federal Laws, and hold BNSF harmless therefrom.

11) INSURANCE COVERAGE

SLWC shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

Railroad liability policy of insurance acceptable to Railroad in an amount of at least [REDACTED] (\$ [REDACTED]) per occurrence, except that prior to January 1, 2002 the railroad liability policy of insurance shall be at least [REDACTED] (\$ [REDACTED]) per occurrence. Such insurance shall include coverage for:

A. Injury to or death of persons whomsoever, Personal Injury, Federal Employers Liability Act, property damage liability including but not limited to, damage or destruction of any and all property including public liability, bill of lading and foreign line rolling stock, seepage and pollution coverage, contractual liability for the liability assumed in this Agreement if the policy is written on a claims made basis the policy shall be endorsed as follows:

If coverage is purchased on a "claims made" basis, SLWC hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, SLWC agrees to provide evidence of such coverage as required hereunder.

B. Workers Compensation and Employers Liability insurance including coverage for, but not limited to: SLWC'S statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway. Employers' Liability (Part B) with limits of at least \$ [REDACTED] each accident, \$ [REDACTED] by disease policy limit, \$ [REDACTED] by disease each employee. All such coverage shall include coverage for the Federal Employers Liability Act and include an alternate employer endorsement naming Railroad as the alternate employer with coverage for the Federal Employers Liability Act. The term Alternate Employer as used herein and above is being used solely as an insurance term of art. By SLWC'S actions of obtaining insurance coverage as set forth above SLWC is in no way intending or evidencing an alternate or dual employment relationship with Railroad. The parties agree: (1) Railroad has no right to direct or control SLWC'S employees with respect to the physical conduct or the performance of services; (2) Railroad does not supervise, nor does it have the right to supervise, details of SLWC'S employees' work or the manner in which such work is accomplished; (3) Railroad retains no control over the details of the SLWC'S employees' work; and (4) Railroad has no right to select, hire, train or fire SLWC'S employees.

C. All risks property insurance covering all of SLWC'S property including property in the care, custody or control of SLWC. Coverage shall include the following: Issued on a replacement cost basis shall provide that in respect of the interest of Railroad the insurance shall not be invalidated by any action or inaction of SLWC or any other person and shall insure the respective interests of Railroad as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by SLWC or any other person. Include a standard loss payable endorsement-naming Railroad as the loss payee as its interests may appear.

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

SLWC agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. SLWC further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody or control.

SLWC'S insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Railroad. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Railroad as an additional insured with respect to work performed under this agreement. Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.

SLWC is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims shall be paid directly by SLWC. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by SLWC'S insurance shall be paid by SLWC as if SLWC elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, SLWC shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

SLWC represents that this Agreement has been thoroughly reviewed by SLWC'S insurance agent(s)/broker(s), who have been instructed by SLWC to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverage referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad SLWC and underwriting practices in the insurance SLWC.

If any portion of the operation is to be subcontracted by SLWC, SLWC shall require that the subcontractor shall provide and maintain insurance coverage as set forth herein, naming Railroad as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railroad to the same extent and under the same terms and conditions as SLWC is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section shall entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of SLWC'S obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by SLWC shall not be deemed to release or diminish the liability of SLWC including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad shall mean "Burlington Northern Santa Fe Corporation", "The Burlington Northern and Santa Fe Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

12) This Agreement and any rights granted hereunder may not be assigned in whole or in part by SLWC without the prior written consent of BNSF. SLWC 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 SLWC thereunder. BNSF, 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. SLWC and BNSF agree to cooperate fully to procure all such necessary consent, approval or authority.

13) This agreement shall be effective on the approval or exemption by the Surface Transportation Board. Approval or exemption shall be obtained by SLWC at its sole cost. In the event any adverse labor protection is applied to this transaction, either party shall have the right to terminate this agreement effective immediately.

14) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

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

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By D. B. Holmsten

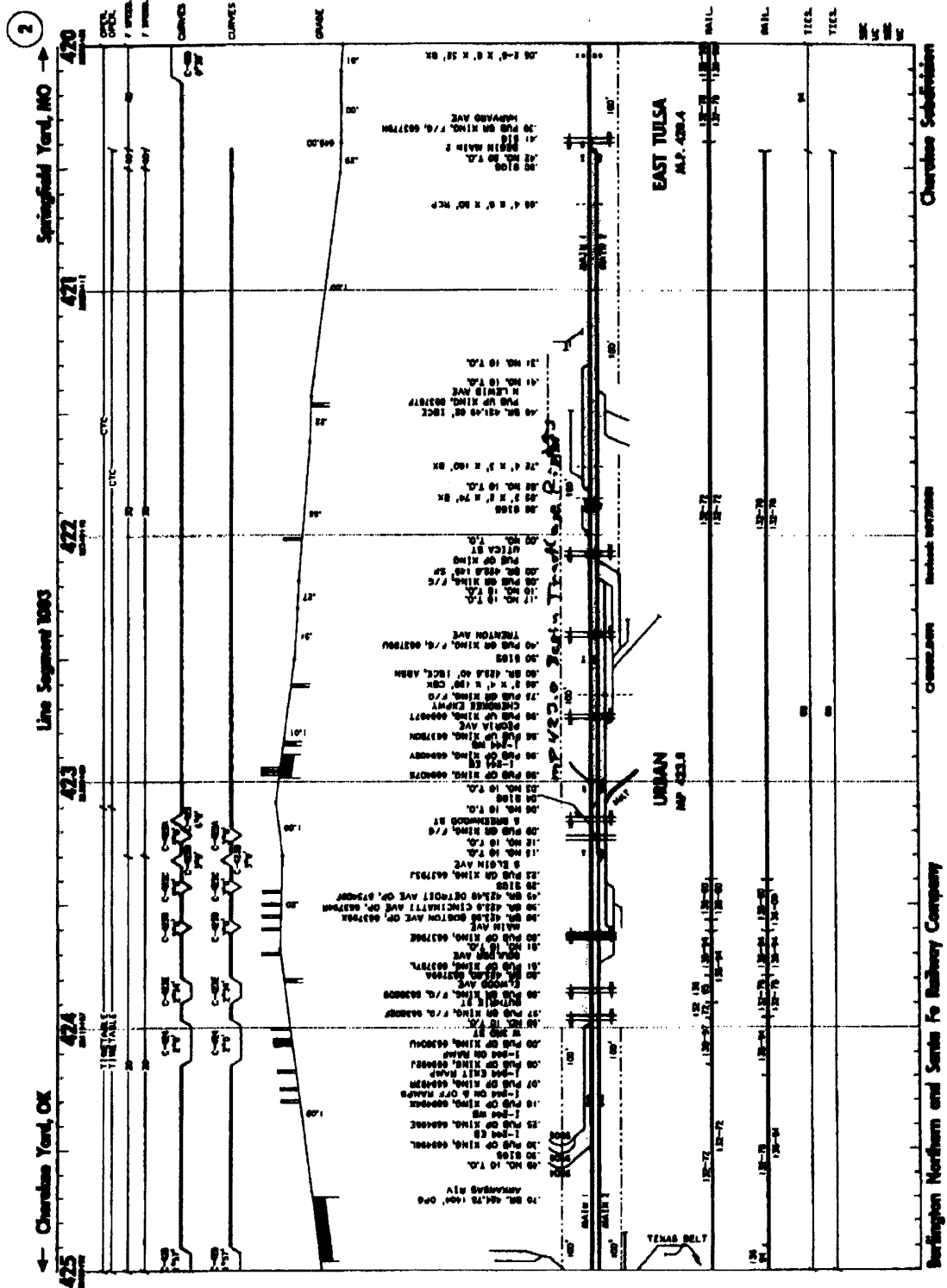
Title ALL CONTRACTS & T. FACILITIES

STILLWATER CENTRAL
RAILROAD COMPANY

By R. B. Webb

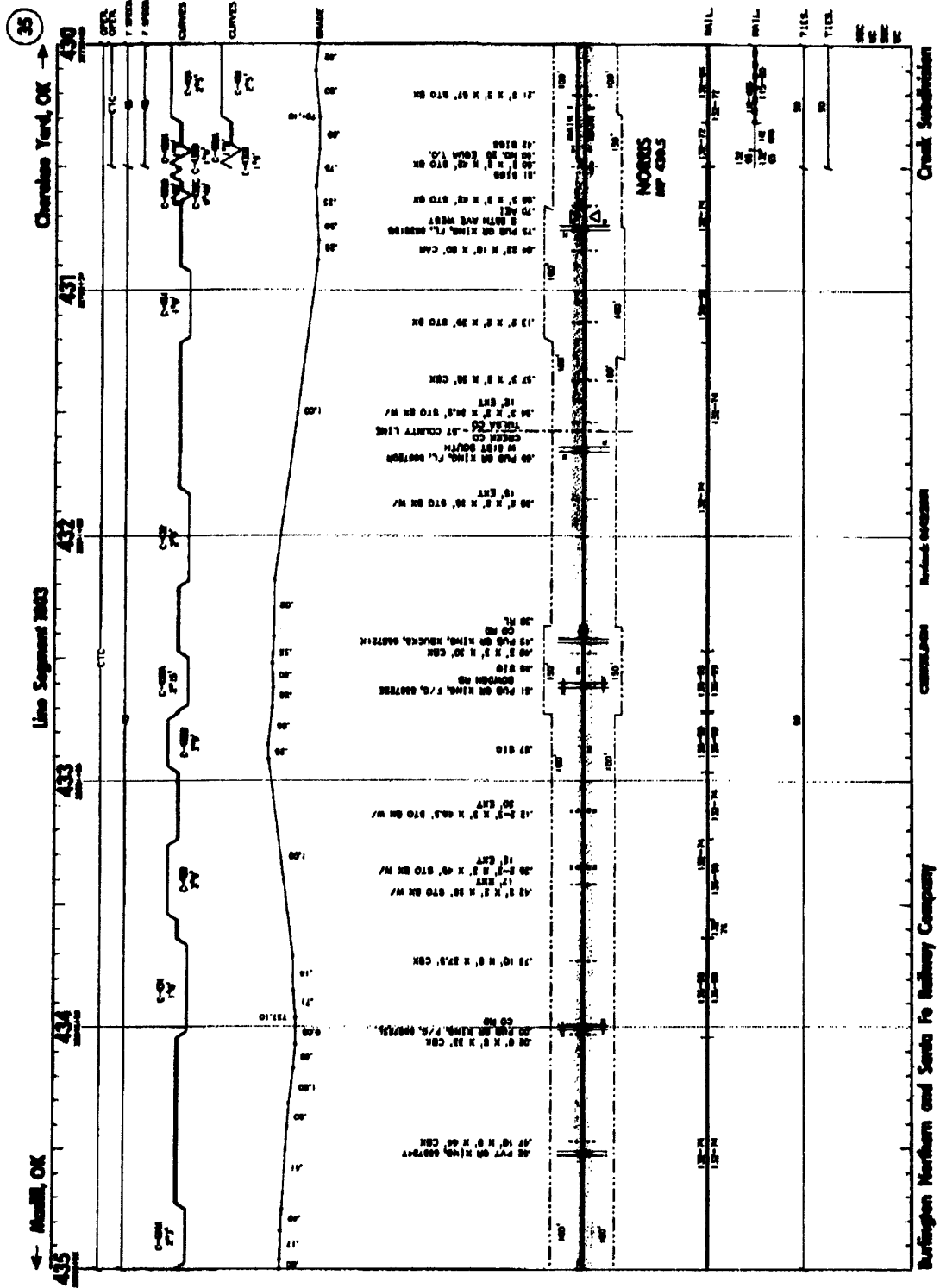
Title President

Exhibit A



December 13, 2001





December 12, 2001

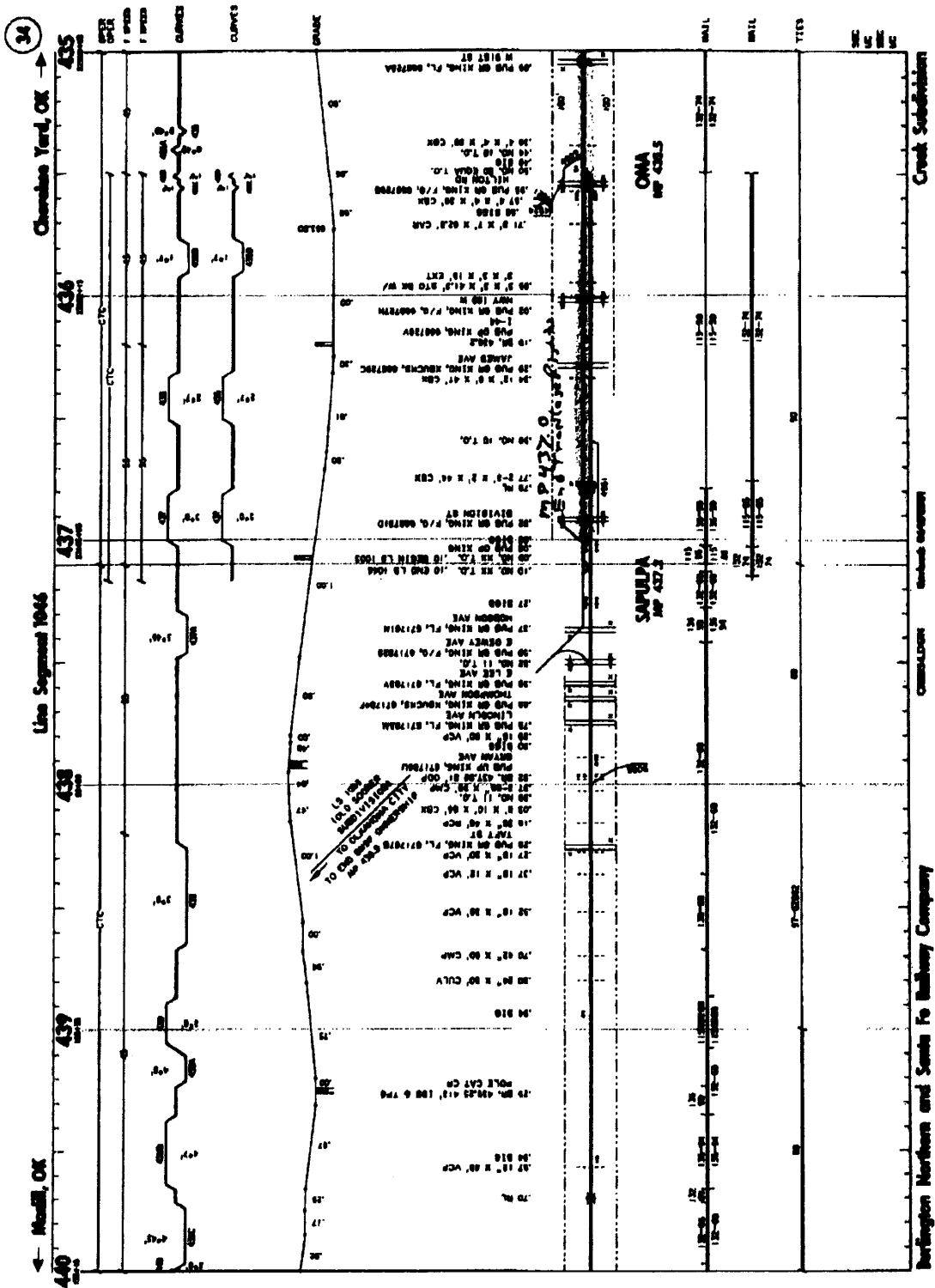


EXHIBIT "B"
GENERAL CONDITIONS

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, 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 "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 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 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 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 cars, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged 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 thirty (30) 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. In the event that either party hereto shall fail to pay any monies due to the other party hereto within thirty (30) days after the invoice date then such first party shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by such first party at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in the *Wall Street Journal* in the preceding June plus two and one-half percent (2 ½%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

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, 1-3, 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 affect 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 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 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's 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 10 page 3 of the agreement.

Section 5. ARBITRATION

5.1 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.

5.2 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 6. GOVERNMENTAL APPROVAL and ABANDONMENT

6.1 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.

6.2 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.

6.3 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.

6.4 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.

6.5 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 operation 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 7. OTHER CONSIDERATIONS

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

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