

**AGREEMENT**

BETWEEN

**Los Angeles & Salt Lake  
Railroad Company,  
Union Pacific Railroad Company  
AND  
Southern Pacific Company,**

DATED APRIL 8, 1943

*Covering joint use by Southern Company of UP tracks  
from 9th Street Junction and Bridge Junction to  
near Fruitland Avenue for the purpose of  
serving the Union Stockyards and Cen-  
tral Manufacturing District in Los  
Angeles, California.*

**THIS AGREEMENT, made and entered into this 8th day of April, 1943, by and between LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Utah, party of the first part; its lessee, UNION PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Utah, party of the second part (parties of the first and second parts hereinafter collectively called "Union Pacific"); and SOUTHERN PACIFIC COMPANY, a corporation organized and existing under the laws of the State of Kentucky, party of the third part (hereinafter called "Southern Company"), WITNESSETH:**

#### **RECITALS**

Los Angeles & Salt Lake Railroad Company and Southern Company entered into an agreement dated February 4, 1930, whereunder Southern Company was granted the right to operate its trains, engines and cars in common with Los Angeles & Salt Lake Railroad Company over certain tracks of the latter company extending from the east bank of the Los Angeles River in the City of Los Angeles, California, in the vicinity of Ninth and Butte Streets, to the vicinity of Hobart in said city and over certain additional tracks of Los Angeles & Salt Lake Railroad Company in common with said latter company and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation organized under the laws of the State of Kansas (hereinafter called "Atchison Company"), extending from the vicinity of Hobart in said city to a connection with the tracks of the LOS ANGELES JUNCTION RAILWAY COMPANY

in the City of Vernon, County of Los Angeles, State of California, for the purpose of serving the Union Stockyards and the Central Manufacturing District directly or through interchange with the Los Angeles Junction Railway. The Interstate Commerce Commission in its Finance Docket No. 7146, decided December 13, 1928, approved the application of Southern Company for operation upon tracks of Los Angeles & Salt Lake Railroad Company as above described. Los Angeles & Salt Lake Railroad Company had granted operating rights to the Atchison Company over a portion of the trackage above mentioned by an agreement dated November 4, 1922. It was provided in said agreement dated February 4, 1930, that the same would terminate concurrently with the termination of that certain agreement between Southern Pacific Railroad Company, Southern Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1923, and known as the "Temporary Agreement", covering the joint use of the station facilities known as the "Arcade (Central) Station Facilities" and certain track facilities in the City of Los Angeles, County of Los Angeles, State of California.

Said agreement of February 4, 1930, was supplemented and amended by agreement of April 22, 1930, and by agreement of December 1, 1934.

Effective as of January 1, 1936, Union Pacific Railroad Company leased all of the properties of Los Angeles & Salt Lake Railroad Company and assumed all of the obligations and acquired all the rights of Los Angeles & Salt Lake Railroad Company under said agreements hereinabove referred to.

The parties hereto have entered into an agreement hereinafter called the "East Bank Agreement", covering continued use by Southern Pacific Railroad Company and Southern Company (considered as one party) of certain tracks of Union Pacific and by separate document have terminated as of 12:01 a.m., May 7, 1939, the said Temporary Agreement and certain other agreements referred to in said East Bank Agreement. Said East Bank Agreement contains provisions to the effect that the same shall take effect as of 12:01 a.m., May 7, 1939, and shall continue in full force and effect to and including April 14, 1988, and thereafter until terminated by written notice given (either before or after said expiration date) by either party thereto on any date in such notice stated, not less, however, than two (2) years subsequent to the date on which such notice shall be given.

That upon map attached hereto dated May 7, 1939, marked Exhibit "A", are shown by brown lines certain of the tracks of Union Pacific over which Southern Pacific Railroad Company and Southern Company (considered as one party) have acquired operating rights under said East Bank Agreement. Said tracks shown in brown lines connect with the tracks of Union Pacific covered by said agreement dated February 4, 1930. Since the execution of said agreement of February 4, 1930, certain of the tracks covered thereby have been relocated, and by supplements to said agreement and to said agreement with the Atchison Company dated November 4, 1922, operating rights of the Southern Company and of the Atchison Company over the tracks covered by said agreement of February 4, 1930, as heretofore supplemented, have been changed.

The parties hereto desire to formally terminate said agreement of February 4, 1930, as amended and supplemented by said agreements of April 22, 1930, and December 1, 1934, said termination to be effective as of 12:01 a.m., May 7, 1939, and to enter into a new agreement whereby the Union Pacific will grant to Southern Company, for the purpose of serving the Union Stockyards and the Central Manufacturing District directly or through interchange with Los Angeles Junction Railway Company, the right to operate over certain tracks of the Union Pacific, in common with Union Pacific and such other company or companies as Union Pacific may admit to the use thereof, and over certain other tracks, in common with the Atchison Company and Union Pacific and such other company or companies as Union Pacific may admit to the use thereof. It is proposed that this new agreement shall take effect as of 12:01 a.m., May 7, 1939, and shall continue until terminated as hereinafter provided.

### AGREEMENT

NOW, THEREFORE, in order to more fully set forth the understanding of the parties hereto with respect to said operations of Southern Company, it is mutually understood and agreed as follows:

#### ARTICLE I

##### EXHIBITS

Section 1. The general location of trackage and facilities of Union Pacific (which, subject to the rights of Union Pacific Railroad Company as lessee, are owned by Los Angeles & Salt Lake Railroad Company), the con-

tinued use of which is desired by Southern Company, is shown in green and mauve on map attached hereto and hereby made a part hereof, said map being dated May 7, 1939, and identified as Exhibit "A".

Section 2. Maps showing in detail the jointly used trackage by green and mauve lines, the joint right of way outlined in green tint on Exhibit "B" and outlined in mauve tint on Exhibit "C", and all other Joint Facilities as hereinafter defined that can be readily indicated on maps of such scale have been heretofore prepared by the parties hereto, identified by the signatures of the respective valuation officers of said parties, designated as Exhibits "B" and "C", and are hereby made parts of this agreement without being attached hereto.

Section 3. Detailed statements of property schedules and values of said Joint Facilities have been heretofore prepared by the parties hereto, identified by the signatures of the respective valuation officers of said parties, designated as Exhibit "D", which exhibit is hereby made a part of this agreement without being attached hereto.

#### ARTICLE II

##### DEFINITIONS

Section 1. *Description of Joint Tracks*—Those certain tracks indicated in green upon Exhibits A and B will for convenience be referred to hereafter collectively as "Joint Track Unit A".

Those certain tracks indicated in mauve upon Exhibits A and C will for convenience be hereafter referred to collectively as "Joint Track Unit B".

The term "Joint Facilities" as used in this agreement shall mean the joint right of way and such tracks, bridges,

buildings, culverts, signals, interlocking plants, grade separations, railroad facilities and appurtenances thereon and which are listed on the Valuation Schedule on Exhibit "D" and all additions and betterments thereto made as provided in Article XII hereof (except for the sole account of one of the parties hereto), and also section facilities hereafter constructed or used, as to the portion the valuation of which is by mutual agreement of the parties hereto added to the valuation of the Joint Facilities. The term "Joint Facilities" shall not include the telephone and telegraph lines of the Union Pacific nor existing tracks of Union Pacific upon the joint right of way not comprising a part of Joint Track Unit A or Joint Track Unit B nor such tracks and railroad facilities which Union Pacific shall in the future construct upon the joint right of way other than as additions and betterments to the Joint Facilities whether Union Pacific shall conduct operations thereover solely or in common with other railroad companies. Shown by red lines on Exhibit "B" and Exhibit "C" are certain existing tracks of Union Pacific located upon the joint right of way over which Union Pacific alone conducts operations and which are not part of the Joint Facilities. Shown by yellow lines on Exhibit "B" and Exhibit "C" are certain tracks of Union Pacific located upon the joint right of way over which Union Pacific conducts operations in common with the Atchison Company, which tracks are not part of the Joint Facilities.

For the purpose of the payment by the Southern Company of its share of the maintenance and operation expenses of the Joint Facilities and of rental upon additions and betterments thereto, each portion of the Joint Facili-

ties as to which the number of Railroad Companies using the same is different from the number thereof using another portion of the Joint Facilities shall be considered as a separate unit.

Joint Track Unit A and Joint Track Unit B presently constitute the two units of the Joint Facilities, but the number and extent of the units of the Joint Facilities shall automatically change in accordance with changes made in the number of users of the Joint Facilities or any part thereof during the term hereof. For the purposes of this agreement Union Pacific shall be considered as one user.

**Section 2. Cars Handled Percentage**—The term "cars handled percentage" as used in this agreement for determination of the payment or division of any item or items of expense with respect to any one of the units of the Joint Facilities means the percentage that bears the same ratio to one hundred percent (100%) as the number of cars (counted as hereinafter prescribed) moved in said unit or any part thereof, during any one month (or otherwise agreed-upon period of time) by any party hereto bears to the total number of cars (counted as hereinafter prescribed) moved by all parties using the Joint Facilities in the same unit, or any part thereof, and during the same period of time. For the purpose of determining the cars handled percentage of the Southern Company under this Section 2 all cars moved upon the Joint Facilities except cars in possession of the Southern Company shall be counted as Union Pacific cars.

In counting cars moved over said Joint Facilities, or any part thereof:

- (a) Each car, each car body in an articulated unit of two or more car bodies and each cahoose shall be counted as one car;
- (b) Each Diesel or electric locomotive of one or more units, each steam locomotive (including tenders if any) or other type of motivs powor operating with or without cars shall be counted as one car;
- (c) Each motor car having space for carrying passengers, baggage, mail or express shall be counted as one car;
- (d) Each car, locomotive or motor car, as above described, moving through any unit or picked up or set out on track diverging thsrefrom shall be counted once in each unit in which the same is moved, either in whole or in part.

Notwithstanding the foregoing, however, the following equipment shall not be counted:

- (1) Work equipment, work trains and relief equipment, including locomotives therefor, engaged in service upon the Joint Facilities.
- (2) Business cars of all parties using the Joint Facilities.

Effective as of 12:01 a.m., May 7, 1939, and until 12:01 a.m., June 1, 1940, the cars handled percentage of the parties for said Joint Track Unit A and Joint Track Unit B shall be as follows:

	<i>Southern Company</i>	<i>Union Pacific</i>
Joint Track Unit A.....	16.64%	83.36%
Joint Track Unit B.....	16.64%	83.36%

Effective ns of 12:01 a.m., June 1, 1940, and until 12:01 a.m., January 1, 1942, the cnrs handled percentage of the

parties for said Joint Track Unit A and Joint Track Unit B shall be as follows:

	<i>Southern Company</i>	<i>Union Pacific</i>
Joint Track Unit A.....	17.878%	82.122%
Joint Track Unit B.....	17.878%	82.122%

Effective as of 12:01 a.m., January 1, 1942, the cars handled percentage of the parties for said Joint Track Unit A aud Joint Traok Unit B shall be as follows:

	<i>Southern Company</i>	<i>Union Pacific</i>
Joint Track Unit A.....	16.03%	83.97%
Joint Track Unit B.....	16.03%	83.97%

Said last named percentages shall remain in effect until changed as hereinafter provided.

From time to time upou request of either Union Pacific or Southern Company the parties hereto shall arrange for a joint count of cars (counted ns heroinnbovo prescribed and for such period as may be mutually agreed upon) moving over the Joint Facilities or any unit thereof, and all percentages thus determined as herein provided, except when suoh percentages nre detormined monthly by mutual agreement, shall remain in effect for at least one (1) year befora another joint count of cars is made, or for as great a portion of one (1) year as possible in caso the respective units of the Joint Facilities are changed during said one-year period as provided in Section 1 of Article 1I hereof. No cars handled percentage determined as above shall be retroactive beyond date upon which a new car count is requested or required.

Whenever a joint count of cars is made, the count shall be taken separately in each unit of the Joint Facilities.

**Section 3. Interstate Commerce Commission Regulation**—The term "current Interstate Commerce Commission regulations" as used in this agreement means the accounting rules and regulations prescribed by the Interstate Commerce Commission or other regulatory body having jurisdiction in the premises in effect from time to time and as followed by Union Pacific.

**Section 4. Parties**—Subject to the provisions of Article XXX hereof, Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company, except where specifically otherwise provided or where one of said parties shall be individually mentioned, shall be deemed one party and one user.

### ARTICLE III

#### VALUATION OF JOINT FACILITIES

**Section 1.** It is mutually agreed that the value of said Joint Facilities is the sum of Two Hundred Eighty-One Thousand Three Hundred Thirty and 30/100 Dollars (\$281,330.30) for Joint Track Unit A and One Hundred Ten Thousand Eight Hundred Thirty and 28/100 Dollars (\$110,830.28) for Joint Track Unit B, both as of May 7, 1939.

### ARTICLE IV

#### GRANT OF RIGHTS

**Section 1. Joint Use by Southern Company**—The Union Pacific hereby grants to the Southern Company the right

and privilege throughout the term of this agreement to use Joint Track Unit A in common with Union Pacific and any other railroad company or companies admitted to the use thereof as hereinafter provided and to use Joint Track Unit B in common with Union Pacific and Atchison Company (during the continuance of the Atchison Company's right to use the same during the term hereof) and any other railroad company or companies admitted to the use thereof as hereinafter provided for the operation of its trains, engines and cars thereover, provided, however, that the use of said Joint Facilities by the Southern Company shall be limited solely to through movements for the purpose of serving, directly or through interchange with the Los Angeles Junction Railway Company, the Central Manufacturing District and the Union Stockyards located in said district, and for the purpose of serving the facilities of the Vernon Feed Yards shown by cross-hatching on said Exhibit "A" over spur tracks now or hereafter constructed within the limits of said Vernon Feed Yards which connect with the Joint Facilities. Except as hereinabove in this section provided, the Southern Company shall have no right whatever to construct, maintain or operate any track connecting with the Joint Facilities or to operate over any track now or hereafter constructed connecting with the said Joint Facilities or to serve any industry served from the Joint Facilities or from any track connected therewith. For the purpose of this agreement the Central Manufacturing District comprises that area generally known, as of the date hereof, as "Central Manufacturing District", or as said District may be enlarged, extended or contracted. The rights herein granted to Southern

Company are subject to the right hereby reserved to Union Pacific, its successors and assigns, to utilize the joint right of way in any way which will not permanently or materially impair the use of the Joint Facilities by Southern Company, including the right of Union Pacific to use and to grant to others than Southern Company the right to use railroad tracks and facilities located upon the joint right of way which are not a part of the Joint Facilities. The use by Union Pacific and such others of said railroad tracks and facilities which are not part of the Joint Facilities shall not affect the obligation of Southern Company to pay rental as herein provided, except that Southern Company shall be entitled to its proportion as provided in Article XXI hereof of revenue (including rental and taxes) received by Union Pacific from such others for use of the Joint right of way so occupied by said railroad tracks and facilities.

#### ARTICLE V

##### TELEPHONE AND TELEGRAPH LINES

Section 1. *Construction of Lines*—Southern Company shall have the right to construct telephone and telegraph lines longitudinally along, over or under the joint right of way; provided that such lines shall be installed and maintained by and at the sole cost and expense of Southern Company in locations approved by and in a manner satisfactory to Union Pacific.

Section 2. *Use of Existing Conduits*—Southern Company shall also have the right, subject to the approval of Union Pacific and any telephone or telegraph company having rights in the premises or in communication con-

duits along or under the joint right of way, to use such conduits or cables therein if space is available therefor.

Section 3. *Status of Lines*—Said telephone and telegraph lines, including conduits and cables, shall not form a part of the Joint Facilities.

#### ARTICLE VI

##### MAINTENANCE AND OPERATION

Section 1. *Maintenance*—Union Pacific shall maintain, repair, renew and replace the Joint Facilities in reasonable condition for the combined business of all parties using said facilities. It is expressly understood and agreed that Southern Company shall not by reason of any defect in the Joint Facilities, or by reason of the failure of Union Pacific to repair such defect, have or make against Union Pacific any claim or demand for any loss, damage or injury whatsoever arising from such defect, neglect or failure.

Section 2. *Operation*—The cost of train, engine and car operations over the Joint Facilities, except the operation by Union Pacific of engines and work train equipment engaged in maintaining, repairing or renewing any part of the Joint Facilities or in connection with the construction of additions and betterments thereto, shall be borne solely by each of the parties hereto as to its own trains, engines and cars.

Section 3. *Interruption or Delay to Traffic*—In case the use of the Joint Facilities shall be interrupted or traffic thereover delayed from any cause whatsoever, no party hereto shall have any claim against the others for liability



on account of loss or damage of any kind resulting from such interruption or delay.

## ARTICLE VII

### MANAGEMENT AND CONTROL

Section 1. *Management*—The Joint Facilities shall be under the exclusive direction and control of Union Pacific.

Section 2. *Rules and Regulations*—Union Pacific shall from time to time promulgate such reasonable rules, regulations and orders governing the Joint Facilities as will be consistent for proper, expeditious, economical and safe operation thereon and thereover of the locomotives, trains, motor cars and cars of all parties using said facilities. Such rules, regulations and orders shall be reasonable, just and fair to each party, and all Union Pacific officers and employees engaged in the operation and maintenance of the Joint Facilities shall impartially perform their duties.

Section 3. *Precedence of Trains*—All passenger trains operating upon the Joint Facilities shall be given preference over other trains according to their class and superiority, and the trains of all parties shall be given equal dispatch according to their class and superiority.

## ARTICLE VIII

### RENTAL

Section 1. In consideration of the rights granted in this agreement, Southern Company, subject to any rental adjustments resulting from changes in the number of or extent of the units of the Joint Facilities and subject to

provisions of Article X, Article XII, Article XIII and Article XV hereof, shall pay to Union Pacific monthly, during the life of this agreement as rental for the use of the Joint Facilities, the following sums:

- (a) Joint Track Unit A, Four Hundred Twenty-Seven and 77/100 Dollars (\$427.77), being one-twelfth (1/12) of one-half (1/2) of 81.095 percent of four and one-half percent (4½%) of Two Hundred Eighty-One Thousand, Three Hundred Thirty and 30/100 Dollars (\$281,330.30).
- (b) Joint Track Unit B, One Hundred Twelve and 35/100 Dollars (\$112.35), being one-twelfth (1/12) of one-third (1/3) of 81.095 percent of four and one-half percent (4½%) of One Hundred Ten Thousand, Eight Hundred Thirty and 28/100 Dollars (\$110,830.28).

The phrase "applicable interest rental rate or rates" as used in Article XIII and Article XV of this agreement with respect to the valuation of the Joint Facilities, or any part thereof, in existence as of the effective date of this agreement shall mean 81.095 percent of 4½ percent, and with respect to the valuation of the Joint Facilities resulting from cost of changes, additions and betterments and taxes, each of which under the terms of this agreement is chargeable to Investment in Road and Equipment subsequent to the effective date of this agreement shall mean four and one-half percent (4½%).

## ARTICLE IX

### PAYMENTS FOR MAINTENANCE AND OPERATION

Section 1. Southern Company shall pay monthly to the Union Pacific a sum representing Southern Company's

cars handled percentage of the total actual cost to Union Pacific of operation (except train and engine operation other than work-train operation), maintenance, repairs, renewals and replacements separately applicable to each unit of the Joint Facilities.

**Section 2. Section Facilities**—The total actual cost to Union Pacific of the work referred to in Section 1 of this Article IX shall include a reasonable proportion of the total actual cost to Union Pacific of operation, maintenance, repair, renewal and replacement applicable to section facilities, any portion of the valuation of which is included on Exhibit D, and to section facilities hereafter constructed or used, any portion of the valuation of which is by mutual agreement added to the valuation of the Joint Facilities.

**Section 3. Cost Defined**—To the actual cost of labor and materials furnished by Union Pacific and used in the operation (except train and engine operation other than work-train operation), maintenance, repairs, renewals and replacements of the Joint Facilities there shall be added:

- (a) On all items of labor, including wages of foremen, ten percent (10%) for supervision, accounting and the cost of such tools as may be used by extra gangs; however no percentage shall be added to the cost of contract work or to the cost of work performed by parties other than parties to this agreement or to the wages paid employees engaged in the operation of interlocking plants, nor shall any charge be made for wages of any supervisors of Union Pacific while engaged in inspecting said interlocking plants;

- (b) A reasonable proportion of the replacement cost of tools and roadway machines costing less than \$300.00 per machine assigned to regular section gangs, including transportation charges thereon as hereinafter provided;
- (c) A charge for storehouse expenses of one percent (1%) on the actual cost of rails and cross-ties, and ten percent (10%) on the actual cost of all other materials and supplies passing through or to the storehouse area, which costs shall include transportation charges on said rails, cross-ties, materials and supplies, but not including the transportation charges provided for in Section 3-(e) of this Article IX;
- (d) A charge for purchasing department expense of one percent (1%) on the actual cost of all materials and supplies which do not pass through or to the storehouse area;
- (e) Transportation charges for transportation over the rail lines of the Union Pacific on all materials and supplies transported for use on the Joint Facilities at the rate of one-half cent ( $\frac{1}{2}$ ¢) per ton per mile, but not to exceed the published tariff rates, where the materials and supplies are transported in other than work trains.

**Section 4. Additional Items of Cost**—To the actual cost of operating and maintaining the Joint Facilities there shall also be added:

- (a) Rental at agreed upon rates for use of roadway machines, special tools and appliances which individually cost Three Hundred Dollars (\$300.00) or more, and for use of locomotives, work and rolling stock equipment engaged in work-train

service, while performing work upon or in respect to the Joint Facilities;

- (b) Wages of crews, fuel, water, lubricants, other supplies, engine-house expenses, together with additives properly assessable under Section 3 hereof, and all other costs of operating locomotives and work equipment while performing work upon or in respect to the Joint Facilities;
- (c) A trackage charge of two and one-half cents (2½¢) per mile for movement (excluding movements over the Joint Facilities except where transportation charges are assessed under Section 3(o) hereof) of each locomotive and each unit of work or rolling stock equipment in or to be used in work service on the Joint Facilities, moved to and from stations on Union Pacific distant not to exceed one hundred sixty (160) miles from Los Angeles, but excluding movements over the Joint Facilities.

Section 5. *Second-Hand Material*—Prices for second-hand and scrap material and supplies used in and released from the Joint Facilities shall be agreed upon from time to time by the parties hereto.

Section 6. *Annual Adjustments*—At the close of each calendar year so much of the monthly amounts paid or borne by Southern Company hereunder during that year as are chargeable to Maintenance of Way and Structures (and taxes applicable thereto) under current Interstate Commerce Commission regulations shall be readjusted so that Southern Company will bear and pay its cars handled percentage of the total of such charges for such year on an annual instead of a monthly basis; provided, however, that such adjustment shall be made only when cars

are counted and percentages determined monthly as permitted by Article II, Section 2.

## ARTICLE X

### TAXES

Section 1. *Taxes in General*—Union Pacific shall pay all taxes and assessments as hereinafter described allocable to the Joint Facilities, and Southern Company thereafter, upon demand, shall pay to Union Pacific

- (a) Its cars handled percentage of any taxes and assessments, exclusive of taxes and assessments levied against the rolling stock of the Union Pacific, which may be levied upon, fairly attributable and allocable to, assessed against, charged to or on account of the real and personal property comprising each respective unit of the Joint Facilities.
- (b) Its cars handled percentage of all local license and privilege franchise taxes attributable to, charged to or on account of the operations contemplated under this agreement with respect to each unit of the Joint Facilities, exclusive, however, of any such taxes due solely to Union Pacific operations upon said Joint Facilities.
- (c) Its cars handled percentage of all social security taxes, unemployment insurance taxes, railroad retirement taxes, sales taxes, use taxes and taxes which may from time to time be levied or assessed against or on account of materials used and labor employed in the operation, maintenance, repairs, renewals and replacements of the Joint Facilities.

**Section 2. Taxes Chargeable to Investment**—"Taxes" or "assessments", as used in this Article X, levied or assessed against the Joint Facilities, shall not be deemed to include any taxes or assessments paid by Union Pacific which properly constitute charges to Investment in Road and Equipment or Railway Operating Expenses as defined in current Interstate Commerce Commission regulations. Expenditures by Union Pacific for such taxes and assessments shall become a part of the Capital and Operating Expenditures applicable to the Joint Facilities, and Southern Company shall pay rental upon the amount of such Capital Expenditures at the rate specified for additions and betterments in Article XII of this agreement provided and its cars handled percentage of such Operating Expenditures as in Article IX of this agreement provided.

**Section 3. New Method of Taxation**—It is understood and agreed that in the event a different method of levying taxes is hereafter adopted in California, or any other forms of taxation are hereafter imposed, resulting in inequities to either of the parties hereto, then such new taxes levied or assessed against the Joint Facilities, or any part thereof, shall be apportioned between all parties using the Joint Facilities on a fair and equitable basis.

## ARTICLE XI

### DEPRECIATION

**Section 1. Apportionment**—Should depreciation on Joint Facilities, or any part thereof, be currently accrued and set up on the books of Union Pacific under Interstate Commerce Commission regulations, or other authorized

governmental authority, it shall be assessed and apportioned between the parties hereto as mutually agreed upon.

## ARTICLE XII

### ADDITIONS AND BETTERMENTS

**Section 1. Rental For**—Union Pacific may from time to time make such changes in or additions and betterments to the Joint Facilities as shall in its judgment be necessary or desirable for the economical and safe operation thereof, or as shall be required by Federal or State law, or by lawful municipal ordinance or public service regulation or order, and the same shall immediately become a part of the Joint Facilities hereunder. That portion of costs incurred by Union Pacific in connection with public improvements not owned by Union Pacific, but which properly constitutes a charge to Investment in Road and Equipment as defined in current Interstate Commerce Commission regulations, and which is fairly allocable to the Joint Facilities as determined by the respective benefits to Joint Facilities and to exclusive facilities of Union Pacific, shall be deemed a cost of additions and betterments to the Joint Facilities upon which Southern Company shall pay rental as in this section provided. Southern Company shall pay thereon monthly to Union Pacific as rental, in addition to the rentals hereinabove provided, and with respect to each unit of the Joint Facilities, a sum equal to one-twelfth ( $1/12$ ) of that proportion of four and one-half percent ( $4\frac{1}{2}\%$ ) of the actual cost to the Union Pacific chargeable to Investment in Road and Equipment of such changes, additions or betterments in each unit (as ascertained from current Interstate Com-

merce Commission regulations) as one bears to the total number of users in each such unit. Said actual cost shall include the total amount of taxes (of the character referred to in Article X, Section 1-(c)) allocable to that portion of the work of making such changes, additions and betterments, the cost of which is chargeable to Investment in Road and Equipment. The portion of such actual cost of such changes, additions and betterments chargeable to Railway Operating Expenses, including that portion of the taxes of the character referred to in Article X, Section 1-(c), which are allocable thereto, shall be considered as maintenance expense, and Southern Company shall pay its proportion in the manner and as provided in Article IX hereof.

**Section 2. Additions and Betterments in Excess of \$10,000.00**—Notwithstanding the foregoing, however, in the event Union Pacific shall desire to make any changes in, additions to, or betterments of the Joint Facilities costing in excess of Ten Thousand Dollars (\$10,000.00) chargeable to Investment in Road and Equipment, it shall so notify Southern Company, and if Southern Company shall consider the same unnecessary or undesirable for the safe or economical operation of the Joint Facilities for joint use, then, upon written request by Southern Company, the question of such necessity or desirability (except when the same shall be required by lawful authority) shall be submitted to arbitration; and if it shall be determined by arbitration that the same are not necessary or desirable for joint use, as aforesaid, or if it shall be determined by arbitration that the same are necessary or desirable for use only by Union Pacific, then

Union Pacific may make such changes, additions or betterments, and Southern Company shall not be required to pay any taxes or expenses of construction, operation, maintenance, renewals and retirements connected therewith or rental charges thereon until Southern Company shall desire to use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, at which time the same, including any subsequent changes, additions and betterments thereto, shall become additions and betterments to the Joint Facilities.

**Section 3. Requested by Southern Company**—In the event Southern Company shall request Union Pacific to make changes in, or additions to, or betterments of the Joint Facilities, and Union Pacific does not deem the same to be necessary or desirable for the joint use of the parties hereto and the safe or economical operation of the Joint Facilities, then, and in that event, the question of such necessity or desirability shall first be submitted to arbitration, and if it shall be determined by arbitration that the same are not necessary or desirable for joint use, the said changes, additions or betterments shall not be made. However, if it shall be determined by arbitration that the said changes, additions and betterments are necessary or desirable for use only by Southern Company, Union Pacific shall make such changes, additions or betterments at the sole cost and expense of the Southern Company, and all taxes and expenses of construction, operation, maintenance, renewals and retirements connected therewith shall be borne by Southern Company until or unless Union Pacific shall desire to use the same,

or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, at which time Union Pacific shall reimburse Southern Company for the cost of such change, addition or betterment, together with the cost of any subsequent changes, additions or betterments thereto, provided Southern Company shall concurrently be required to convey the title to such addition and betterment free, clear and released from all liens, mortgages or encumbrances thereon, and thereafter such facilities shall become additions and betterments to the Joint Facilities.

**Section 4. For Sole Account of One Party**—In the event either party shall desire that any changes, additions or betterments should be made to the Joint Facilities for the sole account of the party so desiring them, and the other party has no objection thereto, then Union Pacific shall make such changes, additions or betterments to the Joint Facilities at the sole cost and expense of the party desiring the same, and all taxes and expenses of construction, operation, maintenance, renewals and retirements connected therewith shall be borne solely by the party desiring said change, addition or betterment until or unless the other party shall desire to use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, whereupon the said change, addition or betterment shall become additions and betterments to the Joint Facilities and Union Pacific shall reimburse Southern Company for the cost thereof, together with the cost of any subsequent change, addition or betterment thereto if said costs were borne by South-

ern Company, provided Southern Company shall concurrently be required to convey the title to such addition and betterment free, clear and released from all liens, mortgages or encumbrances thereon. In any event, the Union Pacific shall have the right to make any changes, additions or betterments to the Joint Facilities for its sole account and at its sole cost and expense, and the said changes, additions and betterments, when made, shall be subject to all of the provisions of this Section 4.

**Section 5. Later Made Part of Joint Facilities**—In the event changes, additions or betterments were made at the sole expense of either party hereto and said changes, additions or betterments later shall become a part of the Joint Facilities as hereinabove provided, the portion of the cost of such changes, additions or betterments which was charged to Railway Operating Expenses shall be divided and borne by all parties using same in accordance with their cars handled percentages for the month in which said changes, additions or betterments were completed, and Southern Company shall commence the payment of rental on the portion of the cost of such changes, additions or betterments, as outlined in Section 1 of this Article XII, commencing with the first of the month following the determination that such changes, additions or betterments shall become part of the Joint Facilities.

**Section 6. Impairment of Joint Facilities**—Notwithstanding the foregoing, no change, addition or betterment shall be made or requested by either party that will permanently or materially impair the usefulness of said Joint Facilities by either of the parties hereto.

Section 7. *Cost*—Except as otherwise provided in Section 1 of this Article XII, the terms "Actual Cost" or "Sole Cost" as used in this agreement in connection with changes or additions or betterments shall be the amount as ascertained under the current Interstate Commerce Commission regulations restated to include charges as outlined in Sections 3-(e), 4-(a), 4-(c) and 5 of Article IX hereof.

### ARTICLE XIII

#### RETIREMENTS

Section 1. *Reduction in Rental*—(a) Whenever any change in, elimination, disposal or retirement of any part of the Joint Facilities is made, which, under the current Interstate Commerce Commission regulations, reduces the ledger value and agreed valuation, or either thereof, as the case may be, of the Joint Facilities, then the valuation of the Joint Facilities upon which the Southern Company shall thereafter be required to pay rental under Article VIII, Article X and Article XII hereof shall be reduced by the valuation, including additives applicable thereto, of the facility so changed, eliminated, disposed of or retired, and Southern Company shall thereafter pay as rental on the reduced valuation its proportion as stated in Article VIII hereof, or as changed pursuant to the provisions of Article XV hereof, computed at the applicable interest rental rate or rates.

(h) Whenever any part of the Joint Facilities shall be withdrawn from joint use by mutual agreement, and Union Pacific elects to retain said part for its exclusive use or use by or with any third party, the said valuation

of the Joint Facilities upon which the Southern Company shall thereafter be required to pay rental under Articles VIII, X and XII hereof shall be reduced by the valuation, including additives applicable thereto, of the facility so withdrawn, and Southern Company shall thereafter pay as rental on the reduced valuation its proportion as stated in Article VIII hereof, or as changed pursuant to the provisions of Article XV hereof, computed at the applicable interest rental rate or rates.

Section 2. *Apportionment of Losses on Retirement*—Any loss chargeable to Railway Operating Expenses or Profit and Loss Accounts, resulting from sale, abandonment or other retirement of the Joint Facilities, or any part thereof, shall first be divided to determine the portions thereof applicable to the period of the sole and exclusive use of the Joint Facilities by Southern Company or Union Pacific and the period of joint use of the Joint Facilities by Southern Company and Union Pacific, and the portion applicable to the period of such joint use shall be apportioned to the parties in the same proportion as the expense for maintenance of the particular facility, or part thereof, involved, is allocated to the parties at the time of such sale, abandonment or other retirement, and the portion applicable to the period of exclusive use by the Southern Company shall be borne by said company; provided, however, that any loss or gain incurred or realized by Union Pacific in the sale or retirement of land shall be borne solely by or inure to the sole benefit of Union Pacific. Use of the Joint Facilities by Union Pacific and any railroad company or companies other than Southern Company shall be con-

sidered exclusive use thereof by the Union Pacific for the purposes of this section.

**Section 3. *Limitation on Retirement***—Notwithstanding the foregoing, no withdrawal, change in, elimination, disposal or retirement of any part of the Joint Facilities which will permanently or materially impair the usefulness to the Southern Company of the Joint Facilities shall be made without the consent of the Southern Company.

#### ARTICLE XIV

##### CLASSIFICATION OF ACCOUNTS

**Section 1. *Interstate Commerce Commission Regulations***—Expenditures chargeable to Investment in Road and Equipment and to Railway Operating Expenses and other appropriate accounts, except as in this agreement otherwise provided, occasioned by the construction, operation, maintenance, repairs, renewals, replacements and retirements of the Joint Facilities, shall be classified in accordance with current Interstate Commerce Commission regulations as followed by the Union Pacific and shall be added to the rental base or apportioned on a cars handled percentage basis in the manner provided in Article XII and Article IX of this agreement.

#### ARTICLE XV

##### ADMISSION OR ELIMINATION OF OTHER RAILROADS

**Section 1. *Right of Admission Reserved by Union Pacific***—Union Pacific reserves the right at all times to grant to other railroad company or companies the use of

the Joint Facilities, or any part thereof, in common with itself, Southern Company and any railroad company already admitted to the use thereof, provided such admission of other railroad company or companies shall not unreasonably hinder or obstruct the Southern Company in the use of the rights granted hereunder. In case any other railroad company or companies shall be, at any time during the life of this agreement, admitted to the use of any or all of said Joint Facilities, then during the time the said railroad company or companies so admitted shall use or be entitled to the use of said Joint Facilities, or any part thereof, the monthly rental payable to Union Pacific by Southern Company under the provisions of Articles VIII, X and XII hereof upon that portion of the Joint Facilities to the use of which the said Railroad Company or Companies shall have been admitted, shall be one-twelfth (1/12) of the proportion that one bears to the entire number of railroad companies at the time entitled to use said portion of the Joint Facilities of the product of the valuation of the said portion of the Joint Facilities (including portion of taxes and cost of changes, additions and betterments chargeable to Investment in Road and Equipment) multiplied by the applicable interest rental rates or rates.

**Section 2. *Elimination of Other Railroads***—In case any railroad company or companies other than Southern Company or Union Pacific now or hereafter admitted to the use of the Joint Facilities, or any part thereof, shall discontinue use of all or any part of the Joint Facilities under an arrangement with Union Pacific whereby said railroad company or companies shall not be thereafter



obligated to pay rental to Union Pacific for the use thereof, then during the time the said railroad company or companies shall not use or be entitled to use the said Joint Facilities or any part thereof, the monthly rental payable to Union Pacific by Southern Company under the provisions of Articles VIII, X and XII hereof upon that portion of the Joint Facilities which the said company or companies shall be thereafter not entitled to use shall be one-twelfth (1/12) of the proportion that one bears to the entire number of railroad companies thereafter entitled to use said portion of the Joint Facilities of the product of the valuation of the said portion of the Joint Facilities (including portion of taxes and cost of changes, additions and betterments chargeable to Investment in Road and Equipment) multiplied by the applicable interest rental rates or rates.

Section 3. *Detours*—The provisions of this article shall not apply to any temporary permission granted by Union Pacific to other railroad company or companies to use the Joint Facilities or any part thereof, for detour purposes, for periods not exceeding sixty (60) days in any calendar year.

## ARTICLE XVI

### INSURANCE—PREMIUMS AND RECOVERIES

Section 1. *Apportionment*—Premiums paid for insurance carried by Union Pacific on the Joint Facilities shall be prorated on a cars handled percentage basis.

Section 2. *Compensation Insurance*—In the event Union Pacific shall voluntarily, or pursuant to Federal or State regulations, carry Federal or State compensation

insurance, or insurance of any similar character, for the protection of joint employees while engaged in the construction, operation, maintenance, repair, renewal or retirement of the Joint Facilities, said policies shall protect both Union Pacific and Southern Company, and the cost of the premiums therefor shall be divided in accordance with the provisions of Article IX hereof, or when chargeable to Investment in Road and Equipment in connection with changes, additions or betterments, rental upon the portion of the cost so chargeable shall be paid by Southern Company as provided in Article XII hereof.

Section 3. *Destruction of Joint Facilities*—In the event the Joint Facilities, or any part thereof, are damaged or destroyed by any casualty during the life of this agreement, Union Pacific shall repair or restore the same unless the parties hereto agree that the repair or restoration thereof is not necessary, in which event the same shall be retired. Any insurance recovered by Union Pacific as a result of such damage or destruction shall be applied in reduction of the charges to Railway Operating Expenses or Profit and Loss (as the case may be) occasioned by such repair, restoration or retirement. The portion of such charges to Railway Operating Expenses or Profit and Loss (as the case may be) over and above such insurance recoveries shall be borne by the party or parties hereto who shall be liable for such damage or destruction of the Joint Facilities under Article XVII hereof, it being the intention that none of the parties to this agreement shall assume any liability under said Article XVII which is compensated by recovery under insurance carried on the Joint Facilities. If no party hereto shall be so liable

under Article XVII, then the excess of said charges to Railway Operating Expenses or Profit and Loss as the case may be over and above such insurance recovery shall be borne by the parties hereto in accordance with the provisions of Article IX or Article XIII hereof as the case may be.

## ARTICLE XVII

### LIABILITY

With respect to liability as in this Article provided, Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company shall be considered one party, and where the term "user" is employed, shall be considered one user.

Section 1. (a) For the purposes of the liability provisions of this agreement, all officers and other employees of the Union Pacific whose duties are directly connected with the movement of trains, engines or cars upon and along the Joint Facilities shall, while performing such duties in connection with such movements for or on behalf of one user (as hereinafter in subsection (b) of this section defined) for the time being, be considered and held to be the sole employees of such user, and while performing such duties in connection with such movement for or on behalf of two or more users (thus defined) shall, for the time being, be considered and held to be the joint employees of such users.

All employees of the Union Pacific while engaged in the maintenance, repair or renewal of any part of the Joint Facilities or the construction of any addition or betterment thereto, shall for the purposes of the liability

provisions of this agreement be deemed to be the joint employees of the parties hereto and of the other carriers using such part of the Joint Facilities.

(b) Except as herein otherwise provided, liability for injury to or death of persons whomsoever, and for loss of or damage to property whatsoever, in connection with the construction, maintenance, operation, repair, renewal or replacements of the Joint Facilities, shall be fixed as between the parties hereto and other railroad or railway companies using the Joint Facilities as follows (the parties hereto and such other railroad or railway companies being hereinafter in this section referred to individually as "user" and collectively as "users"):

#### When due to

- (a) the acts or omissions of any user or of its officers, agents or employees; or to
- (b) the concurring acts or omissions of a joint employee or joint employees and of any user or of its officers, agents or employees; or to
- (c) defects of any kind in the separate equipment or facilities of any user (except the Joint Facilities and except engines and work train equipment engaged in maintaining, repairing or renewing any part of the Joint Facilities, or in connection with the construction of additions and betterments thereto), shall be borne solely by such user;

#### when due to

- (d) the concurring acts or omissions of two or more users or of their officers, agents or employees; or to

- (e) defects of any kind in the separate equipment or facilities (except the Joint Facilities and except the engines and work train equipment mentioned in subdivision (c) of this section) of two or more users; or to
- (f) the concurring acts or omissions of a joint employee or joint employees and of two or more users or of their officers, agents or employees,

shall be borne

(1) solely by each of the users concerned in any of the three cases aforesaid as to its own property (other than the Joint Facilities and the engines and work-train equipment mentioned in subdivision (c) of this section) or property in its custody or control and as to its own employees, passengers and patrons and all others on its engines, trains or cars or on or about the Joint Facilities in the transaction of business with it; and

(2) jointly and equally by the users concerned in any of the three cases aforesaid as to the other user or users, third persons and their property, joint employees and their property, the Joint Facilities and the engines and work train equipment mentioned in subdivision (c) of this section:

when due to

- (g) the acts or omissions of a joint employee or joint employees of two or more users,

shall be borne

(1) solely by each of the users whose joint employee or joint employees are concerned, as to its own property

(other than the Joint Facilities and the engines and work train equipment mentioned in subdivision (c) of this section) or property in its custody or control, and as to its own employees, passengers and patrons and all others on its engines, trains or cars or on or about the Joint Facilities in the transaction of business with it; and

(2) jointly and equally by the users whose joint employee or joint employees are concerned, as to the other user or users, third persons and their property, joint employees and their property, the Joint Facilities and the engines and work train equipment mentioned in subdivision (c) of this section;

when due to

- (h) any other cause whatsoever,
- shall be borne

(1) solely by each user as to its own property (other than the Joint Facilities and the engines and work train equipment mentioned in subdivision (c) of this section) or property in its custody or control, and as to its own employees, passengers and patrons and all others on its engines, trains or cars, or on or about the Joint Facilities in the transaction of business with it; and

(2) jointly and equally by all users of the part of the Joint Facilities involved, as to third persons and their property, joint employees and their property, the Joint Facilities and engines and work train equipment mentioned in subdivision (c) of this section, except that in cases of accidents in which the engines, trains, cars or sole employees of one or more users are concerned, then the liability for the resulting injury, death, loss or dam-

age shall, as to such persons and property, be borne solely by the user, if only one, or jointly and equally by the users, if more than one, whose engines, trains, cars or solo employees are concerned.

If it shall be impossible to determine whether any person is an exclusive passenger, patron or employee of any user, then the liability for injury to or death of such person, or loss of or damage to the property of such person, shall, except as herein otherwise provided, be apportioned as in the case of third persons.

Section 2. Anything herein to the contrary notwithstanding, no user shall have any claim against another user for any loss or damage which may occur to its rolling stock equipment or to that in its possession or to the contents thereof, while on the Joint Facilities, arising by reason of fire, whether such fire be due to the negligence of such other user, or otherwise.

Section 3. Any user against which a claim is made involving joint liability shall give prompt notice thereof to the other user or users jointly liable, and no user not so notified prior to the settlement of such claim shall be bound for a proportionate share of any settlement of such claim or the expense incident thereto, but such user's share shall be borne by the user so failing to give the required notice.

If a claim is made against any user which under this agreement is not chargeable in whole or in part with the liability involved in such claim, such user shall promptly notify in writing the responsible user or users.

All releases taken pursuant to the settlement of any and all claims involving joint liability shall include all users, and copies thereof shall be furnished each of them.

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

No user shall, however, be concluded by any judgment or decree at law or in equity against any other user unless it has had reasonable notice from such other user requiring it to appear in the action or suit and make defense thereto for its own account or jointly with the other user. If such notice shall have been given by one user to the other users or any of them and the user or users receiving such notice shall have failed to appear and make defense, it or they shall be concluded by the judgment or decree in such suit.

Section 4. Each user shall fully indemnify and save harmless the other users, their successors and assigns from and against all claims, liability, judgments, costs and expenses of whatsoever nature resulting from or by reason of any injury to or death of persons or loss of or damage to property properly chargeable to such user under the provisions of this agreement.

The provisions of this Article XVII shall be binding not only as between the parties hereto, but as between them and all railroad and railway companies from time to time using the Joint Facilities, or any part thereof, and the Union Pacific shall cause to be inserted in every contract for the use of the Joint Facilities, or any part thereof, provisions identical with the provisions in this section stated, and such contracts shall, in this respect, be construed as if each one were signed by all the railroad or railway companies at any time using the Joint Facilities, or any part thereof. Failing to cause such provisions to be inserted in the contract with any railroad or railway company hereafter admitted to the use of the Joint Facilities, or any part thereof, the Union Pacific shall assume such obligations as such other company would have assumed if such provisions had been inserted in its contract.

#### ARTICLE XVIII

##### COMPLIANCE WITH LAWS AND REGULATIONS

Section 1. Each user undertakes and agrees in respect to its use of the said Joint Facilities and the operation of equipment and appliances thereon or thereover to comply with all Federal and State laws or regulations, and laws, rules, regulations or orders promulgated by any municipality, board or commission in respect thereto for the protection of employees or other persons or parties, and if any failure on its part to comply therewith shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the other user or users, promptly to reimburse and indemnify such other user or users for or on account of such fine, penalty, cost or

charge and all expenses and attorneys' fees incurred in defending any action which may be brought against such other user or users on account thereof, and further agrees, in the event of any such action, upon notice thereof being given by such other user or users, to defend such action free of all cost, charge and expense to such user or users.

#### ARTICLE XIX

##### EQUIPMENT

Section 1. Any locomotive, motor car, car or equipment used or operated by any party using the Joint Facilities, or any part thereof, shall be deemed to be the motive power or equipment of such party, whether owned by it or not.

#### ARTICLE XX

##### PICKING UP WRECK

Section 1. If any locomotive, motor car, car or equipment of any party hereto shall be wrecked or derailed while upon the Joint Facilities, the same shall be picked up or re-railed without unnecessary delay by either Southern Company or Union Pacific, as may be mutually agreed upon from time to time, and the expense of picking up such wreck or derailed equipment shall be borne by the parties in accordance with the provisions of Article XVII hereof.

#### ARTICLE XXI

##### REVENUES

Section 1. Revenues derived from rental of any part of the Joint Facilities, other than from railroad companies

operating trains or cars thereon and thereover, shall be apportioned to and divided between the parties hereto on the same basis as the expenses of maintenance and operation of the Joint Facilities are apportioned to and divided between the parties as provided for in Section 1 of Article IX of this agreement; provided, however, that no apportionment shall be made of revenues received from any agreement amounting to Five Dollars (\$5.00) or less per annum.

## ARTICLE XXII

### PAYMENT OF BILLS

Section 1. All sums payable hereunder by Southern Company to Union Pacific shall be paid within thirty (30) days after rendition of bills therefor in lawful currency of the United States of America. Errors or disputed items in such bills shall not be deemed a valid excuse for delay in payment, but shall be subject to subsequent adjustment.

## ARTICLE XXIII

### ARBITRATION

Section 1. With respect to arbitration as in this Article provided, Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company shall be considered one party.

Section 2. In case any disagreement shall arise between the parties hereto as to the meaning of any provisions of this agreement, or concerning the observance or performance of any covenant hereof, or as to any other matter arising under this agreement, whether or not

assigned under this agreement as a matter of arbitration, then such subject of disagreement shall be submitted to the arbitrament of three disinterested persons who shall be experienced railroad men then or recently in steam railroad service, and who shall be experienced in matters of the character in dispute, to be chosen as follows:

Section 3. The party desiring arbitration shall select its arbitrator and give written notice thereof to the other party, and shall in such notice state precisely the matter or matters which it proposes to bring before the arbitrators, and only the matters so stated shall be considered by them. Within thirty (30) days after the service of such notice, the party so notified shall select an arbitrator and notify the moving party in writing of such selection. If the party so notified shall not select an arbitrator and notify the moving party in writing of such selection as aforesaid, then the second arbitrator may be appointed by the Judge of the District Court of the United States within whose District the Joint Facilities are located, who shall have served longest in that capacity in said District and who is willing to act, upon application of the moving party upon giving ten (10) days' written notice of such application to the other party to the controversy.

Section 4. The arbitrators so selected or appointed in the manner provided in the next preceding section within thirty (30) days after the designation of the last one chosen shall jointly name a third arbitrator.

Section 5. If in any case, as aforesaid, the two arbitrators so chosen or designated shall fail to agree upon the selection of such third arbitrator, such arbitrator may be appointed by the Judge of the District Court of the

United States within whose District the Joint Facilities are located, who shall have served longest in that capacity in said District and who is willing to act, upon application of the moving party upon ten (10) days' written notice of such application to the other party to the controversy.

Section 6. The arbitrators having taken and subscribed an oath before some person authorized by law to administer oaths, to the effect that they will well and truly try and impartially and justly decide the matter in controversy according to the best of their ability (which oath shall be filed with their decision) shall, as soon as possible after their selection, meet to hear and decide the question or questions submitted to them, and shall give to each of the parties hereto reasonable notice of the time and place of such meeting. The hearings of the board of arbitrators shall be conducted in a lawful manner, and after hearing all parties interested and taking such sworn testimony or making such investigation as they shall deem necessary, the written decision of the arbitrators, signed by a majority of them, shall determine the controversy, and such determination shall be final and conclusive upon the parties to the arbitration.

Section 7. Upon the making of such decision each party hereto shall and will immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision may be required of it.

Section 8. The books and records of the parties hereto, so far as they relate to the matters of arbitration, shall be open to the examination of the arbitrators.

Section 9. The party against which the award shall be made shall pay all of the fees and expenses of the arbitration, or such fees and expenses may be apportioned by the board of arbitrators as it may determine.

Section 10. Until the arbitrators shall make their award upon any question submitted to them, the business, settlements and payments to be transacted and made under this agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such question.

#### ARTICLE XXIV

##### INSPECTION OF RECORDS

Section 1. So much of the books, accounts and records of each party as relate to the subject matter of this agreement shall at all reasonable times be open to inspection by the proper officers and agents of the other party or parties.

#### ARTICLE XXV

##### DEFAULT

Section 1. If Southern Company shall fail to pay any sum payable by it hereunder on the date when the same shall be due, or shall fail to perform or comply with any other covenant or condition by it to be performed and complied with under this agreement, and such default shall continue for a period of six (6) months after written demand for such payment or performance, as in Article XXVII provided, shall have been made upon Southern Company by Union Pacific, then and in such case Union Pacific shall have and is hereby given the right at its election to

declare this agreement terminated, and after giving notice in writing of such election to Southern Company this agreement then and there by such notice shall be terminated and all rights of Southern Company shall cease and determine, and Union Pacific may exclude Southern Company, and anyone acting under its permission and authority, wholly from the Joint Facilities. Such termination, however, shall not relieve either party from any liability which may have attached or accrued prior to or at the date of such termination or deprive either party of the right to enforce any such liability or the benefit of any covenant or obligation in this agreement contained to indemnify and hold it harmless. It is expressly agreed that the failure or refusal of Southern Company to make payments or to perform or comply with any covenants or conditions which shall be the subject of arbitration or litigation between the parties hereto shall not, pending final determination of such arbitration or litigation, be deemed cause for termination of this agreement.

#### ARTICLE XXVI

##### REMOVAL OF SOUTHERN COMPANY'S FACILITIES

Section 1. Upon the expiration or earlier termination of this agreement, Southern Company shall promptly remove from the Joint Facilities any tracks or facilities then owned by it and restore the portions of the Joint Facilities involved to substantially their former condition, and if Southern Company shall fail to make such removal or restoration within one hundred eighty (180) days from the date of such expiration or termination, then such tracks or facilities shall become the property of Union Pacific.

#### ARTICLE XXVII

##### NOTICES

Section 1. Demands or notices under this agreement shall be in writing to the President, any Vice-President or any General Manager of the party hereto to be notified.

#### ARTICLE XXVIII

##### MORTGAGES, LIENS, ETC.

Section 1. The rights that Southern Company acquires hereunder shall be deemed appurtenant to and running with its railroad and properties in the State of California, and it may sell, assign, lease or mortgage said rights in connection with and as a part of the sale, assignment, lease or mortgage as an entirety of all of its railroad and properties in said State.

Section 2. This agreement is subject to all valid existing contracts, leases, liens and encumbrances which may affect said Joint Facilities.

#### ARTICLE XXIX

##### FILING AGREEMENT

Section 1. Southern Company shall file copies of this agreement with the Interstate Commerce Commission or with the Railroad Commission of the State of California, or both, in the event it becomes necessary, as a matter of law or in compliance with a lawful order of a governmental body having jurisdiction in the premises, to file such copies.



**ARTICLE XXX****SUCCESSORS AND ASSIGNS**

Section 1. The several covenants and stipulations herein contained shall be mutually binding upon and inure to the benefit of the parties hereto, their successors, lessees and assigns; provided, however, that if Los Angeles & Salt Lake Railroad Company resumes possession of its railroad it shall ipso facto be substituted in the place and stead of Union Pacific.

**ARTICLE XXXI****EFFECTIVE DATE—TERM OF AGREEMENT**

This agreement shall take effect as of 12:01 a.m., the 7th day of May, 1939, and shall continue in force to and including April 14, 1988, and thereafter until terminated by written notice given (either before or after said expiration date) by any party hereto to the others on any date in such notice stated, not less, however, than two (2) years subsequent to the date on which such notice shall be given; provided, however, that should Southern Company desire not to continue the use of the Joint Facilities for the purposes hereinabove described, it may terminate this agreement at any time after the lapse of fifteen (15) years from the effective date hereof by giving to Union Pacific six (6) months' written notice of intention to accomplish such termination as of a date to be specified in said notice.

**ARTICLE XXXII****TERMINATION OF PRIOR AGREEMENT**

Effective as of 12:01 a.m., the 7th day of May, 1939, that certain agreement between Union Pacific and the

Southern Company dated February 4, 1930, as supplemented and amended by agreement of April 22, 1930, and by agreement of December 1, 1934, shall be terminated and cease to be in effect at such time, and all rights accruing thereunder are waived, provided, however, that no rights or obligations accruing at or prior to 12:01 a.m., May 7, 1939, under the provisions of said agreement as so supplemented are waived, including the right of arbitration.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in two counterparts by their respective officers thereunto duly authorized and their respective corporate seals to be hereunto affixed and attested by their respective secretaries or assistant secretaries the day and year first above written.

**LOS ANGELES & SALT LAKE  
RAILROAD COMPANY,**

By: (Signed) G. F. ASHBY,

*Its Vice-President.*

Attest:

(Signed) PAUL RIGDON,

*Assistant Secretary.*

(SEAL)

UNION PACIFIC RAILROAD  
COMPANY,

By: (Signed) G. F. ASHBY,  
*Its Vice-President.*

Attest:  
(Signed) PAUL RIDGON,  
*Assistant Secretary.*

(SEAL)

SOUTHERN PACIFIC COMPANY,

By: (Signed) A. T. MERCIER,  
*Its President.*

Attest:  
(Signed) ROY G. HILLEBRAND,  
*Assistant Secretary.*

(SEAL)

C. L. D. No. 5181

August 18, 1943.

Southern Pacific Company  
65 Market Street  
San Francisco, California

Gentlemen:

Please refer to agreement between the undersigned and you, dated April 8, 1943, covering joint use by Southern Pacific of Union Pacific tracks from Ninth Street Junction and Bridge Junction to Fruitland Avenue for the purpose of serving the Union Stockyards and Central Manufacturing District in Los Angeles, California, which has been executed by you and is before the undersigned for final execution.

In view of the fact that depreciation accounting became effective for railroads January 1, 1943, we should appreciate an understanding with you that effective January 1, 1943, and pending the consummation of agreement for the assessing and apportionment of depreciation as provided in Section 1 of Article XI of the above mentioned agreement, any retirement loss in connection with the Joint Facilities chargeable to depreciation reserve shall be apportioned under the provisions of Section 2 of Article XIII of said agreement as though chargeable to Railway Operating Expenses or Profit and Loss Accounts.

Your execution and return of the enclosed copy of this letter will confirm the foregoing understanding.

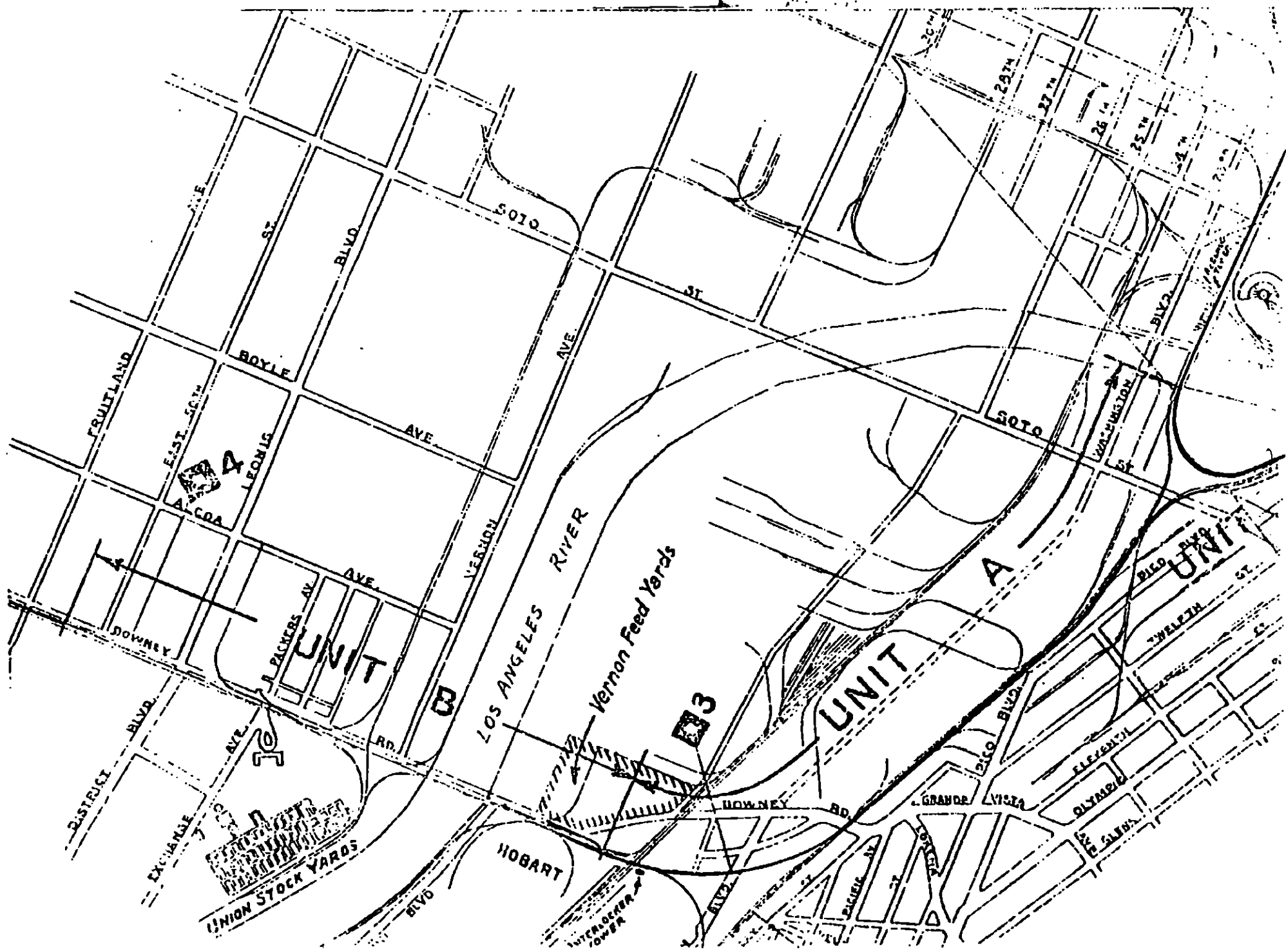
LOS ANGELES & SALT LAKE RAILROAD COMPANY  
UNION PACIFIC RAILROAD COMPANY

By: G. F. ASHBY  
*Vice-President*

ACCEPTED AND APPROVED this  
28th day of October, 1943.

SOUTHERN PACIFIC COMPANY  
By: D. J. RUSSELL  
*Vice-President*





UNIT 1

UNIT 2

UNIT 3

UNIT 4

UNIT 5

UNION STOCK YARDS

Vernon Feed Yards

LOS ANGELES RIVER

HOBART

INTERLOCKING POWER PLANT

GRAND VISTA

OLYMPIA

ELEPHANT

SE CALIF

FRUITLAND

EAST 50TH

BOYLE

LEONIS

J. PACKERS

DISTRICT

EXCHANGE

ST

RD

VERNON

BLVD

DOWNEY

RD

GRAND

VISTA

OLYMPIA

ELEPHANT

SE CALIF

WELFEN

ST

SOTO

UNION

BLVD

ST

5010

ST

AVE

AVE

ST

BLVD

AVE

28TH

27TH

26TH

25TH

24TH

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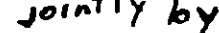


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## LEGEND

-  Union Pacific trackage used jointly by Southern Company and Union Pacific
-  Union Pacific trackage used by Southern Company and Union Pacific under "East Bank Contract"
-  Union Pacific trackage used by Atchison Company under contract dated Nov. 4, 1922 and supplemented
-  Union Pacific trackage used by Atchison Company, Southern Company and Union Pacific

**EXHIBIT "A"**  
**LOS ANGELES & SALT LAKE RAILROAD**  
**UNION PACIFIC RAILROAD COMPANY**  
**TRACKAGE USED JOINTLY BY SOUTHERN PACIFIC**  
**IN REACHING THE UNION STOCKYARDS,**  
**MANUFACTURING DISTRICT AND THE VEGETABLE**  
**MARKET**  
**LOS ANGELES, CALIFORNIA**

MAY 7 1930 SCALE 1" = 1 MILE

**AGREEMENT**

**BETWEEN**

**Los Angeles & Salt Lake  
Railroad Company**

**Union Pacific Railroad Company**

**Southern Pacific Railroad Company**

**AND**

**Southern Pacific Company**

**DATED: MARCH 7, 1942**

*Covering the terms and conditions applicable to the  
maintenance, operation, etc., by the parties of the  
so-called "East Bank Joint Facilities" in the City  
of Los Angeles, County of Los Angeles,  
State of California.*

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*Covering the terms and conditions applicable to the  
maintenance, operation, etc., by the parties of the  
so-called "East Bank Joint Facilities" in the City  
of Los Angeles, County of Los Angeles,  
State of California.*



THIS AGREEMENT, made and entered into this 7th day of March, 1942, by and between LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Utah, party of the first part, its lessee, UNION PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Utah, party of the second part, (parties of the first and second parts hereinafter collectively called "Union Pacific"); and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the States of California, Arizona and New Mexico, party of the third part, its lessee, SOUTHERN PACIFIC COMPANY, a corporation organized and existing under the laws of the State of Kentucky, party of the fourth part (parties of the third and fourth parts hereinafter collectively called "Southern Company"), WITNESSETH:

### RECITALS

The party of the first part is the owner of, and the party of the second part as its lessee is in possession of and operating, certain lines of railroad in the City of Los Angeles, County of Los Angeles, State of California.

The party of the third part is the owner of, and the party of the fourth part as its lessee is in possession of and operating, certain lines of railroad in the City of Los Angeles, County of Los Angeles, State of California.

The parties of the first, third and fourth parts have heretofore entered into certain agreements covering or relating to joint operations over certain lines of railroad in the City of Los Angeles, County of Los Angeles, State

of California, certain of which lines of railroad it is now proposed to be covered by this agreement. Said agreements are more specifically described as follows:

- (a) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated July 18, 1917 (Los Angeles & Salt Lake Railroad Company Audit No. 2807, Southern Pacific Company Audit No. 13722);
- (b) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1923 (Los Angeles & Salt Lake Railroad Company Audit No. 4409, Southern Pacific Company Audit No. 15600), and known as the "Temporary Agreement";
- (c) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1923 (Los Angeles & Salt Lake Railroad Company Audit No. 4410, Southern Pacific Company Audit No. 28979), and known as the "Permanent Agreement";
- (d) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company, dated October 1, 1923 (Los Angeles & Salt Lake Railroad Company Audit No. 4411, Southern Pacific Company Audit No. 17395), and known as the "Terminating Agreement";
- (e) Agreement between Southern Pacific Railroad Company, Southern Pacific Company, and Los Angeles & Salt Lake Railroad Company dated October 1, 1923 (Los Angeles & Salt Lake Railroad Company Audit No. 4412, Southern Pacific

Company Audit No. 17396), and known as the "Option Agreement";

- (f) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1929 (Los Angeles & Salt Lake Railroad Company Audit No. 4409-1, Southern Pacific Company Audit No. 15600), and known as the "First Supplemental Agreement";
- (g) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated December 20, 1933 (Los Angeles & Salt Lake Railroad Company Audit No. 4409-2, Southern Pacific Company Audit No. 35848), and known as the "Second Supplemental Agreement."

The uses and rights granted under Agreements (a), (c), (d) and (e) were never exercised and under Agreements (b), (f) and (g) ("Temporary Agreement" and supplements thereto), Southern Company was granted the right to use, under the terms and conditions of said "Temporary Agreement" and supplements thereto, certain tracks and facilities of Los Angeles & Salt Lake Railroad Company from the southerly right of way line of The Atchison, Topeka and Santa Fe Railway Company near the foot of Avenue 18, easterly of the Los Angeles River, to a connection with the tracks of Southern Company on Alameda Street at a point just southerly of Washington Boulevard (formerly Washington Street), and Los Angeles & Salt Lake Railroad Company was granted the right to use certain tracks of Southern Company from said connection on Alameda Street to a point on Alameda Street at the intersection of the southerly

such additions, extensions, improvements and changes in or abandonments of existing railroad facilities as might be reasonably necessary and incidental to the use of such union passenger terminal, conditioned, however, upon the entry by the Interstate Commerce Commission of an order (thereafter on May 8, 1928, made in Docket No. 14778, 142 I.C.C. 489) containing appropriate findings and certificates covering the said construction, extensions and abandonments.

The Interstate Commerce Commission, in said Docket No. 14778, approved the abandonment of operations of all passenger and freight train service except industrial freight switching service on the main line of Southern Company on Alameda Street, in the City of Los Angeles, between College Street and East 15th Street, all as shown on Exhibit A hereinafter referred to, and authorized the construction, extension, rearrangement and joint use of their several lines of railroads by the parties to said Docket No. 14778, including Southern Company and Los Angeles & Salt Lake Railroad Company, to properly serve said union passenger terminal and properly handle their freight operations.

Said order of the Railroad Commission (Decision No. 18593) was upheld by the Supreme Court of the State of California on May 27, 1930 (209 Cal. 460, 288 Pac. 775), and on May 18, 1931 (283 U. S. 380), by the Supreme Court of the United States.

Thereafter, upon application to said Railroad Commission, the latter, by Decision No. 26399, dated October 4, 1933 (39 C.R.C. 25), approved a plan submitted by Los Angeles & Salt Lake Railroad Company and The Atchi-

line of Third Street, including the use of the station facilities of Southern Company located between Central Avenue, Alameda Street, Sixth Street and Third Street, and known as the Arcade (Central) Station Facilities, all in the City of Los Angeles, County of Los Angeles, State of California.

Under said "Temporary Agreement" of October 1, 1923, Southern Company and Los Angeles & Salt Lake Railroad Company commenced joint operations as of November 2, 1924, over the tracks and facilities described therein, and such operations were continued under said agreement and supplements thereto by said Southern Company and said Los Angeles & Salt Lake Railroad Company or its lessee, Union Pacific Railroad Company, until May 7, 1939.

Effective as of January 1, 1936, Union Pacific Railroad Company leased all of the properties of Los Angeles & Salt Lake Railroad Company and assumed all of the obligations and acquired all the rights of Los Angeles & Salt Lake Railroad Company under said agreements hereinabove referred to.

By Decision No. 18593 dated July 8, 1927 (30 C.R.C. 151), the Railroad Commission of the State of California (hereinafter called "Railroad Commission") ordered Southern Pacific Company, Los Angeles & Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to construct and operate a union passenger terminal within that portion of the City of Los Angeles, California, bounded by Commercial Street, North Main Street, Redondo (Rondout) Street, Alhambra Avenue, and the Los Angeles River, and also to make

son, Topeka and Santa Fe Railway Company, and, among other things, ordered and directed Southern Company (a) to join with Los Angeles & Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway Company in constructing and operating a union passenger terminal in conformance with said plan approved in said Decision No. 26399; (b) to abandon and discontinue operating its passenger station in Los Angeles at the Arcade site (also known as the Central Station site); and (c) to abandon and discontinue the use of and remove certain tracks and other facilities south of College Street and College Street extended easterly.

Pursuant to the Orders and Decisions above referred to said Los Angeles Union Passenger Terminal was constructed, and upon the commencement of operations of said Passenger Terminal, at 12:01 A.M., May 7, 1939, Union Pacific ceased operations over Southern Company's tracks in Alameda Street and the use of Southern Company's Arcade (Central) Station facilities and has no further need for operation over said tracks or the use of said station facilities, and Southern Company discontinued the use as a passenger station of its said Arcade (Central) Station facilities and main line passenger operations over said tracks in Alameda Street between College Street and East 15th Street and prior thereto discontinued freight train operations except industrial freight switching service within said limits.

Southern Company, however, desires to continue its operations over certain Union Pacific tracks and facilities from the southerly right of way line of The Atchison, Topeka and Santa Fe Railway Company near the foot of Avenue 18 easterly of the Los Angeles River to a con-

nection with the tracks of Southern Company at a point on Alameda Street just southerly of Washington Boulevard (formerly Washington Street), and in connection therewith has made necessary extensions in its operations or facilities to serve the Los Angeles Union Passenger Terminal.

The parties hereto propose by separate document or documents to terminate, effective as of the effective date of this agreement, all of the above agreements which are in effect at the time this agreement becomes effective.

### **AGREEMENT:**

NOW, THEREFORE, in order to more fully set forth the understanding of the parties hereto with respect to said operations of Southern Company, it is mutually understood and agreed as follows:

### **ARTICLE I.**

#### **EXHIBITS**

Section 1. The general location of the trackage and facilities of Union Pacific, the continued use of which is desired by Southern Company, is shown in yellow on map attached hereto and hereby made a part hereof, said map being dated March 1, 1940, and identified as Exhibit A.

Section 2. Maps showing in detail the jointly used trackage by red lines, the jointly used right of way in green tint on Exhibits B and C and in yellow tint on Exhibit D, and all other Joint Facilities as hereinafter defined that can be readily indicated on maps of such scale have been heretofore prepared by the parties hereto,

identified by the signatures of the respective Valuation Officers of said parties, designated as Exhibits B, C and D, and are hereby made parts of this agreement without being attached hereto.

Section 3. Detailed statements of property schedules and values of said Joint Facilities have been heretofore prepared by the parties hereto, identified by the signatures of the respective Valuation Officers of said parties, designated as Exhibit E, and are hereby made a part of this agreement without being attached hereto.

## ARTICLE II.

### DEFINITIONS

Section 1. *Joint Facilities*—"Joint Facilities," as used in this agreement, shall mean all right of way, tracks, bridges, buildings, culverts, signals, interlocking plants, grade separations and appurtenant property of the Union Pacific (except telephone and telegraph lines), all of which are more specifically shown on said Exhibits B, C and D, and included on said Exhibit E.

Section 2. *Zones*—Said Joint Facilities have been divided into four Zones designated on said Exhibit A and more particularly shown on said Exhibits B, C and D, and are described as follows:

ZONE 1. From the southerly right of way line of The Atchison, Topeka and Santa Fe Railway Company near the foot of Avenue 18 to Engineer's Station 49 plus 95 immediately south of Alhambra Avenue.

ZONE 2. From said Engineer's Station 49 plus 95 to heels of frogs of double track switch turnouts ap-



proximately eight hundred (800) feet south of Olympic Boulevard (formerly Ninth Street).

ZONE 3. From said heels of frogs of double track switch turnouts to connection with trackage of Southern Company in Alameda Street just southerly of Washington Boulevard.

ZONE 4. Section facilities and underlying realty between First and Kearny Streets and east of Myers Street.

The division of said Joint Facilities into zones as above described may be changed from time to time upon the request of either of the parties hereto. If the parties are unable to agree upon such change the question shall be submitted to arbitration in the manner hereafter provided, but such zones when so established shall continue in effect for a period not less than five years, but there shall be no request for change in such zones to become effective before May 7, 1944.

Section 3. *Cars Handled Percentage*—The term “cars handled percentage” as used in this agreement for determination of the payment or division of any item or items of expense with respect to any one of said Zones 1, 2 and 3, means the percentage that bears the same ratio to one hundred per cent (100%) as the number of cars (counted as hereinafter prescribed) moved in any one of said Zones, or any part thereof, by one party during any one month or otherwise agreed upon period of time bears to the total number of cars (counted as hereinafter prescribed) moved by all parties using said Joint Facilities, or any part thereof, in the same Zone and for the same period of time.

In counting cars moved over said Joint Facilities, or any part thereof:

- (a) Each car, each car body in an articulated unit of two or more car bodies, and each caboose shall be counted as one car;
- (b) Each Diesel or electric locomotive of one or more units, each steam locomotive (including tenders if any) or other type of motive power operating with or without cars shall be counted as one car.
- (c) Each motor car having space for carrying passengers, baggage, mail or express shall be counted as one car;
- (d) Each car, locomotive or motor car, as above described, moving through any Zone or picked up or set out on tracks diverging therefrom, shall be counted once in each Zone in which the same is moved, either in whole or in part.

Notwithstanding the foregoing, however, the following equipment shall not be counted:

- (1) Work equipment, work trains and relief equipment, including locomotives therefor, engaged in service upon the Joint Facilities;
- (2) Empty passenger train cars and locomotives therefor, including light locomotive movements associated therewith, being moved or turned by Union Pacific in emergencies in Zone 1;
- (3) Empty passenger train cars and locomotives therefor, including light locomotive movements associated therewith, being moved by Southern Company in Zone 2 or in emergencies in Zone 1, in going to or from Southern Company's coach yard;

- (4) Business cars of all parties using the Joint Facilities.

Effective as of 12:01 A.M., May 7th, 1939 the cars-handled percentages of the parties for said Zones 1, 2 and 3 shall be as follows:

	<i>Southern Company</i>	<i>Union Pacific</i>
Zone 1.....	95.581%	4.419%
Zone 2.....	68.898%	31.102%
Zone 3.....	76.286%	23.714%

which percentages shall remain in effect until changed, as hereinafter provided.

From time to time, upon request of either party hereto, Union Pacific and Southern Company shall arrange for a joint count of cars (counted as hereinabove prescribed and for such representative periods as may be mutually agreed upon) moving over the Joint Facilities, and all percentages thus determined as hereinabove provided, except when said percentages are determined monthly, shall remain in effect for at least one (1) year before another joint count of cars is made and shall not be retroactive. Whenever a joint count of cars is made, the count shall be taken separately in each of Zones 1, 2 and 3.

Section 4. *Interstate Commerce Commission Regulations*—The term “current Interstate Commerce Commission regulations,” as used in this agreement, means the accounting rules and regulations prescribed by the Interstate Commerce Commission, or other regulatory body having jurisdiction in the premises, in effect from time to time and as followed by Union Pacific.

## ARTICLE III.

## VALUATION OF JOINT FACILITIES

Section 1. It is mutually agreed that the value of said Joint Facilities is the sum of One Million, Seven Hundred Thousand, Two Hundred Twenty-two Dollars sixty cents (\$1,700,222.60) as of May 7, 1939. There have been included in said value and in Exhibit E the following work orders and the estimated expenditures thereof:

<i>Description</i>	<i>Estimated Expenditure</i>
W. O. 260 Mission Interlocker.....	\$38,733.50
W. O. 1175 (Acct. 27 only) Signals— Alhambra Avenue—north.....	21,953.58
W. O. 1205 Signals—Alhambra Avenue to 9th Street Jct.....	29,174.13
W. O. 1403 Ballast South of 7th St.....	None
Total .....	\$89,861.21

Subject to adjustment upon financial completion of said work orders, it is agreed that said value as so finally adjusted shall be used by the parties hereto in determining rental to be paid by Southern Company to Union Pacific for the rights granted to Southern Company under the terms and conditions of this agreement.

## ARTICLE IV.

## GRANT OF RIGHTS

Section 1. Union Pacific grants to Southern Company during the life of this agreement, in common with Union Pacific and such other railroad company or companies as Union Pacific may hereafter admit to the use of the

Joint Facilities, the right and privilege of operating, with Southern Company's own employees, its trains, locomotives, motor cars and cars of every class and kind over and along the Joint Facilities, or any part thereof.

Section 2. In addition to the rights hereinabove granted, Southern Company shall have, and is hereby granted, the right at its own cost and expense during the life of this agreement:

- (a) To maintain, rearrange or add to the existing connections of its lines of railroad with said Joint Facilities approximately at the points shown upon said Exhibits A, B, C, and D; provided, however, that such rearrangement or additional connection shall not unreasonably interfere with the joint use of said facilities as herein contemplated;
- (b) To construct and maintain a single or double track connection from its tracks in Alameda Street immediately south of Butte Street, if extended, to a point in Zone 3 of the Joint Facilities near Alameda Street;
- (c) To move upon and over said Joint Facilities the cars of Pacific Electric Railway Company in bridge service.

The term "bridge service" as used in this Article IV shall mean the transferring or hauling of cars of every class or kind in continuous movement over the Joint Facilities.

Section 3. Southern Company, however, shall have no right to construct, maintain or operate any industrial track or industrial tracks connected, or which shall here-

Pacific any claim or demand for any loss, damage or injury whatsoever arising from such defect, neglect or failure; but in case Union Pacific shall fail to repair any such defect as aforesaid within a reasonable time after Southern Company shall have given to Union Pacific written notice specifying the defect and requesting that it be repaired, then Southern Company shall have the right to make the necessary repairs at once, and Union Pacific shall and will pay the cost thereof which shall thereupon be apportioned between the parties as in this agreement provided.

## ARTICLE VII.

### MANAGEMENT AND CONTROL

Section 1. *Management*—The Joint Facilities shall be under the exclusive direction and control of Union Pacific.

Section 2. *Rules and Regulations*—Union Pacific shall from time to time promulgate such reasonable rules, regulations and orders governing the Joint Facilities as will be consistent for proper, expeditious, economical and safe operation thereon and thereover of the locomotives, trains, motor cars and cars of all parties using said Facilities. Such rules, regulations and orders shall be reasonable, just and fair to such parties, and all Union Pacific officers and employees engaged in the operation and maintenance of the Joint Facilities shall impartially perform their duties.

Section 3. *Precedence of Trains*—All passenger trains operating upon the Joint Facilities shall be given preference over other trains according to their class and

after connect, with the Joint Facilities or to serve any industries from the Joint Facilities.

## ARTICLE V.

### TELEPHONE AND TELEGRAPH LINES

Section 1. Southern Company shall have the right to construct telephone and telegraph lines longitudinally along and under the joint right of way; provided that such lines shall be installed and maintained by and at the sole cost and expense of Southern Company in locations approved by and in a manner satisfactory to Union Pacific.

Section 2. Southern Company shall also have the right, subject to the approval of Union Pacific and any telephone or telegraph company having rights in the premises or in communication conduits along and under the joint right of way, to use such conduits or cables therein if space is available therefor.

Section 3. Said telephone and telegraph lines, including conduits and cables, shall not form a part of the Joint Facilities.

## ARTICLE VI.

### MAINTENANCE

Section 1. Union Pacific shall maintain and keep the Joint Facilities in reasonable repair and reasonably suitable for the combined business of all parties using said Facilities. It is expressly understood and agreed that Southern Company shall not by reason of any defect in the Joint Facilities, or by reason of the failure of Union Pacific to repair such defect, have or make against Union

superiority, and the trains of all parties shall be given equal dispatch according to their class and superiority.

## ARTICLE VIII.

### RENTAL

Section 1. In consideration of the rights granted in this agreement, Southern Company shall pay to Union Pacific monthly during the life of this agreement:

- (a) As rental for the use of Zones 1, 2 and 3, a sum representing one-twelfth ( $1/12$ ) of one-half ( $1/2$ ) of five per cent (5%) of the agreed valuation of said Zones as shown on said Exhibit E, provided, however, that in the event of cessation of operation of its Glendale Branch, the Union Pacific shall cease to operate over that portion of Zone 1 between the southerly right of way line of the Atchison, Topeka & Santa Fe Railway Company near the foot of Avenue 18, easterly of the Los Angeles River and heel of frogs south of Spring Street in (1) Pasadena Branch connection in the Union Pacific's first main track at Engineer's Station 85 + 70.69, and (2) crossover to said Pasadena Branch connection and Union Pacific's second main track at Engineer's Station 69 + 36.89, then the Southern Company shall pay as monthly rental for said portion of Zone 1 a sum representing one-twelfth of five per cent ( $1/12$ th of 5%) of the valuation of said portion of Zone 1, as reflected by Exhibit E, including additions, betterments, and retirements.
- (b) As rental for the use of Zone 4, a sum representing one-twelfth ( $1/12$ ) of one-half ( $1/2$ ) of five per cent (5%) of the agreed valuation of the Joint Facility proportion of said Zone 4 as shown on Exhibit E.



## ARTICLE IX.

## PAYMENTS FOR MAINTENANCE AND OPERATION

Section 1. Southern Company shall pay monthly to Union Pacific a sum representing Southern Company's cars handled percentage of the total actual cost to Union Pacific of operation (except train and engine operation other than work-train operations), maintenance, repairs, renewals and replacements separately applicable to each of Zones 1, 2 and 3.

Section 2. Southern Company shall pay monthly to Union Pacific a sum representing seventy-eight and four-tenths (78.4) per cent of forty (40) per cent of the total actual cost to Union Pacific of operation, maintenance, repair, renewal and replacements applicable to Zone 4.

Section 3. To the actual cost of labor and materials furnished by Union Pacific and used in the operation (except train and engine operation other than work-train operations), maintenance, repairs, renewals and replacements of the Joint Facilities, there shall be added:

- (a) On all items of labor, including wages of foremen, ten (10) per cent for supervision, accounting and the cost of such tools as may be used by extra gangs; however, ten (10) per cent shall not be added to the cost of contract work or to the cost of work performed by parties other than parties to this agreement;
- (b) Seventy-eight and four-tenths (78.4) per cent of forty (40) per cent of the replacement cost at company storehouse of tools and roadway machines assigned to regular section gangs, including transportation charges thereon as hereinafter provided;

- (c) A charge for storehouse expenses of one (1) per cent on the actual cost of rails and cross-ties, and ten (10) per cent on the actual cost of all other materials and supplies passing through storehouse, which costs shall include charge for transportation on said rails, cross-ties, materials and supplies, but not including the transportation charges provided for in Section 3(e) of this Article IX;
- (d) A charge for purchasing department expense of one (1) per cent on the actual cost of all materials and supplies which do not pass through the storehouse;
- (e) Transportation charges on all materials and supplies transported for use on the Joint Facilities at the rate of one-half cent ( $\frac{1}{2}\text{¢}$ ) per ton per mile, but not to exceed the published tariff rates, where the materials and supplies are transported, in other than work-trains, over the rail lines of Union Pacific.

Section 4. To the actual cost of operating and maintaining the Joint Facilities there shall also be added:

- (a) Rental at agreed upon rates for use of roadway machines, special tools and appliances which individually cost Three Hundred Dollars (\$300.00) or more, and for use of locomotives, work and rolling stock equipment engaged in work-train service, while performing work upon or in respect to the Joint Facilities;
- (b) Wages of crews, fuel, water, lubricants, other supplies, engine house expenses, together with additives properly assessable under Section 3 hereof, and all other costs of operating locomotives and work equipment while performing work upon or in respect to the Joint Facilities;

- (c) A trackage charge of two and one-half cents (2½¢) per mile for movement (except where transportation charges are assessed under Section 3(e) hereof) of each locomotive and each unit of work or rolling stock equipment in or to be used in work service on the Joint Facilities, moved to and from stations on Union Pacific distant not to exceed one hundred sixty (160) miles from Los Angeles, but excluding movements over the Joint Facilities.

Section 5. Prices for second-hand and scrap material and supplies used in and released from the Joint Facilities shall be agreed upon from time to time by the parties hereto.

Section 6. At the close of each calendar year so much of the monthly amounts paid or borne by Southern Company hereunder during that year as are chargeable to Maintenance of Way and Structures (and taxes applicable thereto) under current Interstate Commerce Commission regulations shall be readjusted so that Southern Company will bear and pay its cars handled percentage of the total of such charges for such year on an annual instead of a monthly basis, except that for the year 1939 such adjustment shall be made on the basis of the period of that year subsequent to 12:01 A.M., May 7th; provided, however, that such adjustment shall be made only when cars are counted and percentages determined monthly as permitted by Article II, Section 3.

## ARTICLE X

### TAXES

Section 1. Union Pacific shall pay all taxes and assessments, as herein described, allocable to the Joint Facili-

ties, and Southern Company shall, upon demand, pay to Union Pacific:

- (a) One-half ( $\frac{1}{2}$ ) of any taxes and assessments, exclusive of taxes and assessments levied against the rolling stock of Union Pacific, which may be levied upon, fairly attributable and allocable to, assessed against, charged to or on account of the real and personal property comprising the Joint Facilities, or any part thereof, as said Joint Facilities are included on said Exhibit E and any changes therein; provided, however, that should the assessment classification of Zone 1 be changed from present Branch Line classification to Main Line classification, then and in that event Southern Company shall pay any increased taxes due to said reclassification of Zone 1 until such time as the cars handled percentage in Zone 1, collectively of Union Pacific and such other railroads as may hereafter be admitted to the use of said Zone, shall become twenty-five per cent (25%) of the total cars handled thereon and thereover, at which time said taxes on said Zone 1 shall be divided equally between all parties using said Zone; and provided further that if and when the monthly rental to be paid by the Southern Company on that portion of Zone 1 specifically described in subdivision (a) of Section 1 of Article VIII hereof shall be increased as in said subdivision provided, then the Southern Company shall pay the full amount, instead of a part as hereinbefore in this subdivision (a) provided, of taxes and assessments levied upon, fairly attributable or allocable to, assessed against, charged to or on account of said portion of Zone 1.
- (b) One-half ( $\frac{1}{2}$ ) of all local license and privilege franchise taxes attributable to, charged to or on

account of the operations contemplated under this agreement, exclusive, however, of any such taxes due solely to Union Pacific's operation upon said Joint Facilities.

- (c) Southern Company's cars handled percentage, as such term is hereinbefore defined, of all social security taxes, unemployment insurance taxes, railroad retirement taxes, sales taxes, use taxes and taxes which may from time to time be levied or assessed against or on account of materials used and labor employed in the operation, maintenance, repairs, renewals and replacements of the Joint Facilities.

Section 2. "Taxes" or "assessments," as used in this Article X, levied or assessed against the Joint Facilities, shall not be deemed to include any taxes or assessments paid by Union Pacific which properly constitute charges to Investment in Road and Equipment or Railway Operating Expenses, as are defined in current Interstate Commerce Commission regulations. Expenditures by Union Pacific for such taxes and assessments shall become a part of the Capital and Operating Expenditures applicable to the Joint Facilities, and Southern Company shall pay its interest rental proportion or cars handled percentage, as appropriate, of such expenditures as in Article XII and Article IX of this agreement provided.

Section 3. It is understood and agreed that in the event a different method of levying taxes is hereafter adopted in California, or any other forms of taxation are hereafter imposed, resulting in inequities to either of the parties hereto, then such new taxes levied or assessed against the Joint Facilities, or any part thereof, shall be

apportioned between all parties using the Joint Facilities on a fair and equitable basis.

## ARTICLE XI.

### DEPRECIATION

Section 1. Should depreciation on Joint Facilities be currently accrued and set up on the books of Union Pacific under Interstate Commerce Commission regulations, or other authorized governmental authority, it shall be assessed and be apportioned between the parties hereto as mutually agreed upon.

## ARTICLE XII.

### ADDITIONS AND BETTERMENTS

Section 1. Union Pacific may from time to time make such changes in, or additions and betterments to, the Joint Facilities as shall in its judgment be necessary or desirable for the economical and safe operation thereof, or as shall be required by Federal or State law, or by lawful municipal ordinance or public service regulation or order, and the same shall immediately become a part of the Joint Facilities hereunder. Southern Company shall pay thereon monthly to Union Pacific as rental, in addition to the rentals hereinbefore provided, a sum equal to one-twelfth ( $1/12$ ) of two and one-half ( $2\frac{1}{2}$ ) per cent of the actual cost to Union Pacific chargeable to Investment in Road and Equipment of such changes, additions and betterments (as ascertained under the current Interstate Commerce Commission regulations). There shall be added to such sum upon which Southern Company shall pay rental as hereinabove provided, the total

amount of all taxes (as the same are defined in Article X, Section 1 (c)) allocable to such changes, additions and betterments. That portion of such actual cost of such changes, additions and betterments chargeable to Railway Operating Expenses, including taxes as provided in Article X, Section 1 (c) shall be considered as maintenance expense, and Southern Company shall pay its proportion thereof in the manner and as provided in Articles IX and X hereof.

Section 2. Notwithstanding the foregoing, however, in the event Union Pacific shall desire to make any changes in, additions to, or betterments of the Joint Facilities costing in excess of Ten Thousand Dollars (\$10,000.00) chargeable to Investment in Road and Equipment, it shall so notify Southern Company, and if Southern Company shall consider the same unnecessary or undesirable for the safe or economical operation of the Joint Facilities then, upon written request by Southern Company, the question of such necessity or desirability (except when the same shall be required by lawful authority) shall be submitted to arbitration; and if it shall be determined by arbitration that the same are not necessary or desirable, as aforesaid, or if it shall be determined by arbitration that the same are necessary or desirable for use only by Union Pacific, then Union Pacific may make such changes, additions, or betterments and Southern Company shall not be required to pay any taxes or expenses of construction, operation, maintenance, renewals and retirements connected therewith or rental charges thereon until Southern Company shall use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable

for joint use as aforesaid, at which time the same, including any subsequent changes, additions and betterments thereto, shall become additions and betterments to the Joint Facilities.

Section 3. In the event Southern Company shall request Union Pacific to make changes in, or additions to, or betterments of the Joint Facilities, and Union Pacific does not deem the same to be necessary or desirable for the joint use of the parties hereto and the safe or economical operation of the Joint Facilities, then and in that event the question of such necessity or desirability shall first be submitted to arbitration, and if it shall be determined by arbitration that the same are not necessary or desirable for joint use, the said changes, additions or betterments shall not be made. However, if it shall be determined by arbitration that the said changes, additions and betterments are necessary or desirable for use only by Southern Company, Union Pacific shall make such changes, additions or betterments at the sole cost and expense of the Southern Company, and all taxes and expenses of construction, operation, maintenance, renewals and retirements connected therewith shall be borne by Southern Company until or unless Union Pacific shall use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, at which time Union Pacific shall reimburse Southern Company for the cost of such change, addition or betterment, together with the cost of any subsequent changes, additions, or betterments thereto, provided Southern Company shall concurrently be required to convey the title to such addition and betterment free, clear and released.



from all liens, mortgages or encumbrances thereon, and thereafter such facilities shall become additions and betterments to the Joint Facilities.

Section 4. In the event either party shall desire that any changes, additions or betterments should be made to the Joint Facilities for the sole account of the party so desiring them and the other party has no objection thereto, then Union Pacific shall make such changes, additions or betterments to the Joint Facilities at the sole cost and expense of the party desiring the same, and all taxes and expenses of construction, operation, maintenance, renewals and retirements connected therewith shall be borne solely by the party desiring said change, addition or betterment until or unless the other party shall use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, whereupon the said change, addition or betterment shall become additions and betterments to the Joint Facilities and Union Pacific shall reimburse Southern Company for the cost thereof, together with the cost of any subsequent changes, additions or betterments thereto if said costs were borne by Southern Company, provided Southern Company shall concurrently be required to convey the title to such addition and betterment free, clear and released from all liens, mortgages or encumbrances thereon.

Section 5. In the event changes, additions or betterments were made at the sole expense of either party hereto and said changes, additions or betterments later shall become a part of the Joint Facilities as hereinabove provided, the portion of the cost of such changes, additions or betterments which was charged to Railway Operating

Expenses shall be divided and borne by all parties using same in accordance with their cars handled percentages for the month in which said changes, additions or betterments were completed, and Southern Company shall commence the payment of rental on the portion of the cost of such changes, additions or betterments, as outlined in Section 1 of this Article XII, commencing with the first of the month following the determination that such changes, additions or betterments shall become part of the Joint Facilities.

Section 6. Notwithstanding the foregoing, no change, addition or betterment shall be made or requested by either party that will permanently or materially impair the usefulness of said Joint Facilities to either of the parties hereto.

Section 7. Except as otherwise provided in Section 1 of this Article XII, the terms "actual cost" or "sole cost" as used in this agreement in connection with changes or additions or betterments shall be the amount as ascertained under the current Interstate Commerce Commission regulations restated to include charges as outlined in Sections 3(e), 4(a), 4(c) and 5 of Article IX hereof.

### ARTICLE XIII.

#### GRADE SEPARATIONS

Section 1. It is agreed as follows with respect to expenditures borne by Union Pacific in connection with the construction of grade separation structures across the tracks of Union Pacific forming a part of the Joint Facilities:

There shall first be determined the net amount of such expenditures in respect to each structure (after deducting all credits except moneys paid to Union Pacific in the acquisition of property or as compensation for damages) as is chargeable to Investment in Road and Equipment under the current Interstate Commerce Commission regulations. There shall then be allocated to the Joint Facilities such proportion of the amount so determined to constitute charges to Investment in Road and Equipment as the number of tracks forming a part of the Joint Facilities and passing under or over the grade separation structure bears to the total number of tracks owned by or constructed under authority of Union Pacific passing under or over the said structures. The amount so allocated to the Joint Facilities shall be treated as an addition to and betterment of the Joint Facilities and included in the amount upon which Southern Company pays rental as in Articles VIII and XII provided. Adjustment of the capitalization respecting each structure shall be made from time to time in accordance with any changes in the number of tracks passing under or over said structures determined in the manner indicated above.

Section 2. The provisions of the next preceding section shall apply to expenditures borne by Union Pacific in connection with construction of each said structure independently of any expenditure borne by it for changes in the Joint Facilities due to or made necessary by the construction of such structures. The expenditures for any such changes in the Joint Facilities shall be restated in order to determine the actual cost of the work in accordance with the provisions of Articles IX and XII of this agreement. Of the actual cost of such work so determined,

that part thereof chargeable to Investment in Road and Equipment shall be included in the value upon which Southern Company pays rental in accordance with Articles VIII and XII, and the part thereof chargeable to Railway Operating Expenses of the Zone in which said structure is located or constructed shall constitute a part of the operating expenses of said Zone as in Article IX provided, and the part chargeable to taxes shall be allocated as in Article X provided.

#### ARTICLE XIV.

##### RETIREMENTS

Section 1 (a). Whenever any change in, elimination, disposal or retirement of any part of the Joint Facilities is made which, under the current Interstate Commerce Commission regulations, reduces the ledger value of the Joint Facilities, then the contract valuation, as shown by Exhibit E, including additions and betterments, upon which the Southern Company shall thereafter be required to pay rental under Articles VIII and XII hereof, shall be reduced according to said contract valuation thereof, including additives applicable thereto.

(b). Whenever any part of the Joint Facilities shall be withdrawn from Joint Use by mutual agreement, and Union Pacific elects to retain said part for its exclusive use, or use by or with any third party, then said contract valuations upon which the Southern Company shall thereafter be required to pay rental under Articles VIII and XII hereof, shall be reduced according to the contract valuation thereof, including additives applicable thereto.

Section 2. Any loss chargeable to Railway Operating Expenses or Profit and Loss Accounts, resulting from sale, abandonment or other retirement of the Joint Facilities, or any part thereof, shall first be divided to determine the portions thereof applicable to the period of the sole and exclusive use of the Joint Facilities by Union Pacific or Southern Company, as the case may be, and the period of the Joint Use of the Joint Facilities by Southern Company and Union Pacific, and the portion applicable to the period of such joint use shall be apportioned to the parties in the same proportion as the expense for maintenance of the particular facility, or part thereof, involved, and the portion applicable to the period of exclusive use by the Southern Company shall be borne by said company; provided, however, that any loss or gain incurred or realized by Union Pacific in the sale or retirement of land shall be borne solely by or inure to the sole benefit of Union Pacific.

Section 3. Notwithstanding the foregoing, no withdrawal, change in, elimination, disposal or retirement of any part of the Joint Facilities which will permanently or materially impair the usefulness to the Southern Company of the Joint Facilities shall be made without the consent of the Southern Company.

## ARTICLE XV.

### CLASSIFICATION OF ACCOUNTS

Section 1. Expenditures chargeable to Investment in Road and Equipment and to Railway Operating Expenses and other appropriate accounts, except as in this agreement otherwise provided, occasioned by the construction,

operation, maintenance, repairs, renewals, replacements and retirements of the Joint Facilities, shall be classified in accordance with current Interstate Commerce Commission regulations as followed by the Union Pacific and shall be added to the rental base or apportioned on a cars handled percentage basis as defined in Article XII and Article IX of this agreement.

## ARTICLE XVI.

### CHANGES IN MOTIVE POWER

Section 1. It is understood and agreed that changes, additions or betterments made in or to the Joint Facilities, or any part thereof, on account of a change in the kind or character of motive power operated by either party on any of its lines into the City of Los Angeles to other than the methods used by either party as of the date of the execution of this agreement, shall not come within the meaning of changes, additions or betterments hereinabove provided in Article XII, but that each party shall have the full and free right, at its sole cost and expense and without entailing any charge or liability upon the other party, as to original installation, operation, maintenance, repairs, renewals, replacements and retirements, to make any changes, additions or betterments upon the Joint Facilities, or any part thereof, incident to such change in motive power, provided the same shall not unreasonably impair the use or safe operation of the Joint Facilities by either party. If, after one of the parties hereto shall have changed to such other kind or character of motive power, the other party shall desire to do likewise, then it shall have the right to do so, and the special facilities, if constructed by Union Pacific,

shall thereupon be deemed and treated as additions and betterments to the Joint Facilities as though provided under Article XII of this agreement. If such facilities shall have been constructed by Southern Company, then Union Pacific, if it shall desire to acquire and use the same, shall pay to Southern Company the actual cost to it, together with the cost of any subsequent changes, additions or betterments thereto, and Southern Company shall convey the same to Union Pacific free, clear and released from all liens, mortgages and encumbrances thereon, and thereupon the facilities shall then be deemed additions and betterments to the Joint Facilities as though provided by Union Pacific under said Article XII.

## ARTICLE XVII.

### ADMISSION OF OTHER RAILROADS

Section 1. Union Pacific reserves the right at all times to grant to other railroad company or companies the use of the Joint Facilities, or any part thereof, in common with itself and Southern Company, provided such admission of other railroad company or companies shall not unreasonably hinder or obstruct the Southern Company in the use of the rights granted hereunder. In case any other railroad company or companies shall be, at any time during the life of this agreement, admitted to the use of any or all of said Joint Facilities, then during the time the said railroad company or companies so admitted shall use or be entitled to the use of said Joint Facilities, or any part thereof, the sums payable to the Union Pacific by the Southern Company under Articles VIII and XII and Subdivisions (a) and (b) of Section 1 and Section 2 of Article X hereof on account of the said Joint Facilities,

or the part thereof so used, shall be that proportion of the charges for rental and taxes applicable to that portion of said Joint Facilities which the company or companies so admitted shall use or be entitled to use that one bears to the entire number of railroad companies at the time entitled to use the Joint Facilities or such part thereof.

Section 2. In the event Union Pacific shall grant to other railroad company or companies the use of the Joint Facilities, or any part thereof, as hereinabove provided, the charges for operation, maintenance, repair, renewal, replacements and retirements shall be borne by each company using the Joint Facilities, or any part thereof, in accordance with its respective cars handled percentage, except that charges in connection with retirements shall be borne as provided in Article XIV.

Section 3. The provisions of this article shall not apply to any temporary permission granted by Union Pacific to other railroad company or companies to use the joint facilities or any part thereof, for detour purposes for periods not exceeding sixty (60) days in any calendar year.

## ARTICLE XVIII.

### INSURANCE—PREMIUMS AND RECOVERIES

Section 1. Premiums paid for insurance carried by Union Pacific on the Joint Facilities shall be prorated on a cars handled percentage basis, provided that if in lieu thereof Union Pacific shall carry its own insurance the cost thereof as allocated to the Joint Facilities shall be borne on a cars handled percentage basis.



Section 2. In the event Union Pacific shall voluntarily, or pursuant to Federal or State regulations, carry Federal or State compensation insurance, or insurance of any similar character, for the protection of joint employees while engaged in the construction, operation, maintenance, repair, renewal or retirement of the Joint Facilities, said policies shall protect both Union Pacific and Southern Company, and the cost of the premiums therefor shall be divided in accordance with the provisions of Articles VIII, IX and XII, as the case may be.

Section 3. In the event the Joint Facilities, or any part thereof, are damaged or destroyed by fire or otherwise during the life of this agreement, Union Pacific shall repair or restore the same unless the parties hereto agree that the repair or restoration thereof is not necessary. Any insurance recovered by Union Pacific as a result of said damage or destruction shall be applied in reduction of the charges to Railway Operating Expenses or Profit and Loss (as the case may be) occasioned by such repair, restoration or retirement in which Southern Company is required to participate as in Article IX and Article XIV provided.

## ARTICLE XIX.

### LIABILITY

With respect to liability as in this Article provided Southern Pacific Railroad Company and Southern Pacific Company shall be considered one party, and Los Angeles & Salt Lake Railroad Company and Union Railroad Company shall be considered one party, and in either case where the term "user" is employed shall be considered one user.

Section 1. The term "loss or damage" as used in this Article relates to loss or damage arising upon or adjacent to the Joint Facilities, and embraces all losses and damages growing out of the loss of or damage to property, including property belonging to any or all of the users, and all losses and damages growing out of the death of or injury to persons, and also embraces all costs and expenses incident to such losses or damages. With respect to questions of liability, neither the Joint Facilities nor the work trains or work equipment of Union Pacific or Southern Company, while performing work on the Joint Facilities for the benefit thereof shall be deemed the exclusive property of any user.

Section 2. The term "joint employees" as used in this agreement includes all officers of the rank of Division Superintendent or those of lesser rank and all other employees while actually engaged in the management, construction, operation, maintenance, repairs, renewals, replacements or retirements of any of the Joint Facilities, but it shall not include any such officer or employee during such time as he is performing any service for or on behalf of or in respect to the use of the Joint Facilities solely for one of the users; when so employed such officer or employee shall be deemed for the time being the sole employee of the user for whom or in whose behalf or in respect to whose use of the Joint Facilities such service is being performed.

Section 3. Loss or damage due

- (a) To the negligence or wrongful act or omission of the sole employee or employees of one of the users, or

(b) To the concurring negligence or wrongful act or omission of a joint employee and of the sole employee or employees of one of the users, or

(c) To the failure or defect of the exclusive equipment or appliances of one of the users,

shall be borne by the user whose sole employee or employees or whose exclusive equipment or appliances so caused or contributed to such loss or damage.

#### Loss or damage due

(d) To the concurring negligence or wrongful act or omission of the sole employee or employees of one user and the sole employee or employees of the other user or users, or

(e) To the concurring negligence or wrongful acts or omissions of a joint employee and of the sole employee or employees of one user, and of the sole employee or employees of any other user or users;

shall be borne equally by the users involved, except that each user shall bear all such loss or damage in respect to its own exclusive property or property in its custody or upon its cars, and as to its sole employees, passengers, or persons upon its locomotives, cars or trains.

#### Loss or damage due

(f) To the negligence or wrongful act or omission of a joint employee or employees, or

(g) To the failure or defect of any part of the Joint Facilities, or in the work trains or work equipment of Union Pacific or Southern Company while performing service upon or in respect to the Joint Facilities, or

(h) To unknown causes, or

(i) To the acts of third persons not in the employ or under the control of any user,

shall be borne by each user as to its own exclusive property or property in its custody or upon its cars, and as to its sole employees, passengers, or persons upon its locomotives, trains, or cars, while as to other persons and their property and as to joint employees and the Joint Facilities, and as to work trains or work equipment of Union Pacific or Southern Company while performing work upon or in respect to the Joint Facilities, such loss or damage shall be deemed an expense of operation and maintenance or addition and betterment, as the case may be, and shall be divided between the users in the manner described in Articles IX and XII hereof, except that in cases of accidents in which the locomotives, cars, trains (except work trains) or sole employees of one or more users are concerned, the liability for any resulting loss or damage as to such persons and their property, joint employees and Joint Facilities, work trains or work equipment shall be borne solely by the user if only one, or jointly and equally by the users if more than one, whose locomotives, cars, trains or sole employees are concerned.

Section 4. Anything hereinabove to the contrary notwithstanding, no user shall have any claim against any other user for loss or damage of any kind caused by or resulting from interruption or delay to its business.

Section 5. Each user who may be liable for or be required hereunder to bear any loss or damage will in-

dennify and save harmless the other user or users from such loss or damage and against the payment of and liability for such loss or damage.

Section 6. Each user may make settlement of all claims for loss or damage for which it and any other user shall be jointly liable hereunder, but no payment in excess of Five Hundred Dollars (\$500.00), except in emergency cases for the settlement of personal injury claims and then not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) shall be voluntarily made by any user in settlement of any such claim without first having obtained in writing the consent of the other user or users involved. In making voluntary settlements as aforesaid, the user making the same shall in all cases procure from each claimant and deliver to the other user or users involved a written release from liability in the premises.

Section 7. If any suit shall be brought against any user or users, and any judgment shall be recovered which any user or users shall be compelled to pay and other user or users shall, under the provisions of this agreement, be solely liable therefor, then such other user or users shall on demand promptly repay to the user or users paying the same any moneys which the user or users paying the same shall have paid or been required to pay, whether in the way of damages, costs, fees or other expenses; and, if the liability in any such case or cases is joint as between the users, the user or users paying the same shall be reimbursed to the extent and in the proportion that the other user or users may be required to bear or participate in such liability as hereinabove provided.

Section 8. No user or users shall be concluded by any judgment at law or in equity against any other user or users unless it or they have had reasonable notice from such other user or users requiring it or them to appear in an action or suit and make defense thereto for its or their own account or jointly with the other user or users. If such notice shall have been given by any user or users, and the other user or users involved receiving the same shall fail to appear and make defense, it or they shall be concluded by the judgment or decree in said suit.

## ARTICLE XX.

### COMPLIANCE WITH LAWS AND REGULATIONS

Section 1. Each user undertakes and agrees in respect to its use of the said Joint Facilities and the operation of equipment and appliances thereon or thereover to comply with all Federal and State laws or regulations, and laws, rules, regulations or orders promulgated by any municipality, board or commission in respect thereto for the protection of employees or other persons or parties, and if any failure on its part so to comply therewith shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the other user or users, promptly to reimburse and indemnify such other user or users for or on account of such fine, penalty, cost or charge and all expenses and attorney's fees incurred in defending any action which may be brought against such other user or users on account thereof, and further agrees, in the event of any such action, upon notice thereof being given by such other user or users, to defend such action free of all cost, charge and expense to such user or users.

**ARTICLE XXI.****EQUIPMENT**

Section 1. Any locomotive, motor car, car or equipment used or operated by any party using the Joint Facilities, or any part thereof, shall be deemed to be the motive power or equipment of such party, whether owned by it or not.

**ARTICLE XXII.****PICKING UP WRECKS**

Section 1. If any locomotive, motor car, car or equipment of either party hereto shall be wrecked or derailed while upon the Joint Facilities, the same shall be picked up or re-railed without unnecessary delay by either Southern Company or Union Pacific as may be mutually agreed upon from time to time, and the expense of picking up such wreck or derailed equipment shall be borne by the parties in accordance with the provisions of Article XIX hereof.

**ARTICLE XXIII.****REVENUES**

Section 1. Revenues derived from rental of any part of the Joint Facilities, other than from railroad companies operating trains or cars thereon and thereover, shall be so apportioned that the Southern Company shall receive the portion of such revenue in the ratio that one bears to the total number of railroad companies using the Joint Facilities; provided, however, that no apportionment shall be made of the revenues received from any agreement amounting to Five Dollars (\$5.00) or less per annum.

**ARTICLE XXIV.****PAYMENT OF BILLS**

Section 1. All sums payable hereunder by Southern Company to Union Pacific shall be paid, within thirty (30) days after rendition of bills therefor, in lawful currency of the United States of America. Errors or disputed items in such bills shall not be deemed a valid excuse for delay in payment, but shall be subject to subsequent adjustment.

**ARTICLE XXV.****ARBITRATION**

Section 1. With respect to arbitration as in this Article provided, Southern Pacific Railroad Company and Southern Pacific Company shall be considered one party, and Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company shall be considered one party.

Section 2. In case any disagreement shall arise between the parties hereto as to the meaning of any provisions of this agreement, or concerning the observance or performance of any covenant hereof, or as to any other matter arising under this agreement, whether or not assigned under this agreement as a matter of arbitration, then such subject of disagreement shall be submitted to the arbitrament of three disinterested persons who shall be experienced railroad men then or recently in steam railroad service, and who shall be experienced in matters of the character in dispute, to be chosen as follows:

Section 3. The party desiring arbitration shall select its arbitrator and give written notice thereof to the other



party, and shall in such notice state precisely the matter or matters which it proposes to bring before the arbitrators, and only the matters so stated shall be considered by them. Within thirty (30) days after the service of such notice, the party so notified shall select an arbitrator and notify the moving party in writing of such selection. If the party so notified shall not select an arbitrator and notify the moving party in writing of such selection as aforesaid, then the second arbitrator may be appointed by the Judge of the District Court of the United States within whose District the Joint Facilities are located, who shall have served longest in that capacity in said District and who is willing to act, upon application of the moving party upon giving ten (10) days' written notice of such application to the other party to the controversy.

Section 4. The arbitrators so selected or appointed in the manner provided in the next preceding section within thirty (30) days after the designation of the last one chosen shall jointly name a third arbitrator.

Section 5. If in any case, as aforesaid, the two arbitrators so chosen or designated shall fail to agree upon the selection of such third arbitrator, such arbitrator may be appointed by the Judge of the District Court of the United States within whose District the Joint Facilities are located, who shall have served longest in that capacity in said District and who is willing to act upon application of the moving party upon ten (10) days' written notice of such application to the other party to the controversy.

Section 6. The arbitrators having taken and subscribed an oath before some person authorized by law to admin-

ister oaths, to the effect that they will well and truly try and impartially and justly decide the matter in controversy according to the best of their ability (which oath shall be filed with their decision) shall, as soon as possible after their selection, meet to hear and decide the question or questions submitted to them, and shall give to each of the parties hereto reasonable notice of the time and place of such meeting. The hearings of the board of arbitrators shall be conducted in a lawful manner, and after hearing all parties interested and taking such sworn testimony or making such investigation as they shall deem necessary, the written decision of the arbitrators, signed by a majority of them, shall determine the controversy; and such determination shall be final and conclusive upon the parties to the arbitration.

Section 7. Upon the making of such decision each party hereto shall and will immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision may be required of it.

Section 8. The books and records of the parties hereto, so far as they relate to the matters of arbitration, shall be open to the examination of the arbitrators.

Section 9. The party against which the award shall be made shall pay all of the fees and expenses of the arbitration, or such fees and expenses may be apportioned by the board of arbitrators as it may determine.

Section 10. Until the arbitrators shall make their award upon any question submitted to them, the business, settlements and payments to be transacted and made under this agreement shall continue to be trans-

acted and made in the manner and form existing prior to the rise of such question.

## ARTICLE XXVI.

### PROVISIONS BINDING UPON ALL RAILROAD COMPANIES

Section 1. The provisions of Article XIX and Article XXI of this agreement shall be binding not only as between the parties hereto but as between them and all railroad companies from time to time using the Joint Facilities, or any part thereof, and Union Pacific shall cause to be inserted in every contract for the use of the Joint Facilities, or any part thereof, provisions covering the matters treated in said Articles and in this Article identical with the provisions of said three Articles stated, and such contracts shall in this respect be construed as if each one were signed by all of the railroad companies at any time using the Joint Facilities, or any part thereof. Failing to cause such provisions to be inserted in the contract with any railroad company hereafter admitted to the use of the Joint Facilities, or any part thereof, Union Pacific shall assume such obligations as such other company would have assumed if such provisions had been inserted in its contract.

## ARTICLE XXVII.

### INSPECTION OF RECORDS

Section 1. So much of the books, accounts and records of each party as relate to the subject matter of this agreement, shall at all reasonable times be open to inspection by the proper officers and agents of the other party.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in four counterparts by their respective officers thereunto duly authorized and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries or Assistant Secretaries the day and year first above written.

LOS ANGELES, & SALT LAKE  
RAILROAD COMPANY,

Signed W. M. JEFFERS

By: ~~(Signed) Wm. Jeffers,~~

*Its President.*

Attest:

(Signed) PAUL RIGDON,  
*Assistant Secretary.*

(SEAL)

UNION PACIFIC RAILROAD  
COMPANY,

Signed W. M. JEFFERS

By: ~~(Signed) Wm. Jeffers,~~

*Its President.*

Attest:

(Signed) PAUL BIGDON,  
*Secretary.*

(SEAL)

SOUTHERN PACIFIC RAILROAD  
COMPANY,

By: (Signed) ROY G. HILLEBRAND,  
*Its Second Vice-President.*

Attest:

(Signed) JAY D. BACON,  
*Assistant Secretary.*

(SEAL)

SOUTHERN PACIFIC COMPANY,

By: (Signed) A. T. MERCIER,  
*Its President.*

Attest:

(Signed) JAY D. BACON,  
*Assistant Secretary.*

(SEAL)

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6.

Section 2. This agreement is subject to all valid existing contracts, leases, liens and encumbrances which may affect said Joint Facilities.

#### ARTICLE XXXII

##### FILING AGREEMENT

Section 1. Southern Company shall file copies of this agreement with the Interstate Commerce Commission and the Railroad Commission of the State of California.

#### ARTICLE XXXIII

##### SUCCESSORS AND ASSIGNS

Section 1. The several covenants and stipulations herein contained shall be mutually binding upon and inure to the benefit of the parties hereto, their successors, lessees and assigns; provided, however, that if Los Angeles & Salt Lake Railroad Company resumes possession of its railroad it shall ipso facto be substituted in the place and stead of Union Pacific, and that if Southern Pacific Railroad Company resumes possession of its railroad it shall ipso facto be substituted in the place and stead of Southern Company.

#### ARTICLE XXXIV

##### EFFECTIVE DATE—TERM OF AGREEMENT

Section 1. This agreement shall take effect as of 12:01 A.M., the 7th day of May, 1939, and shall continue in force to and including April 14, 1988, and thereafter until terminated by written notice given (either before or after said expiration date) by either party hereto to the other on any date in such notice stated, not less, however, than two (2) years subsequent to the date on which such notice shall be given.

## ARTICLE XXVIII.

## DEFAULT

Section 1. If Southern Company shall fail to pay any sum payable by it hereunder on the date when the same shall be due, or shall fail to perform or comply with any other covenant or condition by it to be performed and complied with under this agreement, and such default shall continue for a period of six (6) months after written demand for such payment or performance, as in Article XXX provided, shall have been made upon Southern Company by Union Pacific, then and in such case Union Pacific shall have and is hereby given the right at its election to declare this agreement terminated, and after giving notice in writing of such election to Southern Company, this agreement then and there by such notice shall be terminated and all rights of Southern Company shall cease and determine, and Union Pacific may exclude Southern Company, and anyone acting under its permission and authority, wholly from the Joint Facilities. Such termination, however, shall not relieve either party from any liability which may have attached or accrued prior to or at the date of such termination or deprive either party of the right to enforce any such liability or the benefit of any covenant or obligation in this agreement contained to indemnify and hold it harmless. It is expressly agreed that the failure or refusal of Southern Company to make payments or to perform or comply with any covenants or conditions which shall be the subject of arbitration or litigation between the parties hereto shall not, pending final determination of such arbitration or litigation, be deemed cause for termination of this agreement.

**ARTICLE XXIX.****REMOVAL OF SOUTHERN COMPANY'S FACILITIES**

Section 1. Upon the expiration or earlier termination of this agreement, Southern Company shall promptly remove from the Joint Facilities any tracks or facilities then owned by it and restore the Joint Facilities to substantially their former condition, and if Southern Company shall fail to make such removal or restoration within one hundred and eighty (180) days from the date of such expiration or termination, then such tracks or facilities shall become the property of Union Pacific.

**ARTICLE XXX.****NOTICES**

Section 1. Demands or notices under this agreement shall be in writing to the President, any Vice-President or any General Manager of the party hereto to be notified.

**ARTICLE XXXI.****MORTGAGES, LIENS, ETC.**

Section 1. The rights that Southern Pacific Railroad Company and Southern Pacific Company acquire hereunder shall be deemed appurtenant to and running with the respective railroads and properties of either or both of said companies in the State of California, and either or both of said companies may sell, assign, lease or mortgage said rights in connection with and as a part of the sale, assignment, lease or mortgage as an entirety of all of its or their respective railroads and properties in said State.



DEWEY BALLANTINE

333 SOUTH HOPE STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE 213 626-3399 FACSIMILE 213 625-0562

December 18, 1991

Via Messenger

Mr. Jack Shah  
Facilities Engineering Manager  
Rail Construction Corporation  
818 West Seventh Street, Suite 1100  
Los Angeles, California. 90017

Re: Union Pacific Purchase and Sale Agreement

Dear Jack:

Pursuant to our telephone conversation today, enclosed are copies of the following fully executed agreements in connection with the East Bank acquisition from Union Pacific:

1. Purchase and Sale Agreement,
2. Riverside Operating Agreement,
3. Riverside Nonexclusive Lease of Railroad Facilities (without the large maps attached as part of Exhibit A--Richard Stanger has originals of these maps attached to the original of the agreement I sent to him),
4. Hobart Operating Agreement.

If you have any questions, please do not hesitate to call.

Sincerely,

  
Arthur R. Mann

2832AH12  
enclosures