

(1)

SHARED USE AGREEMENT  
(Pasadena Subdivision (Los Angeles County))

Dated as of October 30, 1992

between

The Atchison, Topeka and Santa Fe Railway Company

as "Santa Fe"

and

Los Angeles County Transportation Commission

as the "Agency"

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SHARED USE AGREEMENT  
(Pasadena Subdivision (Los Angeles County))

THIS SHARED USE AGREEMENT (this "Agreement") dated as of October 30, 1992 is entered into by THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Santa Fe", as such term is defined in Section 1.48), and LOS ANGELES COUNTY TRANSPORTATION COMMISSION ("LACTC") a government agency organized under the laws of the State of California (the "Agency," as such term is defined in Section 1.2).

RECITALS:

A. Pursuant to that certain Purchase and Sale Agreement dated as of the date hereof (the "Purchase Agreement"), among Santa Fe, as seller, and the Agency, LOSSAN, OCTA, RCTC, SANBAG, MTDB, NCTD, and SCRRA, as purchaser, Santa Fe has agreed to sell to the various purchasing agencies certain properties and rights described therein, including the portion of the Pasadena Subdivision located in Los Angeles County (the "Property"). The Pasadena Subdivision is more particularly described in Exhibit A attached hereto.

B. In accordance with the Purchase Agreement, Santa Fe will grant the Property to the Agency, pursuant to that certain Grant Deed (the "Grant Deed"), a copy of which (except to the extent that the parties hereto mutually may agree to amendments) is attached hereto as Exhibit B. The Grant Deed

shall be recorded in the Official Records of Los Angeles County, California.

C. In the Grant Deed, Santa Fe will reserve unto itself over the Property, a permanent and exclusive rail freight service easement (the "Reserved Rail Freight Service Easement") on the terms set forth therein, solely for the purpose of providing Rail Freight Service over the Property.

D. The parties hereto are entering into this Agreement to set forth their respective rights and obligations with respect to the Property and the shared use of the Property to accommodate Agency Rail Service and Santa Fe's Rail Freight Service over the Property.

#### ARTICLE 1: DEFINITIONS

The following capitalized terms are used in this Agreement with the following meanings:

1.1 AAR. "AAR" shall mean the Association of American Railroads.

1.2 Agency. "Agency" shall mean LACTC and any successor or assignee following an assignment permitted under this Agreement.

1.3 Agency Party. "Agency Party" shall mean the Agency and any other person to the extent that such person as permitted under this Agreement is exercising any rights to operate Agency Rail Service (other than Amtrak Trains) over any portion of the Property or maintaining or constructing rail



facilities on the Property pursuant to a specific written grant of such rights by the Agency, including, without limitation, any Operator.

1.4 Agency Rail Service. "Agency Rail Service" shall mean the operation of Trains (including light rail service), authorized by the Agency, which are used to provide passenger rail service, or any other related rail passenger service activities; provided, however, the term "Agency Rail Service" shall exclude any operations included within Amtrak Service.

1.5 Agency Train. "Agency Train" shall mean any Train operated by or on behalf of any Agency Party but shall not include any Amtrak Train.

1.6 Amtrak. "Amtrak" shall mean the National Railroad Passenger Corporation.

1.7 Amtrak Service. "Amtrak Service" shall mean intercity rail passenger service or Section 403(b) Service operated by Amtrak on Amtrak Trains, including services provided by Amtrak at Passenger Station Sites, but excluding services provided by Amtrak as Operator for the Agency.

1.8 Amtrak Train. "Amtrak Train" shall mean any Train operated by Amtrak to provide intercity rail passenger service or Section 403(b) Service operated by Amtrak on Amtrak Trains, but shall not include any Agency Train, even if Amtrak is the Operator of such Agency Train.

1.9 Burdened Portion of the Property. "Burdened Portion of the Property" shall mean the portion of the Property encumbered by the Reserved Rail Freight Service Easement.

1.10 Car-Mile. "Car-Mile" shall mean the movement of a loaded car over a one mile distance on the Tracks (one locomotive equals two cars; intermodal traffic carload equivalents shall be consistently applied from period to period, such as two platform loads equals one carload).

1.11 Closing. "Closing" shall mean the date the Property is acquired by the Agency in accordance with the Purchase Agreement.

1.12 Commuter. "Commuter" shall mean:

(a) Any business visitor or public invitee who normally would be considered an invitee of any Agency Party as the term "invitee" is interpreted under California law (including, without limitation, all Passengers aboard, boarding or disembarking from any Agency Trains);

(b) All persons (except any Employee of a Santa Fe Party and any Employee of an Agency Party but not excepting any person who is an Employee of a Santa Fe Party or an Agency Party while such person (i) is not acting in his or her capacity as an Employee and (ii) is within the class of people described in Subsection (a) above) at or within 250 feet of any Passenger Station Site, or within 250 feet of any business located within 250 feet of any Passenger Station Site, if such business is owned or operated by any tenant, licensee, successor

or assignee of any Agency Party, or any tenant or licensee of any such successor or assignee; and

(c) Any Passenger going to or coming from a Passenger Station Site, any person accompanying a Passenger going to or coming from a Passenger Station Site, any person going to a Passenger Station Site to meet a Passenger, and any person coming from a Passenger Station Site who either brought a Passenger to such Passenger Station Site or met a Passenger at such Passenger Station Site if, in any such case, an injury or death to such person occurs within one-half mile of such Passenger Station Site.

1.13 Construction Index. "Construction Index" shall mean the index of changes in Material Prices, Wage Rates and Supplements Combined, Excluding Fuel, as reported in the AAR Railroad Cost Index, Quarterly Indexes of Charge Out Prices and Wage Rates (West). If such index ceases to be reported, an appropriate substitute index for such costs shall be negotiated by the parties hereto. In the absence of agreement, the matter will be arbitrated in the manner prescribed in Article 12 of this Agreement.

1.14 Customer Leases. "Customer Leases" shall mean those certain leases of a portion of the Property by certain Santa Fe rail service customers identified on Exhibit F.

1.15 Dangerous Materials Cars. "Dangerous Materials Cars" shall mean all freight cars containing flammable or toxic gases or liquids, explosives, radioactive materials, etiologic

agents, combustible liquids, oxidizing or corrosive materials, compressed gases or materials that could form toxic gases or liquids.

1.16 Emergency. "Emergency" shall mean a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

1.17 Employee. "Employee" shall mean any employee, agent, independent contractor or consultant of any Agency Party or Santa Fe Party to the extent that such employee, agent, independent contractor or consultant is performing duties for such party. For purposes of this Agreement only, Employees of the Operator, any other Purchasing Agency and of Amtrak shall be considered Employees of the Agency.

1.18 First Priority. "First Priority" shall mean that as to a Train or class of Trains to which such priority is accorded under this Agreement, (i) such Train shall not be stopped or delayed by the dispatcher in order to accommodate the operation or movement of a Train of another class, whether operating in the same or opposing direction, and (ii) the dispatcher will ensure that the Train of another class will be in the clear so that the Train with First Priority will in no case be stopped or delayed by the Train of another class. As used herein, a Train of another class is one as to which another holds First Priority.

1.19 FRA. "FRA" shall mean the Federal Railroad Administration.

1.20 Free of Charge. "Free of Charge" shall mean no rental charge or other compensation for ownership interest ever shall be due from the using party, but it shall not preclude charges for maintenance, capital improvements and other expenses as set forth in this Agreement.

1.21 Freight Rail Facilities. "Freight Rail Facilities" shall mean all rail freight loading or unloading facilities and rail freight weighing scales. Freight Rail Facilities do not include any Tracks.

1.22 Freight Track. "Freight Track" shall mean Tracks or portions thereof which, at the time referenced, are used exclusively, in the ordinary course of business, for Rail Freight Service (unless the Agency elects to use, in the ordinary course, these Tracks for its Agency Rail Service or to make these Tracks available for Amtrak Service), including, without limitation, industry tracks to shippers and receivers.

1.23 Grade Sep Cap. "Grade Sep Cap" shall have the meaning set forth in Section 6.8(e).

1.24 Grant Deed. "Grant Deed" shall have the meaning set forth in Recital B of this Agreement.

1.25 Hazardous Materials. "Hazardous Materials" shall mean any chemical, material or substance that is, now or at the time in question, regulated or governed by any law, the release of which creates any liability under any applicable law, or any other material which, when released, would cause significant ecological damage.

1.26 ICC. "ICC" shall mean the Interstate Commerce Commission.

1.27 Knowledge. "Knowledge" shall mean, with respect to any party to this Agreement, and with respect to any issue or portion of the Property under this Agreement, the actual knowledge of such party's officers or supervisory employees with supervisory responsibility for such issue or portion of the Property.

1.28 Liability. "Liability" shall mean all loss, damage, cost, expense (including costs of investigation and attorneys' fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature (including those arising under the Federal Employer's Liability Act), arising out of an occurrence relating to this Agreement or occurring on or relating to any of the land, tracks or other improvements described herein.

1.29 LOSSAN. "LOSSAN" shall mean the Los Angeles-San Diego Rail Corridor Agency.

1.30 MTDB. "MTDB" shall mean the San Diego Metropolitan Transit Development Board.

1.31 NCTD. "NCTD" shall mean the North San Diego County Transit Development Board.

1.32 OCTA. "OCTA" shall mean the Orange County Transportation Authority.

1.33 Operator. "Operator" shall mean the operator or operators, if any, appointed from time to time by the Agency or its assignee to operate Agency Trains over the Property and/or to exercise some or all of the respective rights and obligations of the Agency under this Agreement in connection with such operation over the Property or any portion thereof, but only to the extent such operator or operators are acting in such capacity and not to the extent such operator or operators are acting for their own account or in some other capacity.

1.34 Pasadena Shift Date. "Pasadena Shift Date" shall mean the date on which Santa Fe has shifted its overhead Rail Freight Service from the Property to the San Bernardino Subdivision.

1.35 Pasadena Subdivision. "Pasadena Subdivision" shall mean the property described on Exhibit A attached hereto.

1.36 Passenger. "Passenger" shall mean any person (including, without limitation, an Employee of Santa Fe) aboard any Agency Train, or Amtrak Train, any person going to a Passenger Station Site with the intent to board any Agency Train, and any person coming from a Passenger Station Site who has disembarked from any Agency Train, other than, in any such case, an Employee of an Agency Party.

1.37 Passenger Station Site. "Passenger Station Site" shall mean, collectively, any passenger station owned or leased by, or operated by or on behalf of any Agency Party, any adjacent passenger parking lot owned or leased by, or operated by or on

behalf of any Agency Party, any passenger loading platform owned or leased by, or operated by or on behalf of any Agency Party and any ticket booth or machine or any passenger waiting area owned or leased by, or operated by or on behalf of any Agency Party.

1.38 Property. "Property" shall have the meaning set forth in Recital A of this Agreement and shall include the Tracks.

1.39 Purchase Agreement. "Purchase Agreement" shall have the meaning set forth in Recital A of this Agreement.

1.40 Purchasing Agency. "Purchasing Agency" shall mean any purchasing party under the Purchase Agreement, as identified in Recital A of this Agreement.

1.41 Quality Rail Freight Service. "Quality Rail Freight Service" shall mean efficient and reliable rail freight service to Santa Fe's current and future customers, with service and Schedules that are competitive with other railroads serving Southern California, including the railhaul portion of intermodal service offered by those other railroads in Southern California, but without reference to cost.

1.42 Rail Freight Service. "Rail Freight Service" shall mean the operations and activities permitted under the Reserved Rail Freight Service Easement.

1.43 RCTC. "RCTC" shall mean Riverside County Transportation Commission.



1.44 Recklessness. "Recklessness" shall mean:

(a) An entire failure of care or the exercise of so slight a degree of care as to raise a presumption that there was a conscious indifference to the property and welfare of others;

(b) Conduct constituting a reckless or wanton disregard of the probable results of such conduct; or

(c) Wilful misconduct.

1.45 Reserved Rail Freight Service Easement. "Reserved Rail Freight Service Easement" shall mean the rail freight service easement reserved by Santa Fe in the Grant Deed.

1.46 Restricted Freight Periods. "Restricted Freight Periods" shall mean (a) between 5:00 a.m. and 8:00 a.m. and between 4:30 p.m. and 7:30 p.m. Restricted Freight Periods shall commence on the Pasadena Shift Date.

1.47 SANBAG. "SANBAG" shall mean San Bernardino Associated Governments.

1.48 Santa Fe. "Santa Fe" shall mean The Atchison, Topeka and Santa Fe Railway Company and any successor or assignee following an assignment which is permitted under this Agreement and the Reserved Rail Freight Service Easement.

1.49 Santa Fe Party. "Santa Fe Party" shall mean Santa Fe and any other person to the extent such person, as permitted under this Agreement and the Reserved Rail Freight Service Easement, is exercising any rights to operate Rail

Freight Service over the Property pursuant to a specific written grant of such rights by Santa Fe.

1.50 Santa Fe Train. "Santa Fe Train" shall mean any Train operated by any Santa Fe Party.

1.51 Schedule. "Schedule" shall mean to appoint a time for the departure and/or arrival of Trains on the Track at origin, principal intermediate points and destination; which information shall be specified in a document which contains the intended times of operation of Trains on the Tracks and which document shall not be changed more often than quarterly, except where agreed in writing by both parties hereto; and also shall mean such document.

1.52 SCRRA. "SCRRA" shall mean the Southern California Regional Rail Authority.

1.53 Section 403(b) Service. "Section 403(b) Service" shall mean service provided by Amtrak pursuant to Section 403(b) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. § 563(b)).

1.54 Terminal Tracks. "Terminal Tracks" shall mean (a) industry tracks or team tracks, or (b) sidings or other tracks upon which the parties mutually agree.

1.55 Third Party. "Third Party" shall mean any person other than any Santa Fe Party, an Employee of any Santa Fe Party, any Agency Party, an Employee of any Agency Party, any other Purchasing Agency, an Employee of any other Purchasing Agency, a Commuter, Amtrak or an Employee of Amtrak.

1.56 Timetable. "Timetable" shall mean Santa Fe's Timetable No. 2 effective 12:01 a.m., Sunday, April 7, 1991.

1.57 Tracks. "Tracks" shall mean all tracks, (including, without limitation, passing tracks and sidings), turnouts, crossovers, interlocking devices and plants, and track improvements and support structures that are located now or in the future on the Property.

1.58 Train. "Train" shall mean one or more locomotive units and cars, if any, attached thereto.

1.59 Train-Mile. "Train-Mile" shall mean the movement of a Train, whether or not revenue generating, over a one mile distance on the Tracks.

## ARTICLE 2: SANTA FE'S RESERVED RAIL FREIGHT SERVICE EASEMENT

### 2.1 Scope of Rail Freight Service Easement.

(a) Santa Fe and any other Santa Fe Party shall have the right to operate Rail Freight Service (but no other service or use) in the exercise of the rights reserved by Santa Fe in the Reserved Rail Freight Service Easement.

(b) Employees of any Santa Fe Party shall have such access to the Property in connection with Rail Freight Service, and freight shippers and freight receivers of any Santa Fe Party shall have such access to the Property as is reasonably necessary in connection with the loading, unloading and inspection of such shippers' or receivers' goods in accordance with the Reserved Rail Freight Service Easement and this

Agreement; provided however, except to the extent expressly provided in this Agreement, this right of access shall not be deemed to require the Agency to take any actions or expend any funds to enable such persons to exercise such right of access and, provided further, such access shall not more than minimally interfere with Agency Rail Service. In addition, Santa Fe shall assign to the Agencies the benefit of any and all indemnities available to Santa Fe under any existing contracts with any agent, contractor, freight shipper or freight receiver permitting such party access to the Property, or in the absence of such assignment being effective, will indemnify the Agencies for Liability for injury or death of such persons or damage to property not involving Agency Rail Service to the extent of any indemnification available to Santa Fe under such contracts. With respect to future contracts permitting such access, Santa Fe will require indemnification of both Santa Fe and the Agencies for Liability for injury or death of such persons or damage to property to the fullest extent included in current standard form contracts for access to the Property, or in the absence of obtaining such contractual indemnification, Santa Fe will indemnify the Agencies for Liability not involving Agency Rail Service to the extent provided in Santa Fe's current standard form contracts.

(c) Santa Fe and the other Santa Fe Parties shall have any and all duties, responsibilities and obligations arising under the Interstate Commerce Act (and any similar California

state law) which require any Santa Fe Party to serve its existing and any future rail freight shippers, it being understood and agreed that nothing set forth herein or in the Reserved Rail Freight Service Easement shall be construed to obligate or require the Agency to assume, adopt, or acquire any duties, liabilities, responsibilities or obligations to provide any Rail Freight Service to any current or future freight shippers or freight receivers of any Santa Fe Party.

(d) No Santa Fe Party shall have any right to operate its Trains over any portion of the Property with respect to which Santa Fe has abandoned its common carrier rail freight service obligations.

2.2 No Fees for Shared Use. The use of the Property by the Santa Fe Parties under the Reserved Rail Freight Service Easement and this Agreement for Rail Freight Service shall be Free of Charge.

2.3 Ownership.

(a) The Agency shall own all Tracks and other improvements on the Property, including, without limitation, improvements constructed on the Property at the cost and expense of Santa Fe.

(b) Nothing in this Agreement shall be construed as granting or reserving to Santa Fe any interest or right in the Property, the Tracks, the Freight Rail Facilities, or other improvements on the Property other than the rights expressly provided herein or in the Reserved Rail Freight Service Easement.

2.4 Track Agreements between Santa Fe and Shippers.

Santa Fe, in Santa Fe's sole discretion, and at Santa Fe's sole cost and expense, may enter into agreements directly with shippers governing the construction, use and maintenance of new and existing industry Tracks for Rail Freight Service, provided that (a) such agreements do not more than minimally interfere with Agency Rail Service and (b) such agreements have been approved by the Agency, such approval not to be unreasonably withheld or delayed. This right shall not relieve Santa Fe of any obligations under Section 6.6.

ARTICLE 3: OPERATIONS

3.1 General.

(a) Santa Fe shall be responsible for providing and operating Rail Freight Service on the Property. The Agency shall be responsible for providing and operating Agency Rail Service on the Property. The Agency anticipates contracting with an Operator to operate Agency Rail Service over the Property. The Agency may appoint an Operator as the Agency's agent to exercise some or all of the Agency's rights under this Agreement, subject to the terms and conditions of this Agreement.

(b) Each Santa Fe Party and each Agency Party shall comply (i) with all applicable federal, state or local laws, regulations or rules governing operations on the Property, the Tracks, the Trains, any other equipment located thereon, or any personnel employed in the maintenance and operation of any of

the foregoing, and (ii) with all of the Agency's timetables, operating rules, general orders and bulletins and other standards relating to such operation, maintenance, condition, inspection, testing or safety, which timetables, general orders, bulletins and other standards shall be provided in writing to Santa Fe by the Agency. In promulgating the operating rules, general orders, bulletins and other standards, the Agency shall treat Santa Fe fairly.

(c) Neither the Agency nor Santa Fe shall have any responsibility for inspecting, maintaining, servicing or repairing any Trains, hi-rail vehicles and other equipment used by the other party on the Property, but all such equipment shall at all times comply with applicable FRA, federal, state, and local governmental requirements.

### 3.2 Personnel.

(a) Santa Fe shall maintain, or cause to be maintained, an adequate and experienced staff to operate Santa Fe Trains that use the Property. The Agency shall maintain, or cause to be maintained, an adequate and experienced staff to maintain the Property and to operate Agency Trains that use the Property.

(b) Santa Fe shall make such arrangements with the Agency as the Agency may require to insure that all persons operating Santa Fe Trains on the Property are competent, trained, licensed and qualified for the task they are performing.

(c) The Agency shall have the right to exclude from the Property after consultation with Santa Fe, any Employee of any Santa Fe Party who is in violation of the Agency's non-discriminatory rules, regulations, orders or instructions.

3.3 Special Operations Issues.

(a) If (i) a Train or any hi-rail vehicle of any Agency Party or any Santa Fe Party becomes stalled or disabled on the Tracks and is unable to proceed or (ii) crippled or otherwise defective equipment is, in an Emergency, set out from any Train onto the Tracks; then the party whose Train or equipment is involved in the incident shall be responsible for immediately notifying the other party, and promptly furnishing motive power or such other assistance as may be necessary to move such equipment or Train. If such a Santa Fe Train or equipment is not promptly moved off all Tracks needed for Agency Rail Service, the Agency shall have the option of moving the Santa Fe Train or equipment and billing Santa Fe its cost of performing this service in accordance with Article 7.

(b) If it becomes necessary to make repairs to crippled or defective Trains or equipment of any Agency Party or any Santa Fe Party in order to move it from the Tracks, such work shall be the responsibility of (i) Santa Fe with respect to Santa Fe Trains and items of equipment of any Santa Fe Party involved in the incident, and (ii) the Agencies with respect to Agency Trains and items of equipment of any Agency Party involved in the incident.



(c) Whenever any Agency Train or any Santa Fe Train on the Tracks requires rerailling, wrecking service or wrecking train service, the party whose Train is involved shall be responsible for the cost of performing such service (except as provided in Article 8), which service shall be arranged by the Agency.

(d) By mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response of the party whose Trains or items of equipment are involved in the incident described in Sections 3.3(a), (b) or (c), as the case may be, has not been adequate relative to the scheduled uses of the Tracks, such other party may render such assistance as reasonably may be required in light of such scheduled uses, and the party whose Trains or items of equipment are involved in the incident shall reimburse the other party, within 30 days after receipt of the bill therefor, for the cost and expense of rendering any such assistance.

(e) In any operational Emergency, the parties shall in good faith provide aid to each other as requested with the costs thereof to be reimbursed promptly thereafter.

(f) For the purpose of this Section 3.3, the term "Agency Train" shall include any Amtrak Train, and the term "Agency Party" shall include Amtrak.

3.4 Emergency Detour Rights. Agency and Santa Fe each shall provide to the other, to the extent feasible, a right to detour over each other's then existing rail lines in the event an

Emergency blocks the Tracks or rail lines owned by Santa Fe or the Agency. Such detour rights shall be granted on those lines that are capable of accommodating such detour. Such detour rights shall be governed by standard detour arrangements between American railroads.

3.5 Business and Excursion Trains. Santa Fe shall have the right to operate over the Tracks Free of Charge for the purpose of the operation by Santa Fe of freight customer Trains, board of directors Trains, employee excursion Trains, or Trains with government officials (including business cars at the end of freight trains). Such right shall be subject to scheduling and operating times acceptable to the Agency or Agencies over whose Tracks Santa Fe will conduct such operation and shall not more than minimally interfere with Agency Rail Service. With respect to all employees and invitees on such cars and Trains operated by Santa Fe (other than the crew operating such Train), the provisions of Article 8 shall not apply to Liability for injury or death of such persons and Santa Fe and the Agency shall bear such Liability in proportion to the relative aggregate degrees of fault of (i) a group consisting of all Santa Fe Parties, compared to (ii) a group consisting of all Agency Parties and Amtrak, and Santa Fe and the Agency each hereby indemnify, defend and hold harmless the other from and against its respective portion of any loss, cost (including, without limitation, any cost of remediation), claim, damage, liability, disbursement or expense, or monetary settlement, of any kind or nature, whether

foreseeable or unforeseeable, including, but not limited to, interest or other carrying costs and legal, accounting and other professional fees and expenses reasonably incurred in the investigation or defense of claims, arising out of or in relation to such Liability.

3.6 Regulatory Approvals. Santa Fe shall obtain and maintain all federal, state and/or local and all AAR regulatory approvals as may be required for the conduct of Rail Freight Service on the Property.

3.7 Railroad Security. Neither the Agency nor Santa Fe shall have any responsibility to provide security services or measures to protect from theft, vandalism or other damage any property, lading or equipment owned or operated by the other party.

3.8 Loading and Unloading of Freight Cars. All loading and unloading of freight cars on the Property by Santa Fe and any Santa Fe Party shall be in compliance with all applicable federal, state, and local safety regulations, and subject only to the following additional restrictions:

(a) As to Tracks existing on the date of Closing, Santa Fe and the Santa Fe Parties shall load and unload freight cars only on Terminal Tracks, further provided:

(i) Loading and unloading of any boxcar on any such Track within 20 feet from any Track used for Agency Rail Service shall occur only on the side opposite of any Track used for Agency Rail Service.

(ii) Loading and unloading from any open top car or lumber car on any such Track shall occur only on a Terminal Track located more than 20 feet from any Track used for Agency Rail Service.

(iii) Loading and unloading of Dangerous Materials Cars shall occur only at (1) any location which has been used to load, unload or store Dangerous Materials Cars between June 18, 1990 and June 18, 1992 (which locations are identified in Exhibit D), provided however, that with respect to any such locations that are within 50 feet from any Track used for Agency Rail Service, or within 250 feet from any Passenger Station Site, if the Agency provides an alternative location reasonably acceptable to Santa Fe, then Santa Fe shall relocate such loading and unloading of Dangerous Materials Cars to the alternate location, or (2) any other Terminal Track existing on the date of Closing which is more than 50 feet from any Track used for Agency Rail Service and more than 250 feet from any Passenger Station Site, or (3) on other Tracks as mutually agreed between Santa Fe and the Agency. All loading and unloading of Dangerous Materials Cars shall be subject to Santa Fe's indemnification obligations set forth in Article 10.

(iv) Loading and unloading of intermodal cars shall be subject to the restrictions that (1) if side loaders are used for loading or unloading, such loading and unloading shall occur only on the side opposite of any Track used for Agency Rail Service, to the extent necessary to keep such loading or

unloading operations at least 20 feet away from any Track used for Agency Rail Service, and (2) if an overhead crane is used for loading and unloading, such crane shall not be operated within 20 feet of any Track used for Agency Rail Service.

(v) Neither loading nor unloading of freight cars shall occur on the Property in a manner contrary to applicable law, or within 250 feet of any grade crossing where such activity would restrict sight distance at that crossing.

(vi) With respect to loading or unloading of any type of freight cars not referenced in subsection (i) through (iv) above, if the Agency discovers safety problems resulting from that loading or unloading, Santa Fe and the Agency agree to work together to explore resolutions to those problems.

(b) As to Tracks constructed after the date of Closing, Santa Fe and the Santa Fe Parties shall load and unload freight cars only on Terminal Tracks, further provided:

(i) Santa Fe and the Santa Fe Parties may not load or unload any boxcar, open top car or lumber car on any such Track that is located within 20 feet from any Track used for Agency Rail Service.

(ii) Santa Fe and the Santa Fe Parties may not unload into any pit or conveyor system, or load from any chute or conveyor system.

(iii) Santa Fe and the Santa Fe Parties shall not load or unload any Dangerous Materials Cars on the Property.

(iv) Santa Fe and the Santa Fe Parties shall not load or unload within 250 feet of any grade crossing where such activity would restrict sight distance at the crossing.

(v) Loading and unloading of intermodal cars shall be subject to the restrictions that (1) if side loaders are used for loading or unloading, such loading and unloading shall occur only on the side opposite of any Track used for Agency Rail Service, to the extent necessary to keep such loading or unloading operations at least 20 feet away from any Track used for Agency Rail Service, and (2) if an overhead crane is used for loading and unloading, such crane shall not be operated within 20 feet of any Track used for Agency Rail Service.

### 3.9 Storage of Freight Cars.

(a) As to Tracks existing on the date of Closing, storage of loaded and empty freight cars by Santa Fe and the Santa Fe Parties is restricted as follows:

(i) Storage of Dangerous Materials Cars shall occur only at (1) any location which has been used to load, unload or store Dangerous Materials Cars between June 18, 1990 and June 18, 1992 (which locations are identified in Exhibit D), provided however, that with respect to any such locations that are within 50 feet from any Track used for Agency Rail Service, or within 250 feet from any Passenger Station Site, if the Agency provides an alternative location reasonably acceptable to Santa Fe, then Santa Fe shall relocate such storage of Dangerous Materials Cars to the alternate location, or (2) any other Track

existing on the date of Closing which is more than 50 feet from any Track used for Agency Rail Service and more than 250 feet from any Passenger Station Site, or (3) on other Tracks as mutually agreed between Santa Fe and the Agency. All storage of Dangerous Materials Cars shall be subject to Santa Fe's indemnification obligations set forth in Article 10.

(ii) Santa Fe and the Santa Fe Parties shall comply, at their sole cost and expense, with all customary and appropriate safety and maintenance procedures (including, without limitation, derails).

(iii) Freight cars shall not be stored on the Property in a manner contrary to applicable law, or within 250 feet of any grade crossing where such activity would restrict sight distance at that crossing.

(b) As to Tracks constructed after the date of Closing, Santa Fe's storage of loaded and empty freight cars is restricted as follows:

(i) the restrictions set forth in Section 3.9(a) (ii) and (iii) apply.

(ii) Santa Fe and the Santa Fe Parties may not store any Dangerous Materials Cars on such Tracks.

(c) If the Agency discovers that any storage of freight cars creates a hazard affecting Agency Rail Service, Santa Fe and the Agency agree to work together to reduce or eliminate such hazard in a manner acceptable to both parties.

ARTICLE 4: DISPATCHING AND SCHEDULING

4.1 Dispatching Responsibilities.

(a) From and after Closing, Santa Fe shall continue to provide dispatching service for all Train movements over the Property until the Pasadena Shift Date except that the Agency shall control train movements within the limits of the Interlocker, as described in Section 3.2(d) of the Purchase Agreement. On and after the Pasadena Shift Date, the Agency shall provide dispatching service for all Train movements over the Property. If and to the extent that Santa Fe is providing dispatching and the Agency then is operating Agency Rail Service, the Agency shall indemnify Santa Fe against any liability resulting from Santa Fe's interim dispatching with respect to Agency Trains, and Amtrak Trains excluding however, any liability arising out of Santa Fe's gross negligence or wilful misconduct. Upon any transfer of dispatching responsibilities, the parties agree to cooperate to effect an orderly transition. When dispatching, Santa Fe shall give Santa Fe Trains, Agency Trains and Amtrak Trains the priorities set forth in Section 4.2 hereof.

(b) Until the Pasadena Shift Date, the movement and dispatching of any Trains and other equipment over the Tracks, shall be subject to the exclusive direction and control of Santa Fe, and on and after the Pasadena Shift Date, shall be subject to the exclusive direction and control of the Agency or the Operator, and in accordance with such operating rules as Santa Fe (prior to the Pasadena Shift Date) and the Agency or the



Operator (on and after the Pasadena Shift Date) shall institute from time to time in accordance with the terms and conditions of this Agreement.

(c) Santa Fe shall have the right to monitor, on reasonable notice, the Agency's or the Operator's performance of the dispatching responsibilities under the Agreement. During the period Santa Fe is dispatching pursuant to Section 4.1(a), the Agency or the Operator shall have the right to monitor, on reasonable notice, Santa Fe's performance of its dispatching responsibilities under this Agreement.

4.2 Priorities and Permissible Times of Operation.

(a) All Agency Trains and Amtrak Trains shall be dispatched with First Priority over any Santa Fe Trains, but during the period prior to the Pasadena Shift Date, freight Trains shall be dispatched with priority over deadhead Agency Trains. In furtherance thereof, all operating, dispatching and maintenance decisions by the Agency or the Operator (or Santa Fe, if it is dispatching under Section 4.1(a)) affecting the movement of Trains on the Tracks shall be made in a manner that gives Agency Trains and Amtrak Trains First Priority over Santa Fe Trains; provided however, that at times other than during Restricted Freight Periods, the Agency or the Operator shall dispatch overhead Santa Fe Trains operating on the Property reasonably so as to enable Santa Fe to conduct Quality Rail Freight Service and to provide Santa Fe continued regular access to all yards and freight customers. The relative priority

between Agency Trains and Amtrak Trains shall be determined by the Agency and Amtrak. Subject to the foregoing, at all times when dispatching, the Agency or the Operator shall treat Santa Fe Trains and Agency Trains fairly.

(b) Except as expressly provided in this Section 4.2(b) and in Sections 4.2(d) and 4.3(b), there shall be no Rail Freight Service during Restricted Freight Periods and each Santa Fe Party shall operate Santa Fe Trains over the Property only during times other than Restricted Freight Periods. Occasionally, if as a result of delay, a Santa Fe Train remains on the line during any Restricted Freight Period, or is operating on the line by special arrangement approved by the Agency or the Operator, such Train may be advanced, provided that the dispatcher reasonably can determine that such Train (i) is powered by at least two locomotives and is otherwise adequately powered to maintain freight train timetable speeds, and (ii) will be in the clear at least ten minutes prior to a meet. If such conditions cannot be so determined, then the dispatcher shall hold such Train at a siding or other location until the end of the Restricted Freight Period. On and after the Pasadena Shift Date, provided that ICC approval or exemption of abandonment of Rail Freight Service, if needed, has been obtained, there shall be no overhead Rail Freight Service on any portion of the Property or local Rail Freight Service on the portion of the Property west of Santa Anita Boulevard at Arcadia. Except as provided above in this Section 4.2(b) or in Section 4.3(b), there

shall be no local Rail Freight Service (i) during Restricted Freight Periods on the portion of the Pasadena Subdivision between Claremont and San Bernardino on and after the Pasadena Shift Date, and (ii) on any portion of the rail line between Claremont and Santa Anita Boulevard in Arcadia on and after the date that Agency Rail Service is commenced over that portion of the rail line.

(c) The Agency shall have the right, upon reasonable prior written notice to Santa Fe, to (i) revise the Restricted Freight Periods for the Property, provided that the total daily duration of the Restricted Freight Periods is not expanded as a result of such revision (except as provided in the next clause); and (ii) expand the time for any Restricted Freight Period, up to a maximum of 30 minutes for each morning and 30 minutes for each evening Restricted Freight Period at any time after June 18, 1997, provided that such expansion shall not, at the time in question (giving consideration to the reasonably expected Rail Freight Service Santa Fe intends to provide within the two years following such time), more than minimally impair Santa Fe's ability to provide Quality Rail Freight Service, as reasonably determined by Santa Fe and the Agency. If such expansion shall more than minimally impair Santa Fe's ability to provide Quality Rail Freight Service, the Agency may not so extend the Restricted Freight Period until such time as sufficient capital improvements have been installed by the Agency to permit such extended Restricted Freight Periods without more

than minimally interfering with Santa Fe's ability to provide Quality Rail Freight Service.

(d) On and after the Pasadena Shift Date, Santa Fe may operate local Trains on the Property after the morning Restricted Freight Period and before the evening Restricted Freight Period, and may operate local Trains on the Property at any time after the evening Restricted Freight Period and prior to the morning Restricted Freight Period.

(e) Nothing in this Agreement shall enlarge or expand dispatching priorities otherwise applicable to Santa Fe as set forth in existing multi-railroad agreements.

#### 4.3 Schedules.

(a) The Agency shall determine the Schedules for Agency Trains and shall provide such Schedules, and any changes thereto, in a timely manner to Santa Fe. The Agency shall use its reasonable efforts to cause Amtrak to provide Schedules for Amtrak Trains, and any changes thereto, to Santa Fe.

(b) Santa Fe shall provide, in a timely manner to the Agency and the Operator, if any, Schedules for all freight Trains on the Property. The Agency shall have the right to approve Santa Fe's Schedules for Santa Fe Trains over the Property, which approval shall not be unreasonably withheld or delayed. Such Schedules shall comply with the restrictions and principles set forth in this Article 4. Except as set forth in Sections 4.2(b) and (d), Santa Fe will not schedule any Santa Fe Trains during the Restricted Freight Periods; provided however,

if the Agency is not then using the full Restricted Freight Period, (i) Santa Fe may schedule Santa Fe Trains during the Restricted Freight Periods up to ten minutes prior to the first scheduled Agency Train or Amtrak Train during a Restricted Freight Period or ten minutes after the last scheduled Agency Train or Amtrak Train during a Restricted Freight Period, and (ii) the dispatcher may dispatch such Santa Fe Train as so scheduled, provided that the dispatcher reasonably can determine that the Santa Fe Train (1) is powered by at least two locomotives and is otherwise adequately powered to maintain freight train timetable speeds, and (2) will be in the clear at least ten minutes prior to a meet, provided that if Agency's Schedules later change, any such Santa Fe Train shall be rescheduled to comply with the standard set forth in (i) above, and when the Agency fully uses the Restricted Freight Periods, Santa Fe will neither Schedule nor operate Santa Fe Trains during such period except as set forth in Section 4.2(b) or 4.2(d).

4.4 Conferences. Santa Fe and the Agency (or the Operator) shall meet periodically to evaluate the dispatching over the Property. The Agency or the Operator shall provide to Santa Fe (and so long as Santa Fe is dispatching pursuant to Section 4.1(a), and Santa Fe shall provide to the Agency or the Operator) appropriate management review tools, including at least monthly route conflict reports, as reasonably necessary to evaluate dispatching performance. One year after the date on which the Agency or the Operator actually assumes dispatching

responsibilities (or earlier if in the reasonable opinion of either party there are substantial problems with dispatching performance over the Property), and thereafter when in the reasonable opinion of either party there are substantial problems with dispatching performance over the Property, Santa Fe and the Agency (or the Operator) shall, if necessary, establish by mutual agreement approaches or mechanisms to reduce the number of instances of route conflicts and to improve the efficiency and reliability of Agency Rail Service and Rail Freight Service.

#### 4.5 Dispatching Costs.

(a) Santa Fe shall pay to the Agency \$0.50 per Train-Mile for dispatching costs and operation of communications, signals and interlockers for Santa Fe Trains dispatched by the Agency or the Operator over the Property. The Agency shall pay to Santa Fe \$0.50 per Train-Mile for dispatching costs and operation of communications, signals and interlockers for Agency Trains dispatched by Santa Fe over the Property during the interim period pursuant to Section 4.1(a). Such amount shall be adjusted annually by increases or decreases in the Construction Index, commencing as of April 1, 1993 and each April 1 thereafter, based on the change in such index from the first quarter of 1992, or the first quarter of the immediately preceding year, as reported for the most recently published Construction Index.

(b) Bills for such dispatching costs may be submitted no more than once a month for payment as provided in

Article 7, and shall contain a statement as to the calculation of such bill (including the number of Train-Miles dispatched) in such detail as the party receiving such bill may request.

#### ARTICLE 5: MAINTENANCE AND REPAIR

5.1 Maintenance Responsibilities. The Agency (and the Operator) shall have exclusive control over the maintenance and repair of, and shall maintain and repair, the Property and the Tracks (including Freight Tracks), Freight Rail Facilities and other improvements thereon.

5.2 Maintenance Standards. The Tracks shall be maintained by the Agency to a safe condition consistent with industry practice and in such condition as to allow (i) continued rail operations at the train speeds shown in the Timetable other than during periods of shut down for maintenance and repairs and (ii), if and to the extent that Tracks are hereafter improved as agreed upon by Santa Fe and the Agency, continued operation of the types of service intended and permitted by such improvements. All Freight Rail Facilities and other rail facilities other than Tracks shall be maintained and repaired by the Agency to keep them in a safe and reliable condition consistent with industry practice and at least at the levels of utility, maintenance and repair existing on the date of this Agreement and, if any such rail facilities are constructed after the date of this Agreement, at least at the levels of utility, maintenance and repair intended and permitted for such rail facilities at the time of

construction. The Agency shall have no duty to inspect Freight Rail Facilities or Freight Tracks (except Freight Rail Facilities and Freight Tracks also used in the ordinary course by Agency Trains or Amtrak Trains) and shall only be required to perform maintenance and repair work upon the written request of Santa Fe. To the extent practicable, all repairs and maintenance shall be performed in a manner that does not more than minimally interfere with Santa Fe's Quality Rail Freight Service.

5.3 Cost and Expense.

(a) As its share of maintenance costs for the Tracks (other than Freight Tracks) and Freight Rail Facilities on the Property, Santa Fe shall pay to each Agency the amount per year directed by LACTC, RCTC, OCTA, NCTD and SANBAG; provided that Santa Fe's annual share of all such maintenance costs paid under all the Shared Use Agreements listed in the Purchase Agreement following the San Jacinto Maintenance Shift Date (as defined in the Shared Use Agreement (San Jacinto Subdivision)) and also the Redlands Maintenance Shift Date (as defined in the Shared Use Agreement (Redlands Subdivision)) shall not exceed \$5,925,000 (the allocation to be determined by such Agencies). Prior to the San Jacinto Maintenance Shift Date and also prior to the Redlands Maintenance Shift Date, Santa Fe's annual share shall not exceed \$5,381,352. Prior to the San Jacinto Maintenance Shift Date, but following the Redlands Maintenance Shift Date, Santa Fe's share shall not exceed \$5,608,972. After the San Jacinto Maintenance Shift Date, but prior to the Redlands



Maintenance Shift Date, Santa Fe's share shall not exceed \$5,697,380. Such amounts shall be adjusted annually by increases or decreases in the Construction Index, commencing as of April 1, 1993 and each April 1 thereafter, based on the change in such index from the first quarter of 1992, or the first quarter of the immediately preceding year, as reported for the most recently published Construction Index. These payments shall be made in advance in equal monthly installments on the 15th day of each month commencing on the first such date on or after the Closing (with the first such payment appropriately pro-rated if necessary). If the Agency or the Operator constructs new Freight Rail Facilities for Santa Fe pursuant to Article 6 hereof, Santa Fe shall pay an additional annual fee for the maintenance of such facilities, which fee shall be determined by mutual agreement prior to the installation of such facilities by the Agency or the Operator. In addition to the foregoing, Santa Fe shall reimburse the Agency for all maintenance costs incurred with respect to any Freight Tracks (except Freight Tracks also used in the ordinary course by Agency Trains or Amtrak Trains which shall be maintained by the Agency at no additional expense to Santa Fe). The Agency shall provide Santa Fe periodic statements for all such services.

(b) Except as specifically set forth in this Section 5.3, all maintenance and repair costs on the Property shall be paid by the Agency.

(c) The provisions of this Section 5.3 (other than payments for maintenance and repair of Freight Tracks) will be subject to renegotiation eight years after the date of this Agreement to adjust, upward or downward, the maintenance charge prospectively in the event that there is a material change in the number of Car-Miles operated by all of the Santa Fe Parties on the Property. Such adjustment shall be based on the principle that Santa Fe shall pay all increased maintenance costs attributable to increased Santa Fe Party Car-Miles and shall be entitled to a reduction for all reduced maintenance costs attributable to reduced Santa Fe Party Car-Miles.

(d) Maintenance and repair costs as referenced in this Section 5.3 shall include, but shall not be limited to, the costs of replacement of signal facilities, communications facilities, rails, bridges, ties, ballast, undercutting, drainage and surfacing, where the replacement does not constitute additions or betterments to the railroad. The cost of such additions or betterments shall be allocated between the parties as set forth in Article 6 of this Agreement.

ARTICLE 6: CONSTRUCTION, CAPITAL IMPROVEMENTS AND  
REMOVAL OF IMPROVEMENTS

6.1 General Rights and Responsibilities.

(a) Santa Fe shall have no right to construct, reconstruct, relocate or remove (or cause to be constructed, reconstructed, relocated or removed) any facilities or other

improvements on the Property other than as provided in this Article 6.

(b) The Agency shall perform all construction, reconstruction, relocation or removal of facilities and improvements on the Property. No future improvements on the Property shall, after they are constructed, more than minimally interfere with Santa Fe's Rail Freight Service on such portion of the Property.

6.2 Ownership. Following the Closing all existing and future capital improvements on the Property shall be owned by the Agency.

6.3 Relocation of Main Line. The Agency shall not relocate any main line Track without Santa Fe's approval, which approval shall not be unreasonably withheld or delayed.

6.4 Removal of Track. The Agency, after notice to Santa Fe, but without compensation to Santa Fe, may remove, take over or retire from service any Track on the Property used solely or primarily for Rail Freight Service; provided however, that if such Track is actively being used by Santa Fe for its Rail Freight Service at the time the Agency proposes to remove, take over or retire the Track, then the Agency first must construct and provide an equivalent substitute Track for Santa Fe's use, Free of Charge to Santa Fe other than those borne by Santa Fe for its share of maintenance, dispatching, capital improvement and similar expenses. As used in the foregoing sentence, the phrase "actively being used" shall mean documented use by Santa Fe

within the last 12 months prior to the month in which the Agency gives such notice to Santa Fe. At the Agency's request, Santa Fe from time to time shall provide the Agency with track diagrams and documentation showing active Tracks.

6.5 Removal of Shipper/Receiver Connection Facilities.

As between Santa Fe and the Agency, the Agency shall have the right to remove connection facilities and related Tracks on the Property to any freight shipper or receiver (i), with the consent of such shipper or receiver, where such shipper or receiver does not ship or receive any rail freight via such connection facilities over any period longer than 12 months but less than 24 months and (ii), without the consent of such shipper or receiver, where such shipper or receiver does not ship or receive any rail freight via such connection facilities over any period more than 24 months; provided however, that if Santa Fe subsequently legally is required to reinstall any such removed connection facilities or related Tracks at Santa Fe's cost as a result of any action by the shipper or receiver served by such connection facilities, then the Agency shall bear the cost of such reinstallation.

6.6 Construction of New Tracks and Freight Rail Facilities. The Agency shall, at Santa Fe's request, design and construct new Freight Tracks and Freight Rail Facilities on the Property in support of Santa Fe's current or future Rail Freight Service, at Santa Fe's sole cost, subject to the prompt approval of the location, design, specifications and cost of such Freight

Tracks and Freight Rail Facilities by Santa Fe and the Agency, provided that such Freight Tracks and Freight Rail Facilities do not more than minimally interfere with Agency Rail Service or related activities (if such Freight Tracks or Freight Rail Facilities would more than minimally interfere with Agency Rail Service or related activities, then such improvements still may be constructed if Santa Fe pays the cost of reducing any such interference to no more than minimal interference). Also if the Agency or Amtrak subsequently determines to use any such new Freight Tracks, the Agency shall reimburse to Santa Fe an appropriate proportionate share of the cost of such new Freight Tracks to be agreed upon by Santa Fe and the Agency or determined pursuant to arbitration under Article 12 of this Agreement. In addition to the foregoing, the Agency may withhold or condition consent to proposed Freight Tracks or Freight Rail Facilities if the Agency anticipates a specific and identified future use of such portion of the Property that interferes with the proposed freight use. In the absence of restrictions or conditions so imposed by the Agency, if any area over which the such new Freight Tracks or Freight Rail Facilities are located later is needed for passenger rail operations, the Agency or the Operator may relocate such Freight Tracks or Freight Rail Facilities, at the Agency's cost, to another location that allows Santa Fe to continue to provide Quality Rail Freight Service to its shippers and receivers. Such relocation shall be subject to Santa Fe's approval of the location and design of such Freight Tracks or

Freight Rail Facilities, which approval shall not be unreasonably withheld or delayed.

6.7 Signal Improvements. The Agency shall not, without Santa Fe's approval, initiate any signal improvements that would require Santa Fe to install cab signals and/or automatic train control in any of Santa Fe's locomotives. Santa Fe and the Agency will cooperate to develop a mutually acceptable train control system.

6.8 General Cost Allocations.

(a) As between Santa Fe and the Agency, Santa Fe shall be responsible for the entire cost of future capital improvements benefiting only Rail Freight Service, including all costs associated with Santa Fe's relocating its dispatching facilities from San Bernardino, California to Schaumburg, Illinois.

(b) As between Santa Fe and the Agency, the Agency shall be responsible for the entire cost of future capital improvements to the Property benefiting only Agency Rail Service.

(c) With respect to future capital improvements benefiting both (i) Rail Freight Service and Agency Rail Service, and not covered by other specific provisions of this Agreement, Santa Fe and the Agency shall share the cost of such capital improvements in a manner to be determined on a case by case basis. Any disputes regarding the sharing of such costs shall be resolved by arbitration in accordance with the procedure set forth in Article 12 of this Agreement.

(d) As between Santa Fe and the Agency, the Agency shall be responsible for the entire cost of any capital improvement that is initiated by the Agency or the Operator that would benefit both (i) Rail Freight Service and (ii) Agency Rail Service, if Santa Fe reasonably would not have made such improvement at the time that such improvement is made, including, but not limited to, all capital improvements initiated by the Agency (i) made to dispatching and signalling systems, or (ii) made to permit operating speeds higher than those currently in effect in the Timetable for train operations on any segment of the Tracks.

(e) Santa Fe shall be solely responsible for the railroad's or owner's share of the cost of all grade separations and other public improvements with respect to the Property that are pending or under contract on the Closing. Santa Fe hereby represents that Exhibit E attached hereto lists all grade separations and other public improvements that are pending or under contract on the date of this Agreement. The cost of any grade separations on the Property other than those pending or under contract on the Closing shall be allocated between the Agency and Santa Fe on a Train-Mile basis, on the basis of the comparative number of Trains operated by each party at the location in the preceding six months; provided however, that (i) Santa Fe's annual share of all such allocations shall not exceed \$485,190 paid under all of the Shared Use Agreements listed in the Purchase Agreement other than the San Diego County

Shared Use Agreement (the allocation thereof to be determined by the Purchasing Agencies), as adjusted annually commencing April 1, 1993 and each April 1 thereafter by increases or decreases in the Construction Index from the first quarter of 1992, or the first quarter of the immediately preceding year, as reported for the most recently published Construction Index (the "Grade Sep Cap"), (ii) in any year in which Santa Fe's share of such allocation is less than the Grade Sep Cap, the balance thereof, with interest thereon at the rate of 6.5% per annum, shall be carried forward to the next succeeding year(s) and added to Santa Fe's maximum allocable share for such year(s), (iii) in any year in which Santa Fe's share of such allocation is more than the Grade Sep Cap, all sums in excess of such cap, with interest thereon at a rate of 6.5% per annum, shall be due in succeeding year(s) in which, and to the extent that, Santa Fe's share of such allocation is less than the Grade Sep Cap, and (iv) in no event shall Santa Fe be responsible for the costs of any grade separations required solely by the Agency or any other Purchasing Agency. The Agency shall be responsible for all grade separation costs on any portion of the Property owned by it to the extent that such costs exceed the costs payable by Santa Fe pursuant to this Section.

(f) Each party shall have the right, exercisable on every fifth anniversary of the date of Closing by notice to the other party at least three months prior to such anniversary, to review and renegotiate future capital improvements



allocations. If Santa Fe and the Agency are unable to reach agreement, either party may submit the matter in dispute to binding arbitration under Article 12.

6.9 Amtrak Improvements. Nothing in this Agreement shall obligate either Santa Fe or the Agency to make or pay for capital improvements requested by Amtrak.

6.10 Construction of Track Connections. The Agency may, at its option and at its expense, construct a Track connection from the Property near Milepost 139.09 to the Union Pacific East Bank Line and a Track connection from the Union Pacific East Bank Line to Hobart Yard at Hobart Tower near Milepost 144.50 on the San Bernardino Subdivision (as defined in the Purchase Agreement). Such connections, if constructed, shall be adequate to handle Santa Fe's overhead Rail Freight Service on the Property with no more than minimal incremental delay. Santa Fe shall cooperate fully in providing necessary access, designs and assistance to complete the connections. Santa Fe shall use its best efforts to relocate or remove (at no cost to Santa Fe) industry tracks not needed for its Quality Rail Freight Service that cross the light rail line.

6.11 Santa Fe Abandonment of Line. Santa Fe recognizes that the Agency is committed to commence light rail service on the Property from LAUPT to Sierra Madre Villa Street in Pasadena by December, 1996, a rail line segment on which there are no freight shippers or receivers. Accordingly, Santa Fe shall seek ICC authority to abandon the rail line segment between Milepost

124.0 and Milepost 140.5 (including the Los Angeles River bridge) and will cease overhead rail service on such segment of the Property effective before February 1, 1994; and Santa Fe shall pursue diligently accomplishment of this abandonment and cessation of overhead rail service to attempt to achieve such goals by January 1, 1994, except as such dates may be extended as provided in Section 4.2 of the Capital Improvements Agreement (San Bernardino Subdivision). Notwithstanding the foregoing, Santa Fe shall cease overhead rail service on this segment of the Property on or before February 1, 1994 (or January 1, 1994 if such earlier date is practical) if Santa Fe is provided comparable alternative routing for its operations and subject to the following terms and conditions:

(a) Concurrently herewith, Santa Fe and Agency have entered into a Special Agreement Regarding Capital Improvements. As provided therein, Agency shall pay to Santa Fe all \$10,300,000 to be used by Santa Fe for expenses and capital improvements to be made and/or incurred in connection with expediting work on Santa Fe's San Bernardino Subdivision rail line, in addition to the amounts Purchasing Agencies are obligated to pay for Facilities and Improvements on the San Bernardino Subdivision under the Capital Improvements Agreement (San Bernardino Subdivision).

(b) Following Santa Fe's shift of overhead rail freight operations from such segment of the Property, Santa Fe

shall file and support an application to discontinue the existing signalling system west of Claremont, California.

In any event, Santa Fe agrees to remove all overhead rail freight operations from the Property between Mission Tower and Milepost 124 by the earlier of (i) July 6, 1994, and (ii) the date on or after May 1, 1993 on which alternative routing for such operations is available to Santa Fe in a manner that would not adversely affect Quality Rail Freight Service by Santa Fe, in Santa Fe's reasonable determination, all with no more than minimal interference to Santa Fe's operations and at no additional expense to Santa Fe, or (iii) completion of Adjusted Base Case Level of improvements to the San Bernardino Subdivision Easement in accordance with the Capital Improvements Agreement (San Bernardino Subdivision), except as such dates may be extended as provided in Section 4.2 of the Capital Improvements Agreement (San Bernardino Subdivision).

6.12 Construction of Certain Capital Improvements. The Agency hereby confirms its agreement to construct certain improvements on the Property that it agreed to construct in that certain Agreement dated May 19, 1992 between Santa Fe and the Agency in the manner provided therein.

ARTICLE 7: BILLING PROCEDURES

7.1 Payment of Bills.

(a) Within 30 days after Agency's receipt of a bill for any dispatching, maintenance, capital improvement, clearing derailments or other costs or expenses to be borne by Agency under this Agreement, Agency shall pay the amount of such bill to Santa Fe. If Agency shall fail to pay any bill within 30 days after Agency's receipt thereof, then such bill shall accrue interest at the rate of 6.5% per annum from such 30th day until paid. Upon payment of such bill, Agency also shall pay such accrued interest. Neither the accrual or payment of interest shall relieve Agency from the obligation to pay in a timely manner the amount set forth in any bill.

(b) Within 30 days after Santa Fe's receipt of a bill for any dispatching, maintenance, capital improvement, clearing derailments or other costs or expenses to be borne by Santa Fe under this Agreement, Santa Fe shall pay the amount of such bill to the Agency or the Operator rendering such bill. If Santa Fe shall fail to pay any bill within 30 days after Santa Fe's receipt thereof, then such bill shall accrue interest at the rate of 6.5% per annum from such 30th day until paid. Upon payment of such bill, Santa Fe also shall pay such accrued interest. Neither the accrual or payment of interest shall relieve Santa Fe from the obligation to pay in a timely manner the amount set forth in any bill.

7.2 Errors or Disputes. If any portion of a bill is in dispute, the debtor nonetheless shall pay on a timely basis the undisputed portion. Any disputed items shall be subject to the procedures set forth in Article 12. No exception to any bill shall be honored, recognized or considered if filed after the expiration of two years from the last day of the calendar month during which the bill is rendered. No bill shall be rendered later than two years after either (i) the last day of the calendar month in which the expense covered thereby is incurred, or (ii) with respect to a project for which a roadway completion report is required or with respect to unliquidated liability claims, then 60 days following the date the amount is settled and/or the liability is established.

7.3 Books and Records. The parties shall maintain accurate books and records with respect to amounts due or claimed to be due under this Agreement. Either party, at a reasonable time, upon reasonable notice, and at its own expense, may inspect and/or audit the books, accounts and records of the other party, to the extent that the same relate to matters covered by this Agreement. If any discrepancy is found, the party owing money shall pay the difference to the other party within 30 days.

#### ARTICLE 8: PERSONAL AND PROPERTY LIABILITY

8.1 Indemnity for Losses Resulting From Negligence. The following provisions, subject to Section 8.2, shall govern personal and property liability and indemnity responsibility

among the parties with respect to their operations under this Agreement for personal injury and property damage resulting from negligence.

(a) Only Agency Negligent. The Agency will defend, indemnify and hold harmless Santa Fe against all Liability incurred by Santa Fe resulting from personal injury and/or property damage to any Santa Fe Party, any Employee of any Santa Fe Party, any Agency Party, any Employee of any Agency Party, any other Purchasing Agency, any Employee of any other Purchasing Agency on the Property under the authority of the Agency, Amtrak, any Employee of Amtrak, any Commuter or any Third Party, arising solely by reason of the negligence of any Agency Party or Amtrak and not also by reason of the negligence or Recklessness of any Santa Fe Party.

(b) Only Santa Fe Negligent; Damage to the Agency or Third Parties. The Agency will defend, indemnify and hold harmless Santa Fe against the first \$10,000,000 of Liability incurred by Santa Fe in a single occurrence resulting from personal injury and/or property damage to any Agency Party, any Employee of any Agency Party, any other Purchasing Agency, any Employee of any other Purchasing Agency on the Property under the authority of the Agency, Amtrak, any Employee of Amtrak, any Commuter or any Third Party (but not personal injury and/or property damage to any Santa Fe Party or any Employee of any Santa Fe Party), arising solely by reason of the negligence of any Santa Fe Party and not also by reason of the negligence or

Recklessness of any Agency Party, any other Purchasing Agency, any Employee of any other Purchasing Agency on the Property under the authority of the Agency or Amtrak. Santa Fe shall be liable for all such Liability incurred by Santa Fe which exceeds \$10,000,000 in a single occurrence, provided however, that in no event shall Santa Fe be required to bear more than \$75,000,000 of Liability for any single such occurrence. The Agency will defend, indemnify and hold harmless Santa Fe against the portion, if any, of such Liability that exceeds \$85,000,000 in a single such occurrence.

(c) Only Santa Fe Negligent; Damage to Santa Fe.

The Agency shall have no obligation to defend, indemnify or hold harmless Santa Fe against Liability incurred by Santa Fe resulting from any personal injury and/or property damage to any Santa Fe Party or any Employee of any Santa Fe Party arising solely by reason of the negligence of any Santa Fe Party and not also by reason of the negligence or Recklessness of any Agency Party, any other Purchasing Agency or any Employee of any other Purchasing Agency on the Property under the authority of the Agency or Amtrak.

(d) Both Parties Negligent. In the event any Liability results from personal injury and/or property damage to any Santa Fe Party, any Employee of any Santa Fe Party, any Commuter or any Third Party, and has arisen by reason of the negligence of both (i) any Santa Fe Party and (ii) any Agency Party or Amtrak, Santa Fe and the Agency shall bear such

Liability in proportion to the relative aggregate degrees of fault of all parties set forth in group (i) above, compared to all parties set forth in group (ii) above, provided that (1) the Agency will defend, indemnify and hold harmless Santa Fe against the first \$10,000,000 of such Liability incurred by Santa Fe in a single occurrence, and (2) the Agency will defend, indemnify and hold harmless Santa Fe against the portion, if any, of such Liability incurred by Santa Fe in a single occurrence that exceeds \$85,000,000.

8.2 Exceptions. The obligations of the parties under Section 8.1, shall be subject to the following exceptions:

(a) Santa Fe Train and Third Party at a Grade Crossing. The Agency shall have no obligation to defend, indemnify or hold harmless Santa Fe against Liability incurred by Santa Fe resulting from personal injury and/or property damage to a Third Party arising out of an incident in which a Santa Fe Train hits such Third Party at a grade crossing if such incident has arisen solely by reason of the negligence of any Santa Fe Party and not also by reason of the negligence or Recklessness of any Agency Party, any other Purchasing Agency or any Employee of any other Purchasing Agency on the Property under the authority of the Agency or Amtrak.

(b) Santa Fe Train and Santa Fe Employee or Third Party Not at a Grade Crossing. Subject to Sections 8.2(g) and 8.2(h), the Agency shall have no obligation to defend, indemnify or hold harmless Santa Fe against Liability incurred by Santa Fe



resulting from personal injury and/or property damage to any Santa Fe Party, any Employee of any Santa Fe Party (other than such an Employee who is a Commuter) or any Third Party arising out of an incident in which a Santa Fe Train hits such Employee of any Santa Fe Party or Third Party at a location other than a grade crossing, regardless of whether such incident has arisen partially or entirely by reason of the negligence of any Agency Party, any other Purchasing Agency or any Employee of any other Purchasing Agency on the Property under the authority of the Agency or Amtrak.

(c) Derailment of a Santa Fe Train. The Agency shall have no obligation to defend, indemnify or hold harmless Santa Fe against Liability incurred by Santa Fe resulting from personal injury and/or property damage to any Santa Fe Party, any Employee of any Santa Fe Party (other than such an Employee who is a Commuter) or any Third Party arising out of a derailment of a Santa Fe Train if such derailment has arisen solely by reason of the negligence of any Santa Fe Party and not also by reason of the negligence or Recklessness of any Agency Party or Amtrak. Subject to Section 8.2(h), with respect to Liability incurred by Santa Fe arising out of a derailment of a Santa Fe Train caused partially or entirely by reason of the negligence of any Agency Party, Santa Fe will bear that portion of such Liability, either on a per occurrence or annual aggregate basis, for loss, damage to its equipment (including the costs of rerailling such equipment) and lading, and injuries to its Employees and Third

Parties, up to an amount as is, in the parties' reasonable judgment, consistent with Santa Fe's historical experience for Santa Fe Trains on the Property, wherever the derailment occurred.

(d) Agency or Amtrak Train Incident. Subject to Sections 8.2(g) and 8.2(h), in the event any Liability results from personal injury and/or property damage to an Employee of any Santa Fe Party and has arisen out of an incident in which an Agency Train or Amtrak Train hits such Employee at a location other than a grade crossing, Santa Fe and the Agency shall bear such Liability in proportion to the relative aggregate degrees of fault of (i) a group consisting of all Santa Fe Parties, compared to (ii) a group consisting of all Agency Parties and Amtrak, provided that, even if such incident was caused solely by reason of the negligence of any Santa Fe Party and not also by reason of the negligence or Recklessness of any Agency Party or Amtrak, (1) the Agency will defend, indemnify and hold harmless Santa Fe against the first \$10,000,000 of such Liability incurred by Santa Fe in a single occurrence, and (2) the Agency will defend, indemnify and hold harmless Santa Fe against the portion, if any, of such Liability incurred by Santa Fe in a single occurrence that exceeds \$85,000,000.

(e) Collision of a Santa Fe Train and an Agency or Amtrak Train. Subject to Sections 8.2(g) and 8.2(h), in the event any Liability results from personal injury and/or property damage to any Santa Fe Party or any Employee of any Santa Fe

Party and has arisen out of the collision of a Santa Fe Train and an Agency Train or Amtrak Train, which collision is caused by the negligence of (i) any Santa Fe Party and (ii) any Agency Party or other Purchasing Agency on the Property under the authority of the Agency or Amtrak, Santa Fe and the Agency shall bear such Liability in proportion to the relative aggregate degrees of fault of all parties set forth in group (i) above, compared to all parties set forth in group (ii) above, provided that (1) the Agency will defend, indemnify and hold harmless Santa Fe against the first \$5,000,000 of such Liability incurred by Santa Fe in a single occurrence, and (2) the Agency will defend, indemnify and hold harmless Santa Fe against the portion, if any, of such Liability incurred by Santa Fe in a single occurrence that exceeds \$85,000,000.

(f) No Train Involved. Subject to Sections 8.2(g) and (h), with respect to Liability incurred by the Agency or Santa Fe resulting from personal injury and/or property damage arising out of an incident in which no Train is involved, (i) if the injured party is any Santa Fe Party, an Employee of any Santa Fe Party or a Third Party, the party responsible for the maintenance of the facility involved in the incident shall defend, indemnify and hold harmless the other party against all Liability resulting from such incident and (ii) if the injured party is any Agency Party, any other Purchasing Agencies on the Property under the authority of the Agency, any Employee of any Agency Party, Amtrak, any Employee of Amtrak, or

a Commuter, Santa Fe and the Agency shall bear such Liability in proportion to the relative aggregate degrees of fault of (i) a group consisting of all Santa Fe Parties, compared to (ii) a group consisting of all Agency Parties and other Purchasing Agencies on the Property under the authority of the Agency and Amtrak, provided that (1) the Agency will defend, indemnify and hold harmless Santa Fe against the first \$10,000,000 of such Liability incurred by Santa Fe in a single occurrence, and (2) the Agency will defend, indemnify and hold harmless Santa Fe against the portion, if any, of such Liability incurred by Santa Fe in a single occurrence that exceeds \$85,000,000.

(g) Recklessness. Notwithstanding anything to the contrary in Section 8.1 or this Section 8.2, neither party shall be defended, indemnified or held harmless by the other party hereto for any Liability, or for exemplary or punitive damages, incurred by such party resulting from personal injury and/or property damage arising by reason of such party's Recklessness.

(h) Freight Tracks and Freight Rail Facilities. Subject to Section 8.2(g), Santa Fe shall defend, indemnify and hold the Agency harmless against all Liability incurred by the Agency from personal injury and/or property damage to anyone in connection with or relating to Freight Tracks and Freight Rail Facilities.

(i) Environmental Liability. Notwithstanding anything to the contrary set forth in this Agreement, Liability

arising by reason of Hazardous Materials shall be allocated as follows: (1) with respect to a release of Hazardous Materials arising by reason of a collision involving an Agency Train or Amtrak Train or a derailment of an Agency Train or Amtrak Train, all Liability (including liability for environmental remediation, abatement and cleanup to soil, groundwater and bodies of water) shall be governed by this Article 8 and not Article 10; (2) with respect to a release of Hazardous Materials arising by reason of a derailment of a Santa Fe Train caused by the negligence of an Agency Party, any Liability for personal injury and death of any Commuter shall be governed by this Article 8 and not Article 10; (3) with respect to a release of Hazardous Materials arising by reason of a derailment of a Santa Fe Train caused by the negligence of an Agency Party and not described by clause (1) above, any Liability for personal injury and death of any person other than a Commuter, and any Liability for damage to property (including liability for environmental remediation, abatement and cleanup to soil, groundwater and bodies of water), shall be governed by Section 10.1(c) and not this Article 8; and (4) with respect to a release of Hazardous Materials arising by any reason other than those described in clauses (1), (2) and (3) above, all Liability shall be governed by Section 10.1(a) and/or Section 10.1(b) and not this Article 8.

(j) Loading, Unloading and Storage. The provisions of Section 8.1 shall be inapplicable to Liability arising from the loading, unloading or storage of Dangerous

Materials Cars, which shall be governed by Section 10.1(a) (without giving effect to the references to Article 8 or Section 8.2(i) in such Section).

(k) Business and Excursion Trains. The provisions of this Article 8 shall not apply to the extent provided in Section 3.5.

8.3 Inapplicability of California Civil Code §2782(a). The parties agree that this Agreement is not, and is not intended to be, a construction contract for purposes of California Civil Code §2782(a). Accordingly, to the maximum extent permitted by law, the provisions of California Civil Code §2782(a), as interpreted in the case of Southern Pacific Transportation Co. v. Sandyland Protective Association, 224 Cal. App. 3d 1494, 274 Cal. Rptr. 626 (1990), shall not apply to this Agreement.

8.4 No Reliance by Other Persons or Entities. The provisions of this Agreement regarding Liability shall bind and inure to the benefit of only the Agency and Santa Fe, and no other person or entity shall be entitled to rely upon or benefit from any of such provisions. Nothing contained in this Agreement shall impose any liability upon the Agency or Santa Fe in favor of any such other person or entity, relieve any such other person or entity from any liability it may have for any Liabilities described in this Agreement, or obligate the Agency or Santa Fe to defend, indemnify or hold harmless any such other person or entity against any such Liabilities.

8.5 Amtrak and Amtrak Trains. The Agency and the other Purchasing Agencies shall have the exclusive benefit (with respect to any incidents occurring on the Property) of all indemnities and insurance benefits provided by Amtrak under any agreement entitling Amtrak to operate Amtrak Trains on the Property.

8.6 Subrogation. To the extent of any obligation of the Agency to indemnify Santa Fe as provided in this Article, the Agency is hereby subrogated to any of Santa Fe's rights, including without limitation, contractual indemnities, to which Santa Fe may be entitled for events described in this Article.

8.7 No Indemnity in Violation of Law. If any provision of this Agreement would otherwise indemnify a party against Liability that would be prohibited by or unenforceable under the laws of the State of California (including a determination that indemnification under the circumstances involved is against the public policy of the State of California), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law.

8.8 Schedule of Hypothetical Events and Liability Allocation. Attached to this Agreement as Exhibit C is a schedule setting forth (by way of example and not expansion or limitation) hypothetical events and the allocation of liability in such events pursuant to the provisions of this Article 8.

## ARTICLE 9: INSURANCE

9.1 General Liability Insurance. In connection with the operations, maintenance and shared use contemplated by this Agreement, the Agency and Santa Fe shall each maintain general liability insurance in the amount of at least \$150,000,000 per occurrence. Such policies may include a reasonable deductible or self-insured retention not to exceed \$5,000,000 where insurance is obtained by the Agency and \$10,000,000 where insurance is obtained by Santa Fe.

9.2 Construction Insurance. If Santa Fe undertakes construction activities (either directly or through a contractor hired by Santa Fe) on the Property, it shall acquire and keep in force during the period of such construction \$10,000,000 (Combined Single Limit) of Railroad Protective Liability insurance, and \$50,000,000 (Combined Single Limit) of liability insurance, to cover all such construction activities (or inaction) undertaken by Santa Fe on the Property, with a deductible not to exceed \$10,000,000. Nothing in this Section shall authorize Santa Fe to conduct any construction activities on the Property not otherwise specifically authorized by the Agencies.

9.3 Increases in Insurance Amounts. The insurance limits set forth in Section 9.1 and 9.2 shall be subject to renegotiation on one year's written notice by either Santa Fe or the Agency to the other at any time on or after five years from the date of the Agreement. Such limits may again be negotiated



on one year's notice on or after five years from the conclusion of the prior renegotiation. At any such renegotiation the parties shall establish new insurance limits and deductibles based on changes in the consumer price index for health care costs and prevailing conditions in the liability insurance markets. If the parties are unable to reach agreement, any party may submit the matter in dispute to arbitration pursuant to Article 12. Each of the insurance limits and deductibles set forth in this Article shall be adjusted effective as of an insurance renewal date by a percentage equal to the percentage change in the consumer price index for health care costs since the date of this Agreement or from the immediately preceding adjustment date, as applicable, rounded to the nearest \$1,000,000, whenever the percentage change in such consumer price index would result in an increase of at least 10% of the then required insurance amount.

9.4 Additional Insureds. Any insurance required under this Article 9 shall name the other parties as additional insureds, and shall be issued by a responsible insurer on commercially reasonable terms and conditions. Upon request of either party, the other party shall provide to the requesting party a certificate of insurance from the insurer evidencing effective insurance as required by this Article 9.

9.5 Failure to Obtain Insurance. In the event that the Agency at any time cannot supply the liability insurance in accordance with the terms specified in this Article 9, then the

Agency either shall make other arrangements to provide equivalent liability protection for Santa Fe or shall reimburse Santa Fe all reasonable costs and expenses that Santa Fe incurs in obtaining such liability insurance. In the event that Santa Fe at any time cannot supply the liability insurance in accordance with the terms specified in this Article 9, then Santa Fe either shall make other arrangements to provide equivalent liability protection for the Agency or shall reimburse the Agency for all reasonable costs and expenses that the Agency incurs in obtaining such liability insurance.

9.6 Commencement of Obligations. Notwithstanding anything to the contrary contained in this Agreement or in the Purchase Agreement, the Agency shall not be obligated to maintain the insurance required by Section 9.1, and shall have no Liability to Santa Fe under Article 8 of this Agreement, unless and until commencement of Agency Train operations on the Property.

9.7 Proceeding against SCRRA. Notwithstanding anything to the contrary contained in this Agreement or in the Purchase Agreement, Santa Fe agrees that if Santa Fe has, or may have, a claim against the Agency under this Agreement (including under Article 8 of this Agreement) at a time when the SCRRA, or any successor agency to the SCRRA, has been designated the Operator hereunder by the Agency, then Santa Fe shall first proceed against the SCRRA, or such successor entity, and shall only pursue a claim against the Agency to the extent that Santa

Fe has not been able to satisfy its claim after exhausting all of its remedies against the SCRRA.

ARTICLE 10: ENVIRONMENTAL LIABILITY AND INDEMNITY

10.1 Environmental Liability.

(a) Santa Fe agrees that it shall not release any Hazardous Materials on the Property. Except to the extent Section 8.2(i) provides that Article 8 or Section 10.1(c) governs, Santa Fe shall indemnify, defend and hold the Agency and the Operator harmless from and against any loss, cost (including, without limitation, any cost of remediation), claim, damage, liability, disbursement or expense, or monetary settlement, of any kind or nature, whether foreseeable or unforeseeable, including, but not limited to, interest or other carrying costs and legal, accounting and other professional fees and expenses reasonably incurred in the investigation or defense of claims, arising out of or in relation to the release of Hazardous Materials on, in, under or from the Property to the extent caused by (i) the activities of any Santa Fe Party or agents, tenants or licensees of any Santa Fe Party or (ii) the activities of any Santa Fe Party's shippers and receivers in connection with rail freight shipping or receiving activities on the Property.

(b) Except to the extent Section 8.2(i) provides that Article 8 or Section 10.1(c) governs, the Agency and the Operator shall indemnify, defend and hold Santa Fe harmless from and against any loss, cost (including, without limitation, any

cost of remediation), claim, damage, liability, disbursement or expense, or monetary settlement, of any kind or nature, whether foreseeable or unforeseeable, including, but not limited to, interest or other carrying costs and legal, accounting and other professional fees and expenses reasonably incurred in the investigation or defense of claims, arising out of or in relation to the release of Hazardous Materials on, in, under or from the Property to the extent caused by the activities of any Agency Party, or agents, tenants or licensees of any Agency Party, except any release of Hazardous Materials covered by Section 10.1(a) (i) or (ii) above.

(c) With respect to Liability for a release of Hazardous Materials that under the provisions of Section 8.2(i) (3) is to be governed by this subsection (c), Santa Fe and the Agency shall bear such Liability in proportion to the relative aggregate degrees of fault of (i) a group consisting of all Santa Fe Parties, compared to (ii) a group consisting of all Agency Parties and Amtrak, and Santa Fe and the Agency each hereby indemnify, defend and hold harmless the other from and against its respective portion of any loss, cost (including, without limitation, any cost of remediation), claim, damage, liability, disbursement or expense, or monetary settlement, of any kind or nature, whether foreseeable or unforeseeable, including, but not limited to, interest or other carrying costs and legal, accounting and other professional fees and expenses

reasonably incurred in the investigation or defense of claims, arising out of or in relation to such Liability.

10.2 Knowledge of Claim.

(a) Upon receiving Knowledge of any suit, claim or demand asserted by a third party that the Agency or the Operator believes is covered by this indemnity, the Agency or the Operator shall give Santa Fe written notice of the matter and an opportunity to defend such suit, claim, or demand, at Santa Fe's sole cost and expense, with legal counsel satisfactory to the Agency (or the Operator). The Agency (or the Operator) may also require that Santa Fe defend the Agency or the Operator.

(b) Upon receiving Knowledge of any suit, claim or demand asserted by a third party that Santa Fe believes is covered by this indemnity, Santa Fe shall give the Agency written notice of the matter and an opportunity to defend such suit, claim, or demand, at the Agency's sole cost and expense, with legal counsel satisfactory to Santa Fe. Santa Fe may also require that the Agency or the Operator defend Santa Fe.

10.3 Abatement. Except for collisions involving an Agency Train, derailments of any Agency Train or Amtrak Train or derailments caused by the negligence of an Agency Party, (which shall be governed by Article 8), Santa Fe shall at the request of the Agency (or the Operator) characterize and remediate or abate to the extent required by applicable federal or state statutes, at Santa Fe's sole cost and expense, any Hazardous Materials on, in or under the Property arising from any release of Hazardous

Materials resulting from (a) the activities of any Santa Fe Party, or any Santa Fe Party's agents, tenants or licensees or (b) to the extent resulting from rail freight shipping or receiving activities on such Property, the activities of any Santa Fe Party's shippers or receivers. Santa Fe shall conduct such characterization and remediation or abatement in compliance with all applicable laws and with all guidelines of any governmental regulatory agency having jurisdiction over such matters, in a manner that causes the Property to comply with all applicable Federal or state statutes, orders or regulations and eliminates any adverse effect or exposure to liability resulting from non-compliance. Any such characterization and remediation or abatement shall be conducted by a reputable contractor approved by the Agency, such approval not to be unreasonably withheld. The Agency shall commence and complete such characterization and remediation or abatement as promptly as practicable (without overtime). Santa Fe shall in no event more than minimally interfere with Agency Rail Service and shall otherwise conduct such characterization and remediation or abatement in accordance with such reasonable terms and conditions as required by the Agency (to the extent such can be done without breaching the orders and regulations of all governmental agencies having jurisdiction over such matters). If and to the extent the release of Hazardous Materials in, on or under the Property arising from the activities of any Agency Party, agents of any Agency Party or any tenant of any Agency Party materially

interferes with Rail Freight Service, the Agency shall conduct such characterization and remediation or abatement as is required to eliminate such interference. Any such characterization and remediation or abatement shall be conducted by a reputable contractor. The Agency shall commence and complete such characterization and remediation or abatement as promptly as practicable (without overtime).

#### ARTICLE 11: BREACHES AND DEFAULT

11.1 Default, Notice and Cure. Subject to the arbitration provisions set forth in Article 12, should either party hereto fail to perform any of its respective obligations hereunder, the aggrieved party may give the defaulting party written notice of such default. The defaulting party shall have a reasonable period of time to cure such default, but in no event to exceed 30 days from the date of such notice (unless such default is not reasonably curable within such 30 day period, in which event the defaulting party must commence to cure such default within such 30 day period and must diligently prosecute such cure). If the defaulting party fails, refuses or neglects to cure the breach or default itself within such time, the aggrieved party shall have the right to cure the default, and charge the costs and expenses thereof to the defaulting party; provided however, that in Emergency situations, the non-defaulting party, immediately and in a reasonable manner, may act to cure the default or mitigate losses.

11.2 Costs of Enforcement. In any action to enforce this Agreement and/or any of its terms, to collect damages as a result of a breach of its provisions, or to collect any indemnity provided for herein, the prevailing party also shall be entitled to collect all its costs in such action, including, without limitation, the costs of investigation, settlement, expert witnesses and reasonable attorneys' fees and costs, together with all additional costs incurred in enforcing or collecting any judgment rendered.

11.3 Penalties and Fines. If any failure on the part of any party to perform in accordance with this Agreement shall result in a governmental fine, penalty, cost or charge being imposed or assessed on or against the other party, such other party shall give prompt notice to the non-complying party, and the non-performing party shall promptly reimburse, defend and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith.

## ARTICLE 12: ARBITRATION OF DISPUTES

12.1 Submitting Dispute to Arbitrator. IF AT ANY TIME A QUESTION OR CONTROVERSY SHALL ARISE BETWEEN THE PARTIES HERETO DEALING WITH THE CONSTRUCTION OF ANY PART OF THIS AGREEMENT OR CONCERNING THE OBSERVANCE OR PERFORMANCE OF ANY OF THE CONDITIONS HEREIN CONTAINED OR THE RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER THIS AGREEMENT, ANY PARTY MAY SUBMIT SUCH QUESTION OR CONTROVERSY



TO ARBITRATION UNDER THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION AS PROVIDED IN THIS ARTICLE 12. SUCH QUESTION OR CONTROVERSY SHALL BE SUBMITTED TO A SINGLE, COMPETENT DISINTERESTED ARBITRATOR IF THE PARTIES HERETO ARE ABLE TO AGREE UPON SUCH ARBITRATOR WITHIN 20 DAYS AFTER THE PARTY DESIRING SUCH ARBITRATION SHALL NOTIFY IN WRITING THE OTHER PARTY. IF SUCH SINGLE ARBITRATOR CANNOT BE AGREED UPON BEFORE THE EXPIRATION OF THE 20 DAYS, AND EITHER PARTY WISHES TO PURSUE ARBITRATION OF THE MATTER, ARBITRATION SHALL BE HAD BEFORE A BOARD OF THREE PERSONS TO BE NAMED AS FOLLOWS: (A) THE PARTY DEMANDING SUCH ARBITRATION SHALL GIVE THE OTHER PARTY NOTICE OF SUCH DEMAND, STATING SPECIFICALLY THE QUESTION OR QUESTIONS TO BE SUBMITTED FOR DECISION OR THE POINT OR POINTS IN CONTROVERSY, AND NOMINATING A PERSON WHO HAS THE REQUIRED QUALIFICATION TO ACT AS ONE ARBITRATOR; (B) THE PARTY TO WHOM SUCH NOTICE IS GIVEN SHALL APPOINT A SECOND ARBITRATOR AND GIVE THE PARTY DEMANDING ARBITRATION WRITTEN NOTICE OF SUCH APPOINTMENT WITHIN 20 DAYS FROM THE TIME OF RECEIPT OF SUCH NOTICE DEMANDING ARBITRATION; (C) IF, AT THE EXPIRATION OF THE 20 DAYS FROM THE RECEIPT OF SUCH NOTICE DEMANDING ARBITRATION, THE PARTY RECEIVING IT HAS NOT NOTIFIED THE PARTY DEMANDING THE ARBITRATION OF ITS NOMINATION OF A SECOND ARBITRATOR, THE PARTY MAKING THE DEMAND MAY MAKE SUCH SELECTION; (D) THE FIRST AND SECOND ARBITRATORS SHALL SELECT A THIRD ARBITRATOR WITHIN 20 DAYS OF THE APPOINTMENT OF THE SECOND ARBITRATOR; AND (E) IF THE ARBITRATORS CHOSEN SHALL BE UNABLE TO AGREE UPON A THIRD ARBITRATOR WITHIN A PERIOD OF 20 DAYS FROM THE

DATE OF APPOINTMENT OF THE SECOND ARBITRATOR, THE THIRD ARBITRATOR MAY BE APPOINTED UPON TEN DAYS' NOTICE OF MOTION OR APPLICATION OF EITHER PARTY THEREFOR BY THE CHIEF OR PRESIDING JUDGE, OR JUDGE ACTING AS CHIEF OR PRESIDING JUDGE, OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA. THE PARTIES AGREE THAT EACH SHALL BEAR ITS OWN COSTS OF ARBITRATION, INCLUDING ANY COSTS ASSOCIATED WITH THE ARBITRATOR SELECTED BY EACH PARTY. THE PARTIES AGREE TO SPLIT EQUALLY THE COSTS OF THE THIRD ARBITRATOR. IN THE EVENT A DISPUTE IS ARBITRATED BY A SINGLE ARBITRATOR, THE PARTIES AGREE TO SHARE ALL COSTS OF THE ARBITRATOR EQUALLY. IN THE EVENT OF ANY DISPUTE UNDER THE PROVISIONS OF SECTION 4.2, IN EACH INSTANCE IN THIS PARAGRAPH WHEREIN IT IS DESIGNATED THAT ACTION WOULD BE TAKEN WITHIN 20 DAYS, IT SHALL BE TAKEN WITHIN 7 DAYS.

12.2 Arbitration Proceeding. THE ARBITRATOR OR BOARD OF ARBITRATORS (HEREAFTER "ARBITRATOR(S) ") SO CONSTITUTED SHALL SET THE DATE, TIME AND PLACE FOR EACH HEARING, SHALL GIVE TO EACH OF THE PARTIES AT LEAST TEN DAYS' ADVANCE WRITTEN NOTICE OF THE DATE, TIME AND PLACE OF THE INITIAL HEARING AND SHALL PROCEED WITHOUT DELAY TO HEAR AND DETERMINE THE MATTERS IN DISPUTE. EACH PARTY SHALL ALSO HAVE FULL RIGHTS OF DISCOVERY, UNLESS OTHERWISE ORDERED BY THE ARBITRATOR(S) FOR GOOD CAUSE, INCLUDING, WITHOUT LIMITATION, IN ORDER TO HAVE A PROMPT FULL HEARING OF THE MATTERS IN DISPUTE. THE PARTIES MAY OFFER SUCH EVIDENCE AS IS RELEVANT AND MATERIAL TO THE DISPUTE AND SHALL PRODUCE SUCH EVIDENCE AS THE ARBITRATOR(S) MAY DEEM NECESSARY TO AN UNDERSTANDING AND

DETERMINATION OF THE DISPUTE. THE ARBITRATOR(S) OR OTHER PERSON AUTHORIZED BY LAW TO SUBPOENA WITNESSES OR DOCUMENTS MAY DO SO UPON THE REQUEST OF ANY PARTY. THE AWARD SHALL BE MADE PROMPTLY BY THE ARBITRATOR(S) AND, UNLESS OTHERWISE AGREED BY THE PARTIES OR SPECIFIED BY LAW, NO LATER THAN 30 DAYS FROM THE DATE OF CLOSING THE HEARING. EACH OF THE PARTIES HERETO MAY BE REPRESENTED BY COUNSEL OR OTHER AUTHORIZED REPRESENTATIVE AT ANY HEARING. THE PARTY INTENDING TO BE SO REPRESENTED SHALL NOTIFY THE ARBITRATOR(S) AND THE OTHER PARTY OF THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE REPRESENTATIVE AT LEAST THREE DAYS PRIOR TO THE DATE SET FOR THE HEARING. THE BOOKS AND PAPERS OF THE PARTIES HERETO, SO FAR AS THEY RELATE TO MATTERS SUBMITTED TO ARBITRATION, SHALL BE OPEN TO THE INVESTIGATION OF THE ARBITRATOR(S).

12.3 Arbitration Award. THE ARBITRATORS SHALL HAVE THE AUTHORITY TO RESOLVE ANY DISPUTE UNDER THIS AGREEMENT THAT IS SUBMITTED TO THEM, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO DETERMINE A) WHETHER ANY PARTY IS IN DEFAULT OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, B) WHETHER SUCH DEFAULT HAS RESULTED IN DAMAGE TO ANOTHER PARTY TO THIS AGREEMENT AND C) THE AMOUNT OF MONEY NECESSARY TO COMPENSATE SUCH DAMAGE. THE DETERMINATION AND ANY AWARD OF DAMAGES BY SUCH ARBITRATOR(S), OR OF A MAJORITY OF THEM, SHALL BE FINAL AND BINDING UPON THE PARTIES TO SUCH ARBITRATION. EACH PARTY SHALL IMMEDIATELY MAKE SUCH CHANGES IN THE CONDUCT OF SUCH PARTY'S BUSINESS OR SUCH PAYMENT AS RESTITUTION, AS THE CASE MAY BE, AS REQUIRED BY SUCH

DETERMINATION AND AWARD, IF ANY. IN MAKING ANY AWARD FOR A BREACH UNDER SECTION 4.2 OF THIS AGREEMENT, THE ARBITRATOR SHALL BE GUIDED BY THE PRINCIPLES THAT AGENCY SHALL NOT BE LIABLE FOR DAMAGES FOR BREACH OF AN OBLIGATION PERTAINING TO SANTA FE'S QUALITY RAIL FREIGHT SERVICE, AND SANTA FE SHALL NOT BE LIABLE FOR DAMAGES FOR BREACH OF AN OBLIGATION PERTAINING TO AGENCY'S SAFE, RELIABLE, PUNCTUAL AND EFFICIENT AGENCY RAIL SERVICE, EXCEPT AS A RESULT OF A BREACH BY AGENCY OR SANTA FE OF THE CONTRACT AS INTERPRETED BY THE ARBITRATOR, WHICH BREACH OCCURS AND CONTINUES AFTER THE DATE OF SUCH INTERPRETATION BY THE ARBITRATOR. THE PARTIES AGREE THAT THE ARBITRATOR'S DETERMINATION AND AWARD, IF ANY, MAY BE ENTERED WITH ANY COURT HAVING JURISDICTION AND THE DETERMINATION AND AWARD, IF ANY, MAY THEN BE ENFORCED AS BETWEEN THE PARTIES, WITHOUT FURTHER EVIDENTIARY PROCEEDINGS, THE SAME AS IF ENTERED BY THE COURT AT THE CONCLUSION OF A JUDICIAL PROCEEDING IN WHICH NO APPEAL WAS TAKEN.

12.4 Attorneys' Fee. THE LOSING PARTY SHALL PAY TO THE PREVAILING PARTY IN ANY ARBITRATION THE PREVAILING PARTY'S REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED IN CONNECTION WITH SUCH ARBITRATION AND OTHERWISE INCURRED IN CONNECTION WITH THE PREVAILING PARTY'S ATTEMPTS TO ENFORCE PERFORMANCE BY THE LOSING PARTY OF THE LOSING PARTY'S OBLIGATIONS UNDER THIS AGREEMENT.

12.5 Sole Remedy. ARBITRATION SHALL BE THE SOLE REMEDY FOR DEFAULTS UNDER THIS AGREEMENT.

12.6 Arbitration Notice. NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.

  
Santa Fe

  
Agency

#### ARTICLE 13: FIBER OPTICS PROVISIONS

The Grant Deed reserves unto Santa Fe and its permitted successors and assignees, a permanent easement relating to Santa Fe's rights and obligations under certain fiber optics agreements, upon the terms and conditions set forth in the Grant Deed.

#### ARTICLE 14: TERM

This Agreement shall be effective on the date of Closing and shall continue in effect in perpetuity. Notwithstanding the foregoing, immediately upon Santa Fe's abandonment of rail service, this Agreement shall terminate as to the abandoned portion of the Property.

#### ARTICLE 15: ASSIGNMENTS

15.1 Permitted Assignment. Any and all rights hereunder may be assigned by either party only as set forth in the Reserved Rail Freight Service Easement or in this Agreement.

15.2 Agency.

(a) The Agency may appoint an Operator to exercise the Agency's rights under this Agreement subject to the terms and conditions of this Agreement.

(b) The Agency, without the consent of Santa Fe, may transfer or assign the Burdened Portion of the Property and all of its rights hereunder, to one or more of the other Purchasing Agencies. If the transferee under such an assignment assumes in writing, for the benefit of Santa Fe, all of the transferor's obligations under this Agreement, then upon such transfer the transferor shall be released from all liability under this Agreement.

(c) In addition to Section 15.2(b), the Agency may transfer or assign the Burdened Portion of the Property and all of its rights hereunder to, and all of its corresponding

obligations and duties hereunder may be assumed by, any party on the conditions that (i) any transferee or assignee must assume in writing, for the benefit of Santa Fe, all of the Agency's obligations under this Agreement with respect to the portion of the Property or rights transferred, (ii) any transferee or assignee must be capable, in Santa Fe's reasonable judgment, of adequately maintaining the Burdened Portion of the Property, (iii) any transferee or assignee must not, in Santa Fe's reasonable judgment, jeopardize safe and efficient Rail Freight Service on any of the Burdened Portion of the Property, and (iv) any transferee or assignee must be financially capable, in Santa Fe's reasonable judgment, of maintaining any liability insurance required by this Agreement.

#### ARTICLE 16: SANTA FE CUSTOMER LEASES

Exhibit F sets forth a list of certain Santa Fe rail service customers that are also tenants under Customer Leases. Until the tenth anniversary of the Closing, Agency shall not terminate, modify, renew or replace any Customer Lease, without the consent of Santa Fe, which shall not be unreasonably withheld, except upon the following terms and conditions (in which event no consent from Santa Fe shall be necessary):

- (a) the rent may be increased to the extent of increases in the Consumer Price Index for all Urban Consumers (Los Angeles-Anaheim-Riverside) (or if such index ceases to be reported, an appropriate substitute index as

agreed by the parties), or as otherwise provided in such lease.

(b) a Customer Lease may be modified to comply with changes in applicable law.

After such date, the Agency may, without consent or approval of Santa Fe, terminate, modify, renew or replace any Customer Lease.

#### ARTICLE 17: MISCELLANEOUS

17.1 Force Majeure. Neither party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each party shall be excused from performance of any of its obligations hereunder (except obligations involving the payment hereunder of money to the other party or to a third party for activities not related to any suspended obligations), during the time when such non-performance is occasioned by fire, earthquake, flood, mud slide, washouts, storms, blockages, explosion, wreck, derailment, mechanical breakdown, casualty, strike, lock out, unavoidable accident, riot, insurrection, civil disturbance, acts of civil or military authorities, act of public enemy, embargo, war, act of God, inability to obtain labor, materials or supplies, or any other similar cause beyond the party's reasonable control; provided, that if either party suffers a work stoppage due to a labor dispute, such party shall make such reasonable efforts, if practicable, to staff its operations so as to minimize disruptions to rail operations on the Property. Each party agrees to notify the other party



promptly when the non-performance of its obligations hereunder is the result of any of the circumstances described in this Section 17.1 and, except when the circumstance involves a labor dispute, shall use all reasonable efforts to remedy the situation. Each party further agrees to provide the other party with periodic reports describing in reasonable detail the current condition of such circumstance for so long as such circumstance prevents the performance of an obligation required hereunder. In the event of any strike, lock out or other labor dispute against Santa Fe, Santa Fe promptly shall remove any Santa Fe Train from the Tracks which impedes commuter train operations, using management personnel, if necessary.

17.2 Amendment or Waiver. No provision of this Agreement shall be altered, amended, modified, revoked or waived except by an instrument in writing signed by the party to be charged with such alteration, amendment, modification, revocation or waiver.

17.3 Headings. The article and section headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

17.4 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) on receipt, if mailed

to the party to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid and properly addressed as follows:

To Santa Fe:

The Atchison, Topeka and  
Santa Fe Railway Company  
720 East Carnegie Drive, Suite 130  
San Bernardino, California 92408-3571  
Attention: Mr. L.F. Fox  
Telecopy No.: 714-386-4440

with a copy to:

The Atchison, Topeka and  
Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, Illinois  
Attention: Richard E. Weicher, Esq.  
Telecopy No.: 708-995-6846

To the Agency:

Los Angeles County Transportation Commission  
818 West Seventh Street, Suite 110  
Los Angeles, California 90017  
Attention: Mr. Richard Stanger  
Telecopy No.: 213-489-1469

17.5 Survivability. Articles 8 and 10 shall survive termination of this Agreement as to matters arising from events occurring prior to termination, and any and all obligations to make payments in respect of costs incurred at or prior to the date of termination shall survive termination of this Agreement.

17.6 Merger of Prior Agreements. This Agreement, the Purchase Agreement and the Grant Deed constitute the entire agreement between the parties relating to the subject matter described herein and therein and supersede all prior and

contemporaneous agreements and understandings between the parties relating to the subject matter herein and therein.

17.7 No Third Party Rights. The provisions of this Agreement are for the exclusive benefit of Santa Fe, the Agency and their permitted successors and assigns, and no other person or entity shall have any right or claim, or shall be entitled to enforce any provision, against any party by reason of any provision of this Agreement

17.8 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

17.9 Counterparts. This Agreement may be executed in counterparts, each of which shall have the force and effect of an original.

17.10 No Partnership. The parties do not intend that this Agreement create, and this Agreement shall not create, any partnership, joint venture or other relationship between Santa Fe, or any Santa Fe Party, on the one hand, and the Agency, or any Agency Party, on the other hand, other than the express contractual relationship of the parties under this Agreement in accordance with and subject to the terms of this Agreement.

17.11 Approvals. The persons executing this Agreement on behalf of the Agency and Santa Fe have not obtained the approval of their respective board of directors, board of commissioners or other appropriate executive body, and this

Agreement has been executed by such persons subject to obtaining such approvals.

IN WITNESS WHEREOF, the parties to this Agreement have  
duly executed it as of the date first set forth above.

SANTA FE:

THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COMPANY, a  
Delaware corporation

By: *Jeffrey R. Moreland*

Name: Jeffrey R. Moreland

Title: Vice President-Law  
and General Counsel

THE AGENCY:

LOS ANGELES COUNTY  
TRANSPORTATION COMMISSION

By: *Michael L. ...*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Initial Section 12.6]

29124

EXHIBIT A

Description of Pasadena Subdivision

"Pasadena Subdivision" shall mean Pasadena Subdivision between Milepost 82.62 and Milepost 140.05 at Mission Tower, as more fully described on that certain set of maps labeled "THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, PASADENA LINE SALE EXHIBITS; SAN BERNARDINO AND LOS ANGELES COUNTY, CALIFORNIA, "Exhibit A-1," dated October 1992, prepared by Bartlett & West Engineers, Inc. and comprised of a sequence of maps numbered as Exhibit A-1 through A-6 and Exhibit B-1 through B-23. Each page bears a legend in the lower right-hand corner of such page (except as noted below) and depicts a certain portion of the Pasadena Subdivision, all as follows:

San Bernardino County

<u>Page</u>	<u>Title of Legend</u>	<u>Milepost</u>
Exhibit A-1	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 79+ to M.P. 84
Exhibit A-2	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 84 to M.P. 88
Exhibit A-3	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 88 to M.P. 92
Exhibit A-4	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 92 to M.P. 96
Exhibit A-5	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 96 to M.P. 100
Exhibit A-6	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 100 to M.P. 104

Los Angeles County

Exhibit B-1	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 104 to M.P. 108
Exhibit B-2	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 108 to M.P. 112
Exhibit B-3	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 112 to M.P. 116
Exhibit B-4	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 116 to M.P. 120
Exhibit B-5	THE A.T. & S.F. RY. CO. Right of Way and Track Map	M.P. 120 to M.P. 124
Exhibit B-6	THE A.T. & S.F. RY. CO. Station Map; ARCADIA, CA.; Los Angeles County	No M.P. indicated
Exhibit B-7	THE A.T. & S.F. RY. CO. Station Map; ARCADIA, CA.; Los Angeles County	No M.P. indicated
Exhibit B-8	THE A.T. & S.F. RY. CO. Station Map; ARCADIA, CA.; Los Angeles County	No M.P. indicated
Exhibit B-9	THE A.T. & S.F. RY. CO. Station Map; ARCADIA, CA.; Los Angeles County	No M.P. indicated

Exhibit B-10	THE A.T. & S.F. RY. CO. Station Map; CHAPMAN, CA.; Los Angeles County	No M.P. indicated
Exhibit B-11	THE A.T. & S.F. RY. CO. Station Map; LAMANDA PARK, CA.; Los Angeles County	No M.P. indicated
Exhibit B-12	THE A.T. & S.F. RY. CO. Station Map; LAMANDA PARK, CA.; Los Angeles County	No M.P. indicated
Exhibit B-13	THE A.T. & S.F. RY. CO. Station Map; PASADENA, CA; Los Angeles County	No M.P. indicated
Exhibit B-14	THE A.T. & S.F. RY. CO. Station Map; PASADENA, CA; Los Angeles County	No M.P. indicated
Exhibit B-15	THE A.T. & S.F. RY. CO. Deed Map D-19482; Los Angeles County	No M.P. indicated
Exhibit B-16	THE A.T. & S.F. RY. CO. Station Map; SOUTH PASADENA, CA.; Los Angeles County	No M.P. indicated
Exhibit B-17	THE A.T. & S.F. RY. CO. Station Map; SOUTH PASADENA, CA.; Los Angeles County	No M.P. indicated
Exhibit B-18	THE A.T. & S.F. RY. CO. Station Map; SOUTH PASADENA, CA.; Los Angeles County	No M.P. indicated
Exhibit B-19	THE A.T. & S.F. RY. CO. Station Map; Los Angeles County	No M.P. indicated
Exhibit B-20	THE A.T. & S.F. RY. CO. Station Map; Los Angeles County	No M.P. indicated
Exhibit B-21	THE A.T. & S.F. RY. CO. Station Map; HIGHLAND PARK; Los Angeles County	No M.P. indicated
Exhibit B-22	LOS ANGELES STATION PLAT; The Atchison, Topeka & Santa Fe Railway operated by The Atchison, Topeka & Santa Fe Railway Co. THE A.T. & S.F. RY. CO. Station Map; LOS ANGELES; Los Angeles County	No M.P. indicated
Exhibit B-23	THE A.T. & S.F. RY. CO. Station Map; LOS ANGELES; Los Angeles County	No M.P. indicated

EXHIBIT B

Form of Grant Deed for Los Angeles County

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

This instrument is exempt from Recording Fees (Govt. Code §27383) and from Documentary Transfer Tax (Rev. & Tax Code §11922)

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Grantor"), hereby sells, transfers, grants and conveys to Los Angeles County Transportation Commission, a county transportation commission, existing under the authority of Section 130050 et seq. of the California Public Utilities Code ("Grantee"), all of Grantor's right, title and interest in and to (a) the land located in the County of Los Angeles, State of California, as more particularly described in Exhibit A attached hereto (the "Land"); (b) all structures and other improvements on the Land, including all railroad tracks and related facilities (including rail and fastenings, switches and frogs, bumpers, ties, ballast, signaling devices and roadbed); and all structures and other improvements necessary for the use or support of any such railroad tracks or related facilities (including bridges, tunnels, culverts, grading, embankments, dikes, pavements and drainage facilities) (collectively, the "Improvements"); (c) all fixtures that Grantor owns and uses in the operation and maintenance of the Land and the Improvements; and (d) all appurtenances to the foregoing property (the Land, the Improvements, such fixtures and such appurtenances being referred to herein collectively as the "Property"), subject only to the following permitted exceptions:



1. any lien for real property taxes and assessments that are not yet due and payable, or for which collection has been enjoined (and with respect to which Grantor has the right to challenge, and Grantor shall protect, defend, indemnify and hold Grantee harmless from and against any and all liability, loss, damage, cost, expense and liens that have arisen or arise or relate to any such taxes accruing prior to the closing of the sale of the Property);

2. liens or encumbrances arising out of any activity of Grantee with respect to the Property;

3. the Shared Use Agreement;

4. any leases and licenses to the extent that the same do not and will not materially interfere with (i) Grantee's use of the portion of the Property which is used for Agency Rail Service or (ii) the use for residential, industrial or commercial property of the portion of the Property which is not used for Agency Rail Service;

5. with respect to the portion of the Property which is used for Agency Rail Service, any other non-monetary encumbrance, limitation or exception that does not materially interfere with Grantee's use of the Property for Agency Rail Service;

6. with respect to the portion of the Property which is not used for Agency Rail Service, any other non-monetary encumbrance, limitation or exception that does not materially interfere with the use of the Property for residential, industrial or commercial property, whichever use the respective purchasing Agency intends to make of the specific property;

7. the following permits or agreements to be retained by Grantor: (a) Rail Freight Service contracts and permits, (b) permits and agreements for any environmental remediation to be undertaken by Grantor, (c) rights and obligations under any and all joint facility agreements and other agreements pertaining to the portion of the Property which is used for Agency Rail Service, but only to the extent such rights and obligations relate to Rail Freight Service, (d) the Sprint Agreement and the MCI Agreement (as defined below) and (e) all industry track agreements; provided that such permits and agreements do not and will not materially interfere with (i) Grantee's use of the portion of the Property which is used for Agency Rail Service or (ii) the use for residential, industrial or commercial property of the portion of the Property which is not used for Agency Rail Service;

8. any covenant, condition or restriction contained in any instrument vesting title to any portion of the

Property in Grantor which restricts the use of such portion to railroad purposes;

9. any encumbrance, limitation or exception resulting from the Property not having been divided in compliance with the Subdivision Map Act (California Government Code Section 66410 et seq.);

10. materialmen's, mechanics' repairmen's, employees', contractors', operators', tax and other similar liens and charges arising pursuant to operations or work related to the Property or in the ordinary course of business incidental to the construction, maintenance or operation of the Property, but only to the extent that (i) if filed, they have not yet become due and payable, or payment is being withheld as provided by law, or (ii) if their validity is being contested in good faith by appropriate action;

11. all applicable laws, rules, regulations or orders of any municipality or other governmental, statutory or public authority; and

12. any other exceptions to title approved by Grantee.

[Insert the Reserved Rail Freight Service Easement language.]

[Insert the Fiber Optic License language.]

[Insert deed superseding language for Montclair Property]

IN WITNESS WHEREOF, Grantor has set its hand and seal this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

GRANTOR:

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation

ATTEST:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_         )        ss.

On \_\_\_\_\_, 199\_\_, before me, a Notary Public  
in and for said County and State, personally appeared

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that  
[he/she/they] executed the same in [his/her/their] authorized  
capacity(ies), and that by [his/her/their] signature(s) on the  
instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(Seal)

EXHIBIT A  
LEGAL DESCRIPTION

CERTIFICATE OF ACCEPTANCE

This is to certify that the interests in the real property conveyed by the Grant Deed dated \_\_\_\_\_, 199\_\_, from the Atchison, Topeka and Santa Fe Railway Company, a Delaware corporation, to LOS ANGELES COUNTY TRANSPORTATION COMMISSION, a county transportation commission existing under the authority of Section 130050 et seq. of the California Public Utilities Code, is hereby accepted by the undersigned officer of \_\_\_\_\_ on behalf of \_\_\_\_\_ on \_\_\_\_\_, 199\_\_ pursuant to authority conferred by resolution of \_\_\_\_\_ adopted on \_\_\_\_\_, 199\_\_, and the Grantee consents to the recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, 199\_\_ \_\_\_\_\_

By: \_\_\_\_\_  
Its \_\_\_\_\_

EXHIBIT C

Schedule of Hypothetical Events and  
Liability Allocation

NOTE: This Schedule sets forth certain events and the allocation of liability which would occur in such events pursuant to the provisions of Sections 8.1 and 8.2 (except that the provisions of Sections 8.2(h), 8.2(i), 8.2(j) and 8.2(k) are not reflected in this Schedule). This Schedule is not intended to limit, supersede or modify said Sections 8.1 and 8.2 in any manner. All initial capitalized terms shall have the meaning given such terms in Sections 8.1 and 8.2. "Agency" shall mean one or more of the Agencies. "SF" shall mean Santa Fe.

<u>Event</u>	<u>Allocation of Liability</u>
1. <u>Commuter Train/Grade Crossing Accident</u>	
A. <u>Loss to Agency Train, Injuries to Commuters and Third Parties</u>	
(1) Agency negligent (e.g., engineer or maintenance negligence) and SF not negligent	Agency
(2) SF negligent (e.g. maintenance negligence) and Agency not negligent	Agency: 1st 10 & 85+ Million; SF: 10/85 Million
(3) Both SF and Agency negligent	Agency: Agency's relative negligence and 1st 10 & 85+ Million of S.F.'s relative negligence; SF: 10/85 Million of SF's relative negligence
2. <u>Freight Train/Grade Crossing Accident</u>	
A. <u>Injured Party Not a Commuter</u>	
(1) Agency negligent (e.g. maintenance negligence) and SF not negligent	Agency

(2) SF negligent (e.g. engineer negligent) and Agency not negligent SF

(3) Both SF and Agency negligent

(a) San Bernardino Subdivision SF

(b) Other Subdivisions

Agency: Agency's relative negligence and 1st 10 & 85+ Million of S.F.'s relative negligence;  
SF: 10/85 Million of SF's relative negligence

B. Injured Party a Commuter

(1) Agency negligent and SF not negligent

Agency

(2) SF negligent and Agency not negligent

Agency: 1st 10 & 85+ Million;  
SF: 10/85 Million

(3) Both SF and Agency negligent

Agency: Agency's relative negligence and 1st 10 & 85+ Million of S.F.'s relative negligence;  
SF: 10/85 Million of SF's relative negligence

3. Freight/Commuter Accident

A. Loss to Agency Train, Injuries to Commuters and Third Parties

(1) Agency negligent and SF not negligent

Agency

(2) SF negligent (e.g. engineer or dispatcher negligent) and Agency not negligent

Agency: 1st 10 & 85+ Million;  
SF: 10/85 Million

(3) Both SF and Agency negligent

Agency: Agency's relative negligence and 1st 10 & 85+ Million of SF's relative negligence;  
SF: 10/85 Million of SF's relative negligence

- B. Loss to SF Train, Injuries to SF Employees
- (1) Agency negligent and SF not negligent Agency
  - (2) SF negligent and Agency not negligent SF
  - (3) Both SF and Agency negligent Agency: Agency's relative negligence and 1st 5 & 85+ Million of SF's relative negligence; SF: 5/85 Million of SF's relative negligence
4. Commuter Train Hits Person on Track (not at grade crossing)
- A. SF negligent and Agency not negligent
- (1) Person a SF Employee Agency: 1st 10 & 85+ Million; SF: 10/85 Million
  - (2) Person an Agency Employee/Commuter Agency: 1st 10 & 85+ Million; SF: 10/85 Million
  - (3) Person a Third Party Agency: 1st 10 & 85+ Million; SF: 10/85 Million
- B. Agency negligent and SF not negligent
- (1) Person a SF Employee Agency
  - (2) Person an Agency Employee/Commuter Agency
  - (3) Person a Third Party Agency
- C. Both SF and Agency negligent
- (1) Person a SF Employee Agency: Agency's relative negligence and 1st 10 & 85+ Million of SF's relative negligence;



- SF: 10/85 Million of SF's relative negligence
- (2) Person an Agency Employee/Commuter Agency: Agency's relative negligence and 1st 10 & 85+ Million of SF's relative negligence; SF: 10/85 Million of SF's relative negligence
- (2) Person a Third Party Agency: Agency's relative negligence and 1st 10 & 85+ Million of SF's relative negligence; SF: 10/85 Million of SF's relative negligence
5. Freight Train Hits Person on Track (not at grade crossing)
- A. SF negligent and Agency not negligent
- (1) Person a SF Employee SF
- (2) Person an Agency Employee/Commuter Agency: 1st 10 & 85+ Million; SF: 10/85 Million
- (3) Person a Third Party SF
- B. Agency negligent and SF not negligent
- (1) Person a SF Employee SF
- (2) Person an Agency Employee/Commuter Agency
- (3) Person a Third Party SF
- C. Both SF and Agency negligent
- (1) Person a SF Employee SF
- (2) Person an Agency Employee/Commuter Agency: Agency's relative negligence and 1st 10 & 85+ Million of SF's relative negligence; SF: 10/85 Million of SF's relative negligence

- (3) Person a Third Party SF
6. Train Derailment
- A. Commuter Train Derails; Losses to Agency Train, Agency Employees, Commuters and Third Parties
- (1) Agency negligent and SF not negligent Agency
- (2) SF negligent and Agency not negligent Agency: 1st 10 & 85+ Million;  
SF: 10/85 Million
- (3) Both SF and Agency negligent Agency: Agency's relative negligence and 1st 10 & 85+ Million of SF's relative negligence;  
SF: 10/85 Million of SF's relative negligence
- B. Freight Train Derails; Losses to SF Train, SF Employees, Commuters and Third Parties
- (1) Agency negligent and SF not negligent Agency; SF bears losses to its trains, equipment, employees and Third Parties up to amount of SF's historical losses on the particular line or subdivision
- (2) SF negligent and Agency not negligent SF
- (3) Both SF and Agency negligent Agency: Agency's relative negligence and 1st 10 & 85+ Million of SF's relative negligence; SF bears losses to its trains, equipment, employees and Third Parties up to amount of SF's historical losses on the particular line or subdivision  
SF: 10/85 Million of SF's relative negligence

7. Loss and Injury Not Involving a Train

A. Injured Party Not a Commuter and not an Agency Employee

(1) SF responsible for maintaining facility where injury occurs SF

(2) Agency responsible for maintaining facility where injury occurs Agency

B. Injured Party a Commuter

(1) SF responsible for maintaining facility where injury occurs Agency: 1st 10 & 85+ Million;  
SF: 10/85 Million

(2) Agency responsible for maintaining facility where injury occurs Agency: 1st 10 & 85+ Million;  
SF: 10/85 Million

8. Loss and Injury Caused by Recklessness

a. SF Reckless SF

b. Agency Reckless Agency

NOTE: All of items 1 through 7 above are subject to this item 8.

EXHIBIT D

Locations Used to Load, Unload or Store  
Dangerous Materials Cars

Pasadena Subdivision

Los Angeles County

1465	Claremont Runaround
1481	Pomona Siding
1482	Warehouse Specialists
1483	Warehouse Specialists
1484	Warehouse Specialists
1485	Warehouse Specialists
1487	Pomona Team
1506	Metro Water
1507	Metro Water
1511	San Dimas Runaround
1513	San Dimas Team
1527	Glendora Siding
1533	Azusa Team
1535	Oil Spur
1537	East leg Azusa Wye
1539	West leg Azusa Wye
1545	Ogle Spur
1550	Wynn Oil Company
1554	Aerojet General
1555	Aerojet General
1557	Cal Liquid Gas
1558	Cal Liquid Gas
1560	Cal Liquid Gas
1580	Builders Runaround
1578	Irwindale Siding
1581	Miller Brewing
1582	Miller Brewing
1583	Miller Brewing
1584	Miller Brewing
1585	Miller Brewing
1586	Miller Brewing
1587	Miller Brewing
1588	Miller Brewing
1589	Miller Brewing
1590	Lead Track
1652	Butler Siding
1665	Arcadia Run Around
1666	A&A Building Materials
1669	Chapman Siding
1694	Olga Siding

EXHIBIT E

List of Public Works Projects  
(Includes Pending Grade Separations)

File No.	Station	Project	Milepost
5002732	Arcadia	1st Street	124.1
5002181	Arcadia	Rosemead Blvd	126
5023521	Butler	Retrofit 605 Fwy	119.91-120.0
5000694	Los Angeles	Spring Street (North)	139.5
5000242	Monrovia	Myrtle Ave (line change)	122.4
5002999	Monrovia	Magnolia Avenue	122.6
5000997	Montclair	Monte Vista Ave	103.7
5000251	Pomona	San Dimas Cyn Rd (at SDimas)	109.3
5000251	Pomona	San Dimas Cyn Rd (at SDimas)	109.3
5000254	Pomona	Walnut Ave (at San Dimas)	109.8
5000254	Pomona	Walnut Ave (at San Dimas)	109.8
5001233	Water Street	BR 138.1 Earthquake Retrofit	138.1

EXHIBIT F  
Customer Leases  
Pasadena Subdivision

LOS ANGELES COUNTY

<u>Location</u>	<u>Leases</u>	<u>Contract</u>	<u>Type</u>	<u>Corridor</u>	
				<u>In</u>	<u>Out</u>
San Dimas	Levitz Furniture	140772	Site		X

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EXHIBIT G

FORM OF LANGUAGE FOR RESERVATIONS  
TO BE INCLUDED IN GRANT DEED

EXHIBIT G-1

FORM OF LANGUAGE FOR

RESERVED RAIL FREIGHT SERVICE EASEMENT

1. Reservation of Easement and License.

(a) Grantor hereby excepts from the foregoing conveyance and reserves unto Grantor, its successors and permitted assigns, a permanent (unless abandoned following effective approval or exemption by the ICC) easement over the surface of the portion of the Property described in Section 2 below, solely for the purpose of providing local rail freight service, which easement shall be the exclusive right to provide local rail freight service [with respect to the grant deed for each of the San Diego Subdivision (Orange County), San Diego Subdivision (San Diego County), Olive Subdivision, the Harbor Subdivision, Pasadena Subdivision and the Mission Tower Segments add the following: and overhead rail freight service] (the "Reserved Rail Freight Service Easement").

(b) Grantor also excepts from the foregoing conveyance and reserves unto Grantor, its successors and permitted assigns, a license (the "Reserved Rail Freight Service License") that permits (i) in connection with the Reserved Rail Freight Service Easement any of Grantor's employees, agents or contractors or freight shippers or freight receivers (but only in connection with the loading, unloading or inspection of such shippers' or receivers' goods) to ingress and egress the Property, and (ii) Sprint and MCI or any of their employees, agents or contractors, assignees or transferees to construct, maintain and operate their fiber optics lines.

(c) Grantor, and its successors and permitted assigns, shall have the right to use the Reserved Rail Freight Service Easement and the Reserved Rail Freight Service License without payment of any rental charge or other compensation for ownership interest to the owner of the ownership interest conveyed in the foregoing conveyance.

2. Description of Easement. The Reserved Rail Freight Service Easement shall have (i) a height of 26 feet from the top of the rail located on the Property, (ii) a length coterminous with the Property (except as set forth in Section 3), and (iii) a width consisting of a portion of the Property that encompasses (1) the land ten feet on either side of the centerline of all Tracks currently located on the Property and, upon completion of construction, any new or relocated Tracks on the Property that are mutually designated by Grantor and Grantee to be used for Rail Freight Service (except as set forth in Section 3(a)) and (2) the land covered by, and within three feet of, any Freight Rail Facilities currently located on the Property



and, upon completion of construction, any new or relocated Freight Rail Facilities on the Property that are mutually designated by Grantor and Grantee to be used for Rail Freight Service.

3. Expansion and Contraction of Easement.

(a) If and when Grantee conveys to a party other than any other agency signatory to the Purchase Agreement, any real estate that is within 15 feet of the centerline of the Tracks, the width of the Reserved Rail Freight Service Easement shall be expanded automatically to 15 feet on one side of the centerline of Tracks where the expansion is necessary to permit efficient maintenance of that section of the Tracks.

(b) The Reserved Rail Freight Service Easement automatically shall contract upon removal of any Tracks or Freight Rail Facilities pursuant to the Shared Use Agreement or otherwise removed by or with the consent of Grantor, and automatically shall be relocated when any Tracks or Freight Rail Facilities are relocated pursuant to the Shared Use Agreement.

(c) Grantee shall have the right at no charge to construct or authorize new improvements on the Property limiting vertical clearance to below 26 feet, but no lower than 24 feet (measured from the top of the rail at the time such improvements are installed), with Grantor's prior written consent, which shall not be unreasonably withheld or delayed. If such new improvements limit vertical clearance to less than 26 feet (measured from the top of the rail at the time such improvements are installed), and if such clearance subsequently becomes inadequate to permit electrification of the Track, such retrofits, incremental catenary construction or such other measures as may be necessary, resulting from such limited vertical clearance, shall be at the cost of Grantee. In no event shall a reduction in vertical clearance caused by resurfacing subsequent to original construction be deemed to constitute a violation of any vertical height limitation. Grantee may install, without charge, below the 26 foot limit (but no lower than 24 feet from the top of the rail at the time such improvements are installed), the overhead electrical apparatus necessary for electrification of a Track, provided that such structures do not more than minimally interfere with Grantor's Quality Rail Freight Service on such Track.

(d) Grantee may construct and use for Agency Rail Service loading platforms at Passenger Station Sites on the portion of the Property burdened by the Reserved Rail Freight Service Easement, on the condition that such facilities comply with all standards of the California Public Utilities Commission and applicable Federal Railroad Administration regulations, and Grantor shall not have the right to require such construction to comply with standards more restrictive than applicable California

Public Utilities Commission standards or applicable Federal Railroad Administration regulations.

4. Shared Use Agreement. Grantor and Grantee have entered into the Shared Use Agreement, the terms of which are incorporated by reference as if set forth in their entirety herein, with respect to the Property to govern their respective rights and obligations thereon.

5. No Obligation Regarding Encroachments. Grantee shall have no obligation to clear encroachments into the Reserved Rail Freight Service Easement that exist on the date hereof.

6. Loading and Unloading of Freight Cars. All loading and unloading of freight cars on the Property by Grantor and any Santa Fe Party shall be in compliance with all applicable federal, state, and local safety regulations, and subject only to the following additional restrictions:

(a) As to Tracks existing on the date of this Grant Deed, Grantor and the Santa Fe Parties shall load and unload freight cars only on Terminal Tracks, further provided:

(i) Loading and unloading of any boxcar on any such Track within 20 feet from any Track used for Agency Rail Service shall occur only on the side opposite of any Track used for Agency Rail Service.

(ii) Loading and unloading from any open top car or lumber car on any such Track shall occur only on a Terminal Track located more than 20 feet from any Track used for Agency Rail Service.

(iii) Loading and unloading of Dangerous Materials Cars shall occur only at (1) any location which has been used to load, unload or store Dangerous Materials Cars between June 18, 1990 and June 18, 1992 (which locations are identified in Exhibit D to the Shared Use Agreement), provided however, that with respect to any such locations that are within 50 feet from any Track used for Agency Rail Service, or within 250 feet from any Passenger Station Site, if Grantee provides an alternative location reasonably acceptable to Grantor, then Grantor shall relocate such loading and unloading of Dangerous Materials Cars to the alternate location, or (2) any other Terminal Track existing on the date of this Grant Deed which is more than 50 feet from any Track used for Agency Rail Service and more than 250 feet from any Passenger Station Site, or (3) on other Tracks as mutually agreed between Grantor and Grantee. All loading and unloading of Dangerous Materials Cars shall be subject to Grantor's indemnification obligations set forth in Article 10 of the Shared Use Agreement.

(iv) Loading and unloading of intermodal cars shall be subject to the restrictions that (1) if side loaders are used for loading or unloading, such loading and unloading shall occur only on the side opposite of any Track used for Agency Rail Service, to the extent necessary to keep such loading or unloading operations at least 20 feet away from any Track used for Agency Rail Service, and (2) if an overhead crane is used for loading and unloading, such crane shall not be operated within 20 feet of any Track used for Agency Rail Service.

(v) Neither loading nor unloading of freight cars shall occur on the Property in a manner contrary to applicable law, or within 250 feet of any grade crossing where such activity would restrict sight distance at that crossing.

(vi) With respect to loading or unloading of any type of freight cars not referenced in subsection (i) through (iv) above, if Grantee discovers safety problems resulting from that loading or unloading, Grantor and Grantee agree to work together to explore resolutions to those problems.

(b) As to Tracks constructed after the date of this Grant Deed, Grantor and the Santa Fe Parties shall load and unload freight cars only on Terminal Tracks, further provided:

(i) Grantor and the Santa Fe Parties may not load or unload any boxcar, open top car or lumber car on any such Track that is located within 20 feet from any Track used for Agency Rail Service.

(ii) Grantor and the Santa Fe Parties may not unload into any pit or conveyor system, or load from any chute or conveyor system.

(iii) Grantor and the Santa Fe Parties shall not load or unload any Dangerous Materials Cars on the Property.

(iv) Grantor and the Santa Fe Parties shall not load or unload within 250 feet of any grade crossing where such activity would restrict sight distance at the crossing.

(v) Loading and unloading of intermodal cars shall be subject to the restrictions that (1) if side loaders are used for loading or unloading, such loading and unloading shall occur only on the side opposite of any Track used for Agency Rail Service, to the extent necessary to keep such loading or unloading operations at least 20 feet away from any Track used for Agency Rail Service, and (2) if an overhead crane is used for loading and unloading, such crane shall not be operated within 20 feet of any Track used for Agency Rail Service.

[with respect to the grant deed for the Harbor Subdivision, add the following in lieu of 6(a)(iii) and 6(b)(i), (ii) and (iii) above:

6. (a). (iii) With respect to any new Tracks constructed after the date hereof and before the Put Expiration Date (as defined in the Shared Use Agreement), Grantor may not (1) load or unload any boxcars, open top cars or lumber cars on any Tracks that are located within 20 feet of any Tracks used by Grantee for Agency Rail Service other than the two daily passenger trains referenced in Section 3.10 of the Shared Use Agreement, or (2) load or unload any Dangerous Materials Cars on the Property between Milepost 15.0 and Milepost 15.8.

(b) With respect to any new Tracks constructed after the Put Expiration Date, if, and only if, Grantee has not exercised its put option:

(i) Grantor and the Santa Fe Parties may not load or unload any boxcars, open top cars or lumber cars on any Tracks that are located within 20 feet from any Tracks used by Grantee for Agency Rail Service.

(ii) Grantor and the Santa Fe Parties may not load or unload into any pit or conveyor system, and may not load from or unload into any chute or conveyor system.

(iii) Grantor and the Santa Fe Parties may not load or unload Dangerous Materials Cars on any portion of the Property between Milepost 15.0 and Milepost 15.8.]

#### 7. Storage of Freight Cars.

(a) As to Tracks existing on the date of this Grant Deed, storage of loaded and empty freight cars by Grantor and the Santa Fe Parties is restricted as follows:

(i) Storage of Dangerous Materials Cars shall occur only at (1) any location which has been used to load, unload or store Dangerous Materials Cars between June 18, 1990 and June 18, 1992 (which locations are identified in Exhibit D to the Shared Use Agreement), provided however, that with respect to any such locations that are within 50 feet from any Track used for Agency Rail Service, or within 250 feet from any Passenger Station Site, if Grantee provides an alternative location reasonably acceptable to Grantor, then Grantor shall relocate such storage of Dangerous Materials Cars to the alternate location, or (2) any other Track existing on the date of this Grant Deed which is more than 50 feet from any Track used for Agency Rail Service and more than 250 feet from any Passenger Station Site, or (3) on other Tracks as mutually agreed between Grantor and Grantee. All storage of Dangerous Materials Cars shall be subject to Grantor's indemnification obligations set forth in Article 10 of the Shared Use Agreement.

[This paragraph does not apply to the Harbor Subdivision]

(ii) Grantor and the Santa Fe Parties shall comply, at their sole cost and expense, with all customary and appropriate safety and maintenance procedures (including, without limitation, derails).

(iii) Freight cars shall not be stored on the Property in a manner contrary to applicable law, or within 250 feet of any grade crossing where such activity would restrict sight distance at that crossing.

(b) As to Tracks constructed after the date of this Grant Deed, Grantor's storage of loaded and empty freight cars is restricted as follows:

(i) the restrictions set forth in Section 7 (a) (ii) and (iii) apply.

(ii) Grantor and the Santa Fe Parties may not store any Dangerous Materials Cars on such Tracks. [For Harbor Subdivision, substitute with: Grantor and the Santa Fe Parties may store Dangerous Materials Cars on such Tracks, except between Milepost 15.0 and Milepost 15.8.]

(c) If Grantee discovers that any storage of freight cars creates a hazard affecting Agency Rail Service, Grantor and Grantee agree to work together to reduce or eliminate such hazard in a manner acceptable to both parties.

8. Assignment By Grantor of Reserved Rail Freight Service Easement.

(a) Grantor shall have the right, without obtaining the consent of Grantee and without remaining liable under the Shared Use Agreement, to transfer or assign all of the Reserved Rail Freight Service Easement, Reserved Rail Freight Service License and all of its rights under this Reserved Rail Freight Service Easement, Reserved Rail Freight Service License and the Shared Use Agreement, to any party in connection with a merger, corporate reorganization or sale of all or substantially all of Grantor's assets, on the condition that the transferee assumes in writing, for the benefit of Grantee, all of Grantor's obligations under this Reserved Rail Freight Service Easement, Reserved Rail Freight Service License and the Shared Use Agreement with respect to the rights and of the Property transferred. Grantor also shall have the right, without obtaining the consent of Grantee and without remaining liable under the Shared Use Agreement, to sell all or a portion of the Reserved Rail Freight Service Easement or Reserved Rail Freight Service License to another Class I railroad on the condition that the transferee assumes in writing for the benefit of Grantee, all of Grantor's obligations under this Reserved Rail Freight Service Easement, Reserved Rail Freight Service License and the Shared Use Agreement. After a sale of all or substantially all of

Grantor's assets, or the sale of all or a portion of the Reserved Rail Freight Service Easement or Reserved Rail Freight Service License to another Class I Railroad, Grantor shall be released from all liability under the Purchase Agreement and Shared Use Agreement with respect to the obligations so assumed, except liabilities relating to Sections 6.2, 6.3, 6.4, 7.9, 7.10, 8.1, 10.2, 10.3, 10.4, 10.5, and 10.6 of the Purchase Agreement, and Articles 8 and 10 of the Shared Use Agreement.

(b) (1) Grantor may transfer or assign to any party all or a portion of the Reserved Rail Freight Service Easement, Reserved Rail Freight Service License and/or all or a portion of its rights under the Shared Use Agreement, and may grant trackage rights to one or more other railroads over any portion of the Property which is subject to the Reserved Rail Freight Service Easement or Reserved Rail Freight Service License, except that if the sale or grant of trackage rights involves operating railroad facilities on the Property, such a sale of or grant of trackage rights to a non-railroad or a Class II railroad or Class III railroad shall be subject to the prior written consent of Grantee, which may not be unreasonably withheld or delayed. Such consent shall be based on

(i) Grantee's reasonable judgment concerning the railroad operating experience of the transferee or its employees and the transferee's capability to conduct its freight operations in a manner that will not more than minimally interfere with the Agency Rail Service conducted in accordance with the provisions of the Shared Use Agreement, (ii) Grantee's reasonable judgment concerning the amount of maintenance liability allocated to the transferee and the ability of the transferee to pay for and/or perform such maintenance obligations under the Shared Use Agreement and to conduct rail freight operations in a safe manner, and (iii) Grantee's reasonable judgment concerning the ability of the transferee to obtain and maintain the insurance required to be maintained by Grantor pursuant to the Shared Use Agreement and otherwise to be responsible for any losses or damages for which Grantor would be responsible hereunder and under the Shared Use Agreement with respect to the portion of the Property encumbered by the Reserved Rail Freight Service Easement or Reserved Rail Freight Service License which is transferred or assigned or over which trackage rights were granted.

(2) Any such transfer or grant of trackage rights pursuant to Section 8(b) (1) above shall be on the condition that the transferee or trackage rights tenant assumes in writing, for the benefit of Grantee, all (or in the case of a trackage rights tenant, the applicable portions) of the obligations under this Reserved Rail Freight Service Easement, Reserved Rail Freight Service License and the Shared Use Agreement with respect to the portion of the Property encumbered by the Reserved Rail Freight Service Easement or Reserved Rail Freight Service License which is transferred or assigned or over which trackage rights were granted. After any such transfer (but

not grant of trackage rights), Grantor shall be released from all liability under the Purchase Agreement and Shared Use Agreement with respect to the portion of the Property encumbered by the Reserved Rail Freight Service Agreement or rights transferred, except liabilities relating to Sections 6.2, 6.3, 6.4, 7.9, 7.10, 8.1, 10.2, 10.3, 10.4, 10.5, and 10.6 of the Purchase Agreement, and Articles 8 and 10 of the Shared Use Agreement. Additionally, a grant of trackage rights over any portion of the Tracks shall be subject to the prior written consent of Grantee, which consent may not be unreasonably withheld or delayed, where (I) the trackage rights would add an operating railroad over any significant portion of the Tracks or (II) the trackage rights transferee is a non-railroad or a Class II or Class III railroad. Such consent of Grantee shall be based upon clauses (i), (ii), and (iii) of Subsection 8(b)(1) and, in addition, Grantee's reasonable judgment as to whether a new trackage rights operation likely would materially and adversely affect Agency Rail Service.

(3) Grantee shall have the right to meet with Grantor and such a proposed transferee prior to a transfer to discuss a proposed transfer and operations on the Property. Notwithstanding anything to the contrary herein, should Grantor sell or transfer (including by grant of trackage rights) all or any portion of its freight rights under the Reserved Rail Freight Service Easement or Reserved Rail Freight Service License to a Class II railroad or a Class III railroad or to a non-railroad, then upon the effective date of such sale or transfer, all Rail Freight Service shall be conducted only during the period after the evening Restricted Freight Period and before the morning Restricted Freight Period and all rights to operate or advance Santa Fe Trains during peak hours or during midday shall terminate with respect to such portion of the Property.

(c) To the extent practicable, and consistent with securities laws and regulations, Grantor shall give Grantee at least seven days' prior written notice of any sale or transfer of all or any significant portion of the Reserved Rail Freight Service Easement, Reserved Rail Freight Service License or its rights or obligations under the Shared Use Agreement.

(d) Except as set forth in this Section 8, Grantor shall have no right to assign or transfer its rights reserved under this Reserved Rail Freight Service Easement, this Reserved Rail Freight Service License or its rights under the Shared Use Agreement (including, without limitation, the transfer of trackage rights) without Grantee's prior written consent.

9. Sale of Property By Grantee. Grantee may sell, free of the Reserved Rail Freight Service Easement and Reserved Rail Freight Service License, any portion of the Excess Owned Subdivision Property, provided, however, that if Grantor reasonably believes that at that time or in the near future Grantor will need to expand the Reserved Rail Freight Service

Easement, and Grantor delivers written notice thereof to Grantee (which notice describes with specificity the portion of the Excess Owned Subdivision Property then or in the near future required for the Reserved Rail Freight Service Easement and the proposed use of such Excess Owned Subdivision Property), then Grantee shall not sell the portion of the Excess Owned Subdivision Property described in such notice for a period of six months from the receipt of such notice, unless the portion of the property described in such notice is sold subject to the Reserved Rail Freight Service Easement and Reserved Rail Freight Service License. Grantor may not send such a notice with respect to any given portion of the Excess Owned Subdivision Property more than once in any six month period. Six months after the receipt of such notice, unless another notice has been received, Grantee may sell such portion of the Excess Owned Subdivision Property free of the Reserved Rail Freight Service Easement and Reserved Rail Freight Service License. Grantor shall execute and deliver such quitclaim deeds as are requested by Grantee to evidence that the Excess Owned Subdivision Property is not subject to the Reserved Rail Freight Service Easement and Reserved Rail Freight Service License.

10. Property Taxes. Grantor (as between Grantor and Grantee) shall bear any property taxes or possessory interest taxes which are due and payable with respect to the Reserved Rail Freight Service Easement and/or Reserved Rail Freight Service License. Grantor shall pay any such taxes prior to delinquency and shall protect, defend, indemnify and hold Grantee, its successors and permitted assigns, harmless from and against any and all liability, loss, cost, damage or expense (including, without limitation, reasonable attorney's fees) that Grantee, its successors and permitted assigns, may sustain or incur on account of any such taxes.

11. Abandonment. In the event that the Property or any portion thereof has not been used for Rail Freight Service for a period of five years, at the request of Grantee, in circumstances where there is then no current need for future Rail Freight Service on that portion of the Property, Grantor shall seek promptly and pursue diligently at Grantor's cost and expense all regulatory and administrative approvals which are necessary for the abandonment of that portion of the Property. Immediately upon the effective date of such approvals, the Reserved Rail Freight Service Easement and the Reserved Rail Freight Service License shall terminate as to the Property or portion thereof which has been abandoned. Upon the request of Grantee, Grantor shall promptly execute and deliver to Grantee a quitclaim deed with respect to such portion of the Property in recordable form.

[Insert Reserved Fiber Optics Provisions if applicable]



26. Definitions. As used herein, the following terms shall have following meanings:

(a) "Agency Party" shall mean Grantee and any other person to the extent that such person as permitted under the Shared Use Agreement is exercising any rights to operate Agency Rail Service (other than Amtrak Trains) over any portion of the Property or maintaining or constructing rail facilities on the Property pursuant to a specific written grant of such rights by Grantee, including, without limitation, any Operator.

(b) "Agency Rail Service" shall mean the operation of Trains (including light rail service), authorized by Grantee, which are used to provide passenger rail service, or any other related rail passenger service activities; provided, however, the term "Agency Rail Service" shall exclude the operation of all Amtrak Trains.

(c) "Agency Train" shall mean any Train operated by or on behalf of any Agency Party but shall not include any Amtrak Train.

(d) "Amtrak" shall mean the National Railroad Passenger Corporation.

(e) "Amtrak Train" shall mean any Train operated by Amtrak to provide intercity rail passenger service or Section 403(b) Service operated by Amtrak on Amtrak Trains, but shall not include any Agency Train, even if Amtrak is the Operator of such Agency Train.

(f) "Dangerous Materials Cars" shall mean all freight cars containing flammable or toxic gases or liquids, explosives, radioactive materials, etiologic agents, combustible liquids, oxidizing or corrosive materials, compressed gases or materials that could form toxic gases or liquids.

(g) "Excess Owned Subdivision Property" shall mean any portion of the Property that is not then subject to the Reserved Rail Freight Service Easement.

(h) "Freight Rail Facilities" shall mean all rail freight loading or unloading facilities and rail freight weighing scales. Freight Rail Facilities do not include any Tracks.

(i) "Operator" shall mean the operator or operators, if any, appointed from time to time by Grantee to operate Agency Trains over the Property and/or to exercise some or all of the respective rights and obligations of Grantee under the Shared Use Agreement in connection with such operation over the Property or any portion thereof, but only to the extent such operator or operators are acting in such capacity and not to the

extent such operator or operators are acting for their own account or in some other capacity.

(j) "Passenger Station Site" shall mean, collectively, any passenger station owned or leased by, or operated by or on behalf of any Agency Party, any adjacent passenger parking lot owned or leased by, or operated by or on behalf of any Agency Party, and any passenger loading platform owned or leased by, or operated by or on behalf of any Agency Party and any ticket booth or machine or any passenger waiting area owned or leased by, or operated by or on behalf of any Agency Party.

(k) "Purchase Agreement" shall mean that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 1992 between Grantor and Los Angeles County Transportation Commission, Los Angeles-San Diego Rail Corridor Agency, Orange County Transportation Authority, Riverside County Transportation Commission, San Bernardino Associated Governments, San Diego Metropolitan Transit Development Board, North San Diego County Transit Development Board and the Southern California Regional Rail Authority.

(l) "Quality Rail Freight Service" shall mean efficient and reliable rail freight service to Grantor's current and future customers, with service and schedules that are competitive with other railroads serving Southern California, including the railhaul portion of intermodal service offered by those other railroads in Southern California, but without reference to cost.

(m) "Rail Freight Service" shall mean the operation of Santa Fe Trains, whether loaded or empty, which are used to provide local rail freight service or overhead rail freight service over the Property in the exercise of Grantor's rights retained in its Reserved Rail Freight Service Easement, or any other related freight service activity, such as loading, unloading, inspection or weighing of freight cars, maintenance or rehabilitation of Tracks or any rail equipment or facilities on the Property that are used for Rail Freight Service, which are authorized by the Reserved Rail Freight Service Easement and the Reserved Rail Freight Service License.

(n) "Restricted Freight Periods" shall mean [add specific provision, e.g., for San Diego Subdivision (Orange County) and the Olive Subdivision - (a) between 5:30 a.m. and 8:30 a.m. and between 4:00 p.m. and 7:00 p.m. for all portions of the San Diego Subdivision south of Milepost 225.1 at Fallbrook Junction and (b) between 4:30 a.m. and 8:00 a.m. and 4:00 p.m. and 7:30 p.m. for all portions of the Olive Subdivision and for all portions of the San Diego Subdivision north of Milepost 225.1 at Fallbrook Junction; subject to adjustment as provided in Section 4.2(d) of the Shared Use Agreement].

(o) "Santa Fe Party" shall mean Grantor and any other person to the extent such person, as permitted under the Shared Use Agreement, the Reserved Rail Freight Service Easement or the Reserved Rail Freight Service License is exercising any rights to operate Rail Freight Service over the Property pursuant to a specific written grant of such rights by Grantor.

(p) "Santa Fe Train" shall mean any Train operated by any Santa Fe Party [consisting exclusively of freight equipment].

(q) "Section 403(b) Service" shall mean service provided by Amtrak pursuant to Section 403(b) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. § 563(b)).

(r) "Shared Use Agreement" shall mean that certain Shared Use Agreement for [name of rail line] dated as of \_\_\_\_\_, 1992 by Grantor and Grantee.

(s) "Terminal Tracks" shall mean (a) industry tracks or team tracks, or (b) sidings or other tracks upon which the parties mutually agree.

(t) "Tracks" shall mean all tracks, (including, without limitation, passing tracks and sidings), turnouts, crossovers, interlocking devices and plants, and track improvements that are located now or in the future on the Property.

(u) "Train" shall mean one or more locomotive units and cars, if any, attached thereto.