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BY HAND

Mr. Grady Cothen  
Chair, Railroad Safety Board  
Federal Railroad Administration  
1120 Vermont Avenue, N.W.  
Washington, D.C. 20590

October 26, 1999

Re: FRA Waiver Petition No. FRA-1999-6253 -4

Dear Mr. Cothen:

The purpose of this letter is to update you in regard to a change in control of the Freight Operator on the Shared Trackage and to correct or clarify the Waiver Petition in several very minor respects. All capitalized terms in this letter that are not otherwise defined herein are used as defined in the Waiver Petition.

The Waiver Petition explained that UTA was in discussions with another experienced short line operator about a possible transfer of the freight railroad easement and advised FRA that UTA would finish details if any such transfer took place (Waiver Petition, p.6, n.8). On September 30, 1999, Utah Railway Company acquired beneficial ownership of the stock of Salt Lake City Southern Railroad Company, Inc. ("SLCS"). UTA and officials of the Utah Railway Company have held extensive meetings regarding shared use of the Shared Trackage under the terms and conditions described in the Waiver Petition (as corrected and clarified in minor respects by this letter). As explained in the accompanying letter from Gary L. Barker, Utah Railway Company has reviewed the Waiver Petition and believes that it accurately describes the Shared Trackage and affected adjacent tracks, the current and planned SLCS freight operations, and the temporal separation provisions in the Coordination Agreement between UTA and SLCS.

UTA and SLS have made several minor modifications to the Coordination Agreement. (The Amended Coordination Agreement and a copy marked to show all changes from the former Coordination Agreement are enclosed.) The modifications are either not relevant to temporal separation or go even further than the former Coordination Agreement to ensure temporal separation. The changes relevant to temporal separation are identified in the numbered items set forth below:

DEPT. OF TRANSPORTATION  
DOCKETS  
99 NOV 10 PM 1:53

Firm/Affiliate Offices  
Amsterdam\*  
Brussels\*  
Chicago †  
Geneva\*  
Los Angeles\*  
Minneapolis\*  
New York\*  
Orange County\*  
Paris \*  
Saint Paul\*  
Silicon Valley\*  
Washington, D.C.

Mr. Grady Cothen  
October 26, 1999  
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1. Section 5 was amended to include additional language outlining the procedures ensuring that temporal separation is maintained, including procedures governing the entry and exit of the Shared Trackage by both parties, and procedures for the handoff of the Shared Trackage at the conclusion of the respective exclusive periods.
2. Section 5 was amended to include additional language outlining the procedures pursuant to which special permission will be granted to either UTA or the Freight Operator to enter the Shared Trackage outside their respective exclusive periods, including procedures which ensure that the Freight Operator and UTA will never operate simultaneously on the Shared Trackage.
3. The Coordination Agreement was modified throughout to affirm that Shared Trackage will no longer include that portion of the **Midvale** Spur connecting the UTA vehicle maintenance facility with the TRAX Main Line.

The following are minor corrections and clarifications to the Waiver Petition:

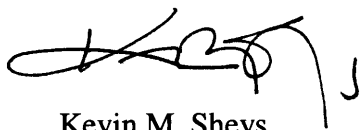
1. Page 5, beginning on line 7 (all references to lines used in this letter do not include headings), delete "South of 10000 South the tracks do not connect with the general railroad system on its south end" and add "South of 10000 South the tracks connect with the general railroad system at Mount, UT, also known as Point of Mountain, at the Salt Lake County - Utah County border."
2. Page 7, beginning on line 12, delete "are to be negotiated through a Coordination Committee created by the Coordination Agreement" and add "are to be negotiated through the weekly track access meetings held between by parties as outlined in the Coordination Agreement."
3. Page 8, beginning on line 9, delete "During this period" and add "During the Passenger Period."
4. Page 8, on line 10, delete "and freight trains."
5. Page 8, after the end of the sentence ending on line 10, add "During the Freight Period, UTA will manage and control entry onto and exit off the Shared Trackage of all freight trains, but the Freight Operator shall manage and control freight trains while they are on the Shared Trackage."
6. Page 10, on line 2, delete "5:00 a.m." and add "12:00 a.m."

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7. Page 14, on line 7, delete "system safety program standard" and add "SSPS."
8. Page 14, Footnote 12, delete "SPPP" and add "SSPP."
9. Page 19, on line 5, delete "ETA" and add "FTA."
10. Page 25, on line 4, delete "display rear and" and add "display rear-end."
11. Page 3 1, on line 13, delete "Although TRAX controller dispatch will control the movement of freight trains once they are admitted to the Shared Trackage" and add "Although TRAX controllers will manage and control the entry onto and exit off of the Shared Trackage by freight trains."

Please contact me if you have any questions regarding the foregoing.

Respectfully submitted,



Kevin M. Sheys

cc: J. Fisher  
G. McBride

# UTAH RAILWAY COMPANY

340 HARDSCRABBLE ROAD

HELPER, UTAH 84526

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October 15, 1999

Mr. Grady C. Cothen, Jr.  
Chair, Railroad Safety Board  
Federal Railroad Administration  
1120 Vermont Avenue, N. W.  
Washington, D.C. 20590

Dear Mr. Cothen:

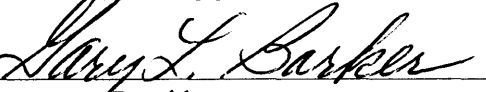
Reference is made to the Petition (the "Petition") of Utah Transit Authority ("UTA") for Approval of Shared Use and Waiver of Federal Railroad Administration Regulations, filed with the Federal Railroad Administration on August 20, 1999, in connection with the planned TRAX Light Rail Transit Project.

Utah Railway Company ("URC"), the parent corporation of Salt Lake City Southern Railroad Company, Inc. ("SLCS"), the freight operator on the Shared Trackage (as that term is defined in the Petition) has reviewed the Petition. URC agrees that the Petition contains accurate descriptions of the Shared Trackage and affected adjacent tracks, as well as of the current and planned freight operations by SLCS over the Shared Trackage and affected adjacent tracks. The Petition also contains an accurate description of the temporal separation agreement between UTA and SLCS, as referenced in the Petition. URC will cause SLCS to adhere to its contractual commitments under the Coordination Agreement.

We believe that the Petition describes a set of procedures which will accommodate safe passenger and freight rail operations. Moreover, the structure will permit SLCS to provide freight service for customers in the service area.

Sincerely

UTAH RAILWAY COMPANY

By:   
President

## AMENDED ADMINISTRATION AND COORDINATION AGREEMENT

This AMENDED ADMINISTRATION AND COORDINATION AGREEMENT (the “Coordination Agreement”) is made as of the 18th day of October in Salt Lake City Southern Railroad Co., Inc., a Delaware corporation (“Freight Operator”), and Utah Transit Authority, a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended (“UTA”).

### WITNESSETH:

WHEREAS, pursuant to the Purchase and Sale Agreement between Union Pacific Railroad Company (“UPRR”) and UTA, dated as of October 30, 1992 (the “Purchase Agreement”), UPRR conveyed to UTA certain right of way, trackage and other assets and improvements (more fully described and **defined** below as the “Right of Way”) excluding a **freight** railroad operating easement which was retained by UPRR;

WHEREAS, pursuant to a Permanent Freight Railroad Operating Easement agreement between UPRR and Freight Operator, dated as of March 31, 1993 (the “Easement Agreement”), UPRR conveyed to Freight Operator the **freight** railroad operating easement on the Right of Way (defined below as the “Freight Easement”) in order to enable Freight Operator to provide common carrier rail **freight** operations on the Right of Way;

WHEREAS, on March 31, 1992, UTA and Freight Operator, then a Texas corporation, executed a predecessor Administration and Coordination Agreement that governed the joint use of the Right of Way prior to UTA’s construction of Passenger Service improvements to the Right of Way;

WHEREAS, UTA has now substantially completed construction of such Passenger Service

improvements, and the parties wish to set forth the terms and conditions pursuant to which the parties will jointly use the Right of Way for both Freight Rail Service and Passenger Service operations; and

WHEREAS, the parties agree that (except as set forth in Section 3.3 and Section 14.9 hereof) this Coordination Agreement will supersede and replace the March 31, 1992 Administration and Coordination Agreement.

NOW, THEREFORE, in consideration of the premises, reservations, covenants and undertakings contained herein, UTA and Freight Operator covenant and agree as follows:

#### SECTION 1. DEFINITIONS

The following terms and phrases shall be defined as follows for the purposes of this Coordination Agreement:

“Closing Date” shall mean the date of execution of this Coordination Agreement.

“Coordination Agreement” shall mean this Amended Administration and Coordination Agreement, which supersedes and replaces the predecessor Administration and Coordination Agreement between Freight Operator and UTA executed on March 31, 1993.

“Easement Agreement” shall mean that certain Permanent Freight Railroad Operating Easement setting forth the rights and obligations to provide Freight Rail Service, by and between UPRR and Freight Operator and dated as of March 31, 1993.

“Exclusive Freight Period” shall have the meaning ascribed in Section 5.4 hereof.

“Exclusive Passenger Period” shall have the meaning ascribed in Section 5.4 hereof.

“Freight Easement” shall mean the easement acquired by Freight Operator for common carrier rail freight operations on the Right of Way pursuant to the terms of the Easement Agreement.

“Freight Operator” shall mean Salt Lake City Southern Railroad Co., Inc., a Delaware corporation.

“Freight Rail Service” shall mean the common carrier rail **freight** operations to be conducted by Freight Operator on the Right of Way.

“Freight Trackage” shall mean all trackage and track-related facilities **affixed** to the Right of Way which are designated as Freight Trackage as of the Closing Date and as shown in the attached Exhibit “A” (which is incorporated herein by this reference), any Joint Trackage and/or Passenger Trackage which is later designated by UTA to be Freight Trackage pursuant to Section 2.3 hereof, or any additions to the existing trackage and track-related facilities constructed by Freight Operator on the Right of Way after the Closing Date pursuant to Section 4.1 hereof.

“**Hazardous Materials**” shall mean any pollutant, toxic **substance**, **hazardous waste**, hazardous substance, oil of any kind or in any form (including petroleum, fuel oil, diesel oil, crude oil or any fraction thereof), and any other substance **defined** in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, or any other **federal**, state, or local environmental law, regulation, ordinance, rule or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

“Joint Trackage” shall mean all trackage and track-related facilities **affixed** to the Right of Way which are designated as Joint Trackage as of the Closing Date and as shown in the attached Exhibit “A,” or any Freight Trackage or Passenger Trackage designated by UTA to be Joint Trackage pursuant to Section 2.3 hereof. However, notwithstanding the foregoing, the term “Joint Trackage” shall not include any portion of the access track connecting the **UTA main** line (a/k/a the

Provo Subdivision Line) to **UTA's** Lovendahl Maintenance Facility.

“Loss or Damage” shall mean all costs, liabilities, judgments, fines, fees (including without limitation reasonable attorneys’ fees and disbursements) and expenses (including without limitation defense expenses) of any nature arising from or in connection with death of or injury to persons, including without limitation employees of the parties; or damage to or destruction of property, including the Joint Trackage, the Freight Trackage, the Passenger Trackage or any property on the Right of Way, in connection with Freight Rail Service or Passenger Service on the Right of Way; or business losses (including without limitation the economic loss related to lost Passenger Service or lost Freight Rail Service), or the costs necessary to mitigate or cover such business losses, resulting **from** or in connection with an act or omission giving rise to a claim for Loss or Damage.

“**Modification**” or “**Modifications**” shall mean alterations or additions to, or removal of, ~~then-~~ existing trackage on the Right of Way, including but not limited to new connections and changes in railroad communication systems, signals or dispatching facilities.

“**Modification Agreement**” shall mean a written **agreement** between the parties hereto entered to allow construction and use of a Modification.

“Passenger Service” shall mean the transportation of passengers on all or any portion of the Right of Way, which shall be provided by UTA or its designee.

“Passenger Trackage” shall mean all trackage and track-related facilities **affixed** to the Right of Way which are designated as Passenger Trackage as of the Closing Date and as shown in the attached Exhibit “A,” any segments of trackage and track-related facilities constructed by UTA on the Right of Way after the Closing Date pursuant to Section 4.2 (absent some other designation by UTA) or 4.3 (if and to the extent Passenger Trackage is being realigned) hereof, or any Freight



Trackage or Joint Trackage hereafter designated by UTA to be Passenger Trackage **pursuant** to Section 2.3 hereof UTA **hereby** designates, pursuant to Section 2.3 hereof, the access track connecting the **UTA mainline** (a/k/a the Provo Subdivision Line) to **UTA's** Lovendahl Maintenance Facility as "Passenger Trackage."

"Purchase Agreement" shall mean that certain Purchase and Sale Agreement by and between UTA and UPRR, dated as of October **30, 1992**.

**"Release"** shall mean any releasing, spilling, leaking, **pumping, pouring**, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

"Right of Way" shall mean the following described portions of the property interests **conveyed by UPRR to UTA pursuant** to the terms and conditions of the Purchase **Agreement**, except to the extent that such property interests were specifically excluded **from** the scope of the Freight Easement retained by UPRR and transferred to Freight Operator: all rights of way, trackage, and structures included in or adjacent to the property described in Parcels No. 1 and 2 of Exhibit "A" to the Purchase Agreement, including all real property shown and described in the Maps and **other** documents regarding the Right of Way which were included in Exhibit "A" to the Purchase Agreement, and all fixtures, tracks, rails, ties, switches, crossings, tunnels, bridges, trestles, culverts, buildings, structures, facilities, leads, spurs, turnouts, tails, sidings, team tracks, signals, crossing protection devices, railroad communications systems, poles and all other operating appurtenances that are situated: (1) on or adjacent to the trackage formerly constituting part of **UPRR's** Provo Subdivision Line **from** the Salt Lake County/Utah County boundary line (approximately UPRR milepost 775.19) to the Ninth Street Junction (which is on the North side of 900 (NINTH) South Street in Salt Lake City at approximately **UPRR** milepost 798.74); and (2) on or adjacent to the

trackage formerly constituting **UPRR's** Lovendahl Spur, also known as the **Midvale Lead**, which departs **from** the trackage referenced above in a southwesterly direction at approximately 6400 (SIXTY-FOUR HUNDRED) South Street in Murray, Utah (approximately former **UPRR** milepost **790.52**), crossing under both I-15 and the Denver and Rio **Grande** Western Railroad Company ("**D&RGW**") main line, and then heading south to approximately 7400 South, to the point of intersection with the **D&RGW** right of way, a distance of approximately 1.4 miles.

“Routine Maintenance” shall include inspections, testing, rail profiling, adjustments, lubricating, welding, respiking, surfacing, maintenance of surfaces at grade crossings, tamping and any other routine and ordinary maintenance, repair and renewal functions on the Joint Trackage and arising from the normal usage of the Joint Trackage, all of which shall be performed by UTA.

“**TRAX**” shall mean the light rail transit system currently constructed by **UTA**, a portion of which is situated upon the Right of Way and any current or future extensions to such light rail transit system.

“TRAX Control Center” shall mean the entity designated by **UTA** to authorize and monitor the movement of vehicles, individuals or other objects along the Joint Trackage and Passenger Trackage, which department must give advance authorization prior to either party entering, occupying or exiting the Joint Trackage.

“**UTA**” shall mean Utah Transit Authority, a public transit district organized under Title **17A**, Chapter 2, Part 10, Utah Code Annotated 1953, as amended, and its successors or assigns.

## **SECTION 2. FREIGHT RAIL SERVICE: PASSENGER SERVICE**

SECTION 2.1 Freight Operator shall have the exclusive right and obligation to provide Freight Rail Service on the Freight Trackage and the Joint Trackage. Freight Operator shall have

no right or obligation to conduct, and shall not conduct, directly or indirectly, Freight Rail Service on the Passenger Trackage or any other activity whatsoever on the Right of Way that is not necessary for Freight Rail Service. UTA shall have no right or obligation to conduct, and shall not conduct, directly or indirectly, Freight Rail Service on the Right of Way.

SECTION 2.2 UTA shall have the exclusive right to conduct, by itself or through **UTA's** designee or otherwise, Passenger Service on the Right of Way. Freight Operator shall have no right or obligation to conduct, and shall not conduct, directly or indirectly, Passenger **Service on the Right** of Way; provided, however, that UTA and Freight Operator may arrange, under a separate written agreement, for Freight Operator to perform certain services on behalf of UTA with respect to the Passenger Service.

SECTION 2.3 UTA may **from** time to time, upon thirty (30) days written notice to Freight Operator, change any track designation (Freight Trackage, Passenger Trackage or Joint Trackage) to any other track designation; provided, however, that no such change in track designation shall unreasonably interfere with Freight Operator's Freight Rail Service on the Right of Way; and provided further, that the parties may agree to immediate track redesignations to respond to emergencies or the needs of the parties. Notwithstanding the foregoing, UTA may not, **after** the Closing Date, designate trackage as Freight Trackage without the written consent of Freight Operator. In order to ensure safe, economical and reliable Freight Rail Service and Passenger Service on the Right of Way, the parties shall hold track access meetings weekly, or as **otherwise** established by UTA. A representative of Freight Operator with authority to bind Freight Operator with respect to operational issues shall attend all track access meetings.

SECTION 2.4 Freight Operator shall make timely reports to all **federal**, state and local

regulatory agencies having **jurisdiction over Freight Operator's activities**. Freight Operator shall also be responsible for performing all inspections required by the Federal **Railroad** Administration or other regulatory agencies as the result of the existence of Freight Rail Service on the Right of Way. Freight Operator hereby agrees to indemnify UTA with respect to, and hold UTA harmless from, any Losses or Damages sustained by UTA as the result of Freight Operator's failure to timely file reports, to make required inspections or to perform other tasks required by federal, state or local regulations by virtue of the existence of Freight Rail Service on the Right of Way. Freight Operator shall deliver to UTA one copy of **every** report or other document relating to the Right of Way which is filed with or received from a federal, state or local regulatory or safety agency. Such reports or documents shall be delivered to UTA within **three** (3) business days of the filing or receipt by Freight Operator.

SECTION 2.5 Freight Operator shall make all Freight Trackage and yards appurtenant to such Freight Trackage available for inspection by **UTA** upon reasonable notice.

SECTION 2.6 Freight Operator's use of the Right of Way shall be limited to the movement of locomotives, **freight** cars and other track equipment over the Joint Trackage and the Freight Trackage as necessary for the provision of Freight Rail Service, as well as the incidental storage of **freight** cars on the Right of Way. Except for mechanical **failures**, accidents, derailments or similar emergencies, Freight Operator shall not be permitted to fuel, **service**, maintain or repair any rail vehicle or related equipment upon the Right of Way.

### SECTION 3. MAINTENANCE: ALTERATIONS

SECTION 3.1 Freight Operator shall be responsible for all maintenance, repair and renewal of the Freight Trackage and shall maintain, repair and renew the same to the standards it deems

**necessary** for Freight Rail **Service; provided,** however, that Freight Operator shall, at a minimum, maintain, repair and renew the Freight Trackage so as to preserve the present condition of track and signal facilities, as described on the attached Exhibit “B” (which is incorporated herein by this reference). Freight Operator shall bear all costs and expenses of maintenance, repair and renewal of the Freight Trackage. Nothing herein shall relieve Freight Operator of the obligation to perform maintenance, repair and renewal on the Freight Trackage in a good and workmanlike manner and in compliance with all applicable laws and regulations including without limitation those involving track and signal safety and weed control.

SECTION 3.2 UTA shall be responsible for the maintenance, repair and renewal of the Passenger Trackage and shall maintain, repair and renew the same to the standards it deems necessary for Passenger Service; UTA shall bear all costs and expenses of maintenance, repair and renewal of the Passenger Trackage.

SECTION 3.3 Commencing on December **4, 1999**, and subject to Sections 12.2 and 12.4, UTA shall assume and maintain responsibility for the performance of Routine Maintenance of the Joint Trackage. Routine Maintenance of the Joint Trackage prior to December **4, 1999** shall be governed by the terms of the March 3 **1, 1992** Administration and Coordination Agreement. After December **4, 1999**, UTA shall maintain the Joint Trackage to the standards it deems necessary for Passenger Service. Freight Operator hereby acknowledges that the present condition of the Joint Trackage is sufficient for its Freight Rail Service. Nothing provided herein shall be construed as limiting Freight Operator’s obligation to repair any portion of the Joint Trackage that is wholly or partially destroyed or damaged by the actions or omissions of Freight Operator.

SECTION 3.4 The parties shall cooperate to ensure that maintenance, rehabilitation, repair

or renewal of the Right of Way does not unreasonably interfere with **UTA's** Passenger Service or Freight Operator's Freight Rail Service.

#### **SECTION 4. CONSTRUCTION; MODIFICATIONS**

SECTION 4.1 If Freight Operator reasonably determines that Modifications are required to accommodate its Freight Pail Service over the Freight Trackage or the Joint Trackage, Freight Operator shall bear all expenses in wnnection with such Modifications, including without limitation the expense (for so long as such Modifications are a part of the Freight Trackage or the Joint Trackage) of maintaining, repairing, inspecting, and renewing such Modifications, including any increased operating **costs** associated with Passenger Service. Freight Operator shall not commence construction or other work in wnnection with such Modifications to the Joint Trackage or the Freight Trackage without executing a Modification Agreement with UTA. The parties shall negotiate in good faith to enter into a Modification Agreement for Freight Operator's Modifications to the Joint Trackage or the Freight Trackage necessary for Freight Fail Service, but such Modifications shall not interfere with or impede Passenger Service over the Fight of Way. All Modifications made by Freight Operator to the Freight Trackage or the Joint Trackage within the Right of Way shall become the property of UTA.

SECTION 4.2 UTA plans to construct additional trackage (which, in the absence of some other designation, shall initially be deemed to be Passenger Trackage) on the Right of Way. UTA shall have the right to construct such additional trackage as it deems necessary; provided, however, that no such **construction** shall unreasonably interfere with Freight Operator% Freight Fail Service on the Fight of Way but that Freight Operator shall reasonably cooperate with **UTA** so as to allow for the construction of additional trackage on the Right of Way. If necessary, **UTA** and Freight

Operator shall cooperate to secure (from a third party independent **contractor**) temporary substitute service during construction or modification periods. The **cost** of substitute **service** to **freight** customers during construction or modification periods shall not be borne by Freight Operator. **UTA** shall be responsible for the construction of additional trackage for Passenger Service on the Right of Way and shall construct the same to the standards it deems necessary for Passenger Service; Freight Operator shall not bear any **costs** and expenses of construction of such additional trackage.

SECTION 4.3 UTA shall have the right, upon thirty (30) days written notice to Freight Operator, to **realign the Freight** Trackage, the Passenger Trackage or the Joint Trackage **on the Right** of Way; provided, however, that no such realignment shall unreasonably interfere with Freight Operator's Freight Rail Service. Freight Operator shall reasonably **cooperate** with UTA so as to allow for such realignment. Freight Operator shall not bear the **cost** and expense of such realignments.

SECTION 4.4 If UTA determines that Modifications to the Joint Trackage or the Passenger Trackage (**after** construction) are required to accommodate its Passenger Service over the Joint Trackage or the Passenger Trackage, UTA shall bear all expenses in **connection** with construction of additional, bettered, or altered facilities, including without limitation the expense (for so long as such additional, bettered, or altered facilities are a part of the Joint Trackage or the Passenger Trackage) of maintaining, repairing, inspecting, and renewing such additional or altered facilities. All additions, alterations and improvements made by UTA to the Joint Trackage or the Passenger Trackage shall **become** the property of UTA.

SECTION 4.5 Excluding only construction under Section 4.2 and 4.3 hereof, Routine Maintenance of the Joint Trackage, and emergency work required for immediate safety reasons,

UTA shall notify Freight Operator in writing of any proposed work on the Joint Trackage and shall submit plans of any Modifications thereto. The parties shall cooperate in good **faith** to ensure that such Modifications do not unreasonably interfere with or impede Freight Fail Service over the Right of Way.

## SECTION 5. OPERATIONS

SECTION 5.1 UTA shall have the exclusive authority to manage, direct and control all activities on the Passenger Trackage. UTA shall have the exclusive authority to wntrol the operations of all vehicles and equipment and the movement and speed of the same on the Passenger Trackage. Freight Operator shall not have any right to operate on the Passenger Trackage.

SECTION 5.2 Freight Operator shall manage, direct and control all railroad and **railroad-**related operations on the Freight Trackage provided only that Freight Operator's use of the Freight Trackage shall not interfere with Passenger Service. Subject to the preceding sentence, Freight Operator shall have the exclusive authority to control the operations of all vehicles and equipment and the movement and speed of the same on the Freight Trackage.

SECTION 5.3 Except as set forth in Sections 5.4-5.9, the trains, locomotives, rail cars and rail equipment of either party may be operated on the Joint Trackage without prejudice or partiality and in such a manner as will result in the most economical and efficient movement of all traffic.

SECTION 5.4 In order to ensure safe, economical and reliable Freight Pail Service and Passenger Service, the parties hereby establish: (i) an Exclusive Freight Period for the Joint Trackage between the hours of 12:00 midnight and 5:00 a.m., Monday through Friday, inclusive; and (ii) an Exclusive Passenger Period for the Joint Trackage between the hours of **5:01** am. and **11:59** p.m., Monday through Friday, inclusive, and all day Saturday and Sunday. Freight Operator



has inspected the Right of Way and reviewed the records of the previous freight operator **pertaining** to Freight Rail Service on the Right of Way, which consists of approximately 2,500.3,400 cars per year as of the Closing Date. Based on such investigation and review, Freight Operator has determined that it can provide Freight Rail Service within the Exclusive Freight Period. If for whatever reason Freight Operator believes it cannot provide Freight Rail Service within the Exclusive Freight Period, Freight Operator shall adjust its business or operations to allow all Freight Rail Service to be provided without expansion or extension of the Exclusive Freight Period. Without limiting the generality of the foregoing, Freight Operator adjustments to business or operations **could** include the dedication of additional crew and equipment resources.

SECTION 5.5 Freight Operator acknowledges the obligation of **UTA** to provide Passenger Service and UTA acknowledges the common carrier obligations **of Freight Operator** and this section shall be **construed** consistent with and limited by such respective obligations. Freight Operator acknowledges that certain special circumstances (e.g., weather or other service emergencies) or special events may **require** temporary disruptions to Freight Rail Service. UTA may operate exclusively on the Joint Trackage during such events, notwithstanding the Exclusive Freight Period; provided, however, that UTA shall provide Freight Operator with at least thirty (30) days notice of modifications to the Exclusive Freight Period **required** by special events or circumstances which permit such advance notice or, in the case of emergencies, with as much prior notice as is practicable under the circumstances; and provided further, that UTA shall take all reasonable steps to minimize to the extent practicable the disruption to Freight Rail Service resulting **from** the said special circumstances or events; UTA shall not be held liable for any disruption to Freight Rail Service caused by exercising its rights under and consistent with this provision. **UTA** and Freight Operator

shall cooperate to minimize, to the extent possible consistent with local public transit needs and **common** carrier obligations, any potential adverse impact to the Freight Rail Service customers. **UTA** shall not be permitted to operate on the Joint Trackage during the Exclusive Freight Period pursuant to this Section 5.5, and neither party shall be permitted to operate outside its respective exclusive operating period on the basis of an agreement between the parties resulting **from** other exceptional **circumstancesunless** and until specifically authorized by the **TRAX** Control Center **after** proper notification is made to the other party. In such event, the **TRAX** Control Center shall take such measures as it deems reasonably appropriate and necessary to ensure that Freight Rail Service and Passenger Service are not conducted simultaneously on the Joint Trackage.

SECTION 5.6 Once Freight Operator has obtained authorization to enter the Joint Trackage as set forth in Section 5.8, Freight Operator shall manage and control, at Freight Operator's sole expense, all Freight Pail Service operations on the Joint Trackage during the Exclusive Freight Period.

SECTION 5.7 UTA shall manage and control, at **UTA's** sole expense, all Passenger Service operations on the Joint Trackage during the Exclusive Passenger Period. UTA, through the TRAX Control Center, and consistent with Sections 5.4 and 5.5 of this Coordination Agreement, shall also manage and control access to the Joint Trackage and the entry and exit of all trains, locomotives, rail cars and rail equipment upon and **from** the Joint Trackage by either party. The **TRAX** Control Center shall implement such rules, regulations, procedures and policies as may be necessary and appropriate to ensure that an absolute temporal separation of Freight Pail Service and Passenger Service is maintained on the Joint Trackage.

SECTION 5.8 The **TRAX** Control Center shall be staff&d at all times, including during the

Exclusive Freight Period. The Freight Operator shall obtain prior authorization from the **TRAX** Control Center before entering, occupying and/or exiting the Joint Trackage. Freight Operator shall have the obligation to notify the TRAX Control Center on the UTA recorded telephone or radio links each time entry and exit clearance on the Joint Trackage is sought. Freight Operator shall thereafter notify the **TRAX** Control Center each time it has entered or exited Joint Trackage pursuant to such authority. A representative of Freight Operator with decision making authority and power to bind Freight Operator with respect to operational issues must be accessible by telephone or pager on a twenty-four (24) hour basis. Freight Operator must have a fax machine (or other agreed upon method to receive positively verified information) available to train crews or will be required to visit the **TRAX** Control Center in person to receive operating clearances. The Freight Operator's train crews must also be equipped at all times with radios and working telephone communication in order to facilitate **communications** with the **TRAX** Control Center. Freight Operator shall be subject at all **times** to the direction of the **TRAX** Control Center when using the Joint Trackage and shall **comply** in all respects with all applicable operating rules, regulations and procedures **of UTA, TRAX** and the TRAX Control Center.

SECTION 5.9 Freight Operator shall immediately notify the **TRAX** Control Center of any event causing damage to the Right of Way or appurtenant **UTA property**, any event **which may** delay the Freight Operator from clearing the Joint Trackage at the end of the Exclusive Freight Period, and any other event which has the potential to delay or interfere with Passenger Service. Freight Operator shall use its best efforts to clear the Joint Trackage prior to the end of the Exclusive Freight Period.

SECTION 5.10 Freight Operator shall pay all taxes, assessments, fees, charges, costs and

regarding liability notwithstanding, and will forever indemnify, protect, defend and hold harmless the other party, its successors and assigns, **from** such payment.

SECTION 7.4 In case a lawsuit or lawsuits shall be commenced against either party hereto for or on account of any Loss or Damage for which the other party may be solely or jointly liable under this Coordination Agreement, the party thus sued shall give the other party timely written notice of the **pendency** of such suit, and thereupon the party so notified may assume or join in the defense **thereof**, and if the party so notified is liable **therefor** under this Coordination Agreement, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from all Loss or Damage in accordance with the liability allocation set forth in this Coordination Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified, and said opportunity to assume or join in the defense of the action has been afforded, the party so notified shall to the extent of its liability **under** this Coordination Agreement be bound by such judgment.

SECTION 7.5 Nothing in this Section 7 shall be construed as a waiver by UTA of any immunity, defense or requirement provided pursuant to Title 63, Chapter 30, Utah Code Annotated 1953, as amended, or applied so as to effectively constitute such waiver.

#### **SECTION 8. ENVIRONMENTAL REPORTING AND LIABILITY**

SECTION 8.1 Freight Operator shall have a continuing obligation to provide UTA with detailed and updated information regarding the volume, type and destination **of Hazardous** Materials which are transported on or stored along the Right of Way. In addition to its monthly reporting requirement, as specified in Section 12.3, Freight Operator shall immediately notify **UTA** in writing

of any material change in Hazardous Materials **transportation** or storage on the Right of Way. For purposes of the Section 8.1, a material change shall mean: (i) the introduction of a substantially different commodity along the Right of Way; (ii) the delivery of Hazardous Materials to a new destination on the Right of Way; or (iii) an actual or projected change of more than 50% in the annual delivery volume of Hazardous Material to any destination along the Right of Way.

SECTION 8.2 Freight Operator shall defend, indemnify and hold UTA harmless against and in respect of, any Loss or Damage (including without limitation reasonable legal, accounting, consulting, engineering and other expenses) that may be imposed on, incurred by, or asserted against UTA as a direct or indirect result of Freight Operator's use, transportation or storage of Hazardous Materials; provided that nothing set forth solely in this Section 8.2 shall be construed to require Freight Operator to indemnify and hold harmless UTA against and with respect to the acts or omissions of UTA or third parties.

SECTION 8.3 UTA shall defend, indemnify and hold Freight Operator harmless against and in respect of, any Loss or Damage (including without limitation reasonable legal, accounting, consulting, engineering and other expenses) that may be imposed on, incurred by, or asserted against Freight Operator as a direct or indirect result of **UTA's** use, transportation or storage of Hazardous Materials; provided that nothing set forth solely in this Section 8.3 shall be construed to require UTA to indemnify and hold harmless Freight Operator against and with respect to the acts or omissions of Freight Operator or third parties.

SECTION 8.4 Neither party shall cause nor allow to be caused the Release of any Hazardous Materials into the track, ballast, soil or any other part of the Right of Way. Any party responsible for such a Release shall defend, indemnify and hold the other party harmless against and in respect

of, any Loss or Damage (including without limitation reasonable legal, accounting, consulting, engineering and other expenses) that maybe imposed on, incurred by, or asserted against such party as a direct or indirect result of such Release.

SECTION 8.5 Freight Operator shall be responsible for and shall bear the costs of prompt cleanup and removal of any Hazardous Materials, residue or other material associated with Freight Rail Service arising after the Closing Date which is found to be fouling the track, ballast, soil or any other part of the Right of Way. UTA shall be responsible for and shall bear the costs of prompt cleanup and removal of any Hazardous Materials, residue or other material associated with Passenger Service which is found to be fouling the track, ballast, soil or any other part of the Right of Way. The cleanup required by this section shall be undertaken in a manner which minimizes disruption to Passenger Service and Freight Rail Service.

#### SECTION 9. TERM: TERMINATION

SECTION 9.1 This Coordination Agreement shall have an initial term of five (5) years, and shall continue **thereafter** until a termination or transfer of the Freight Easement or as otherwise mutually agreed between the parties.

SECTION 9.2 This Coordination Agreement shall immediately terminate upon the termination of the Freight Easement, or upon a transfer of the Freight Easement to an entity other than the Freight Operator, or a corporate parent, subsidiary or other affiliate of Freight Operator.

SECTION 9.3 Termination of this Coordination Agreement shall not relieve either party of their obligations or liabilities to the other party arising prior to such termination.

#### SECTION 10. COMPLIANCE WITH LAWS

SECTION 10.1 UTA and Freight Operator shall comply with the provisions of all applicable

laws, regulations, and rules respecting the operation, condition, inspection, and **safety** of their respective trains, locomotives, **cars** and other equipment operated over the Right of Way. Each party shall indemnify, protect, defend and hold harmless the other, its affiliates, and any of its **directors**, officers, agents and employees **from** and against all fines, penalties, and liabilities imposed upon the other party, its affiliates or any of its directors, officers, agents, or employees under such laws, rules and regulations by any public authority or court having jurisdiction, when attributable to its failure to comply with the provisions of this section.

#### SECTION 11. CASUALTY LOSSES

SECTION 11.1 **In** the event that any portion of the Right of Way that is being used by **UTA** for the continued provision of Passenger Service is damaged or destroyed by flood, fire, **civil** disturbance, earthquake, storm, sabotage or act of God, or accidents or vandalism caused by third parties or for which the cause is unknown, then, UTA may either (i) repair, or cause to be repaired, that portion of the Fight of Way so damaged or destroyed to substantially the same condition as existed prior to such damage or destruction, or (ii) replace, or cause to be replaced, such portion with property of like kind, condition or quality. The cost and expense of such repair or replacement shall be borne by UTA.

SECTION 11.2 In the event that any portion of the Fight of Way that is being used by Freight Operator for the continued provision of Freight Pail Service, and which is not also being used for Passenger Service, is damaged or destroyed by flood, fire, civil disturbance, earthquake, storm, sabotage or act of God, or accidents or vandalism caused by third parties or for which the cause is unknown, then, Freight Operator may either: (i) repair, or cause to be repaired, that portion of the Right of Way so damaged or destroyed to substantially the same condition as existed prior to

such damage or destruction; or (ii) replace, or cause to be replaced, such portion with property of like kind, condition or quality. The cost and expense of such repair or replacement shall be borne by Freight Operator; provided, however, that the Freight Operator shall not be obligated under this Section 11.2 to repair or replace the damaged or destroyed portion of the Right of Way if the cost of repair or replacement would be unreasonable or excessive given: (i) the Freight Rail Service conducted on such portion of the Right of Way; or (ii) **UTA's** ability to terminate this Freight Easement (and, in turn, this Agreement) on short notice, except that this proviso shall not apply if and to the extent that UTA agrees to give Freight Operator sufficient time to recoup the costs of any such repair or replacement out of future earnings related to such repaired or replaced portion of the Right of Way.

SECTION 11.3 Except when subject to Section 7, in the event any portion of the Right of Way is damaged or destroyed by accidents caused by either party or vandalism by the employees or agents of either party, the party that caused the accident or whose employees or agents caused the vandalism shall bear the cost and expense thereof.

## **SECTION 12. COMPENSATION**

SECTION 12.1 Except as otherwise specifically provided in this Coordination Agreement, Freight Operator and **UTA** shall have no obligation to pay or otherwise compensate each other in connection with this Coordination Agreement.

SECTION 12.2 Freight Operator shall remit to UTA a monthly fee for use of the Joint Trackage and for the Routine Maintenance costs for the Joint Trackage incurred by UTA equal to three (3) mils per gross ton mile of Freight Operator's equipment transported on the Right of Way during the preceding month including without limitation locomotives, loaded cars, empty cars,



maintenance equipment and other vehicles or equipment used in the provision of Freight Rail Service. The monthly fee shall be payable as set forth in Section 12.5. Nothing provided in this Section 12.2 shall be construed to offset any other obligation of Freight Operator as set forth in this Coordination Agreement.

SECTION 12.3 Freight Operator shall deliver to UTA, as soon as practicable **after** the end of each month, such **traffic** data and other information reasonably necessary to monitor and audit the monthly fee payable to UTA pursuant to Section 12.2. **This** data shall also include detailed information on the volume and type of materials (including, as specified in Section 8.1, Hazardous Materials) transported on or stored along the Right of Way. **UTA** agrees, to the extent permissible by law, to protect the confidentiality of any data provided by the Freight Operator under this provision.

SECTION 12.4 Freight Operator shall be solely liable for any Loss or Damage to the Joint Trackage caused by any action whatsoever of Freight Operator. Unless otherwise agreed between the parties, UTA shall perform such work as may be necessary to restore the Joint Trackage or otherwise mitigate the Loss or Damage sustained by UTA. UTA shall be permitted to perform the repair to the standard deemed necessary by UTA to ensure that the use of the Joint Trackage for Passenger Service is not in any way adversely affected by **the** Loss or Damage previously caused by Freight Operator, and in a manner that will ensure that the useful life of the Joint Trackage is not diminished by the actions of Freight Operator. UTA agrees that all costs and expenses incurred by **UTA** pursuant to this Section 12.4 will be incurred in good faith.

SECTION 12.5 All payments due to either party under this Coordination Agreement shall be paid within thirty (30) days after receipt of an invoice therefor, by check delivered to the address

of the payee as set forth in Section 14.4 hereof; provided, however, that in the event of a good faith dispute relating to any such payment, the disputed portion of the invoice shall be paid, with full reservation of rights to possible reimbursement upon resolution of such dispute. Any payments not made within thirty (30) days of an invoice ~~therefor~~ or paid under protest due to a dispute shall thereafter be subject to interest, which shall accrue at the highest lawful rate for the forbearance of money and which interest shall accrue to the benefit of the prevailing party.

SECTION 12.6 Upon request, a party disputing the accuracy of any invoice shall be entitled to receive from the billing party copies of all such supporting documentation and/or records as are kept in the ordinary course of the billing party's business and which are reasonably necessary to verify the accuracy of the invoice as rendered. Each party shall also have the right upon reasonable notice to inspect, examine, copy and audit such books, records and supporting documents of the other party as reasonably relate to the calculation of any fees, charges, reimbursements or other assessments claimed by such other party pursuant to this Coordination Agreement.

### SECTION 13. INSURANCE

SECTION 13.1 Freight Operator, at its sole cost and expense, shall procure or cause to be procured and maintain or cause to be maintained during the continuance of this Coordination Agreement, railroad operating and liability insurance covering liability assumed by Freight Operator under this Coordination Agreement with a limit of not less than Twenty Million Dollars **(\$20,000,000)** combined single limit for personal injury and property damage per occurrence, with deductible or self insurance not greater than One Hundred Thousand Dollars (\$100,000). Freight Operator shall furnish to UTA certificates of insurance evidencing the above coverage in the form of a policy (or policies) at the time of execution of this Coordination Agreement. Such insurance

shall contain a contractual liability endorsement which will cover the obligations assumed under this **Coordination Agreement** and an endorsement naming UTA as “additional insured.” In addition, such **insurance** shall contain notification provisions whereby the insurance company agrees to give thirty (30) days written notice to UTA of any change in or cancellation of the policy. All of these endorsements and notice provisions shall be stated on the certificate of insurance which is to be provided to UTA.

#### SECTION 14. GENERAL PROVISIONS

SECTION 14.1 This Coordination Agreement may not be amended except by an instrument in writing signed by the parties hereto.

SECTION 14.2 Waiver of any provision of this Coordination Agreement, in whole or in part, can be made only by an agreement in writing signed by the parties and such waiver in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

SECTION 14.3 A notice or demand to be given by one party to the other shall be given in writing by personal service, telegram, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such party as follows:

(a) In the case of a notice or communication to UTA, Attention: UTA Director of Rail Services, P. O. Box 30810, Salt Lake City, Utah 84130-0810, with a copy to UTA General Manager, P. O. Box 30810, Salt **Lake** City, Utah 84130-0810, and an additional copy to General Counsel’s Office, P. O. Box 30810, Salt Lake City, Utah 84130-0810.

(b) In the case of a notice or communication to Freight Operator, Attention: Executive Vice President, Utah Railway Company, 340 Hardscrabble Road, Helper, Utah 84526, with a copy to Accounting Department, Utah Railway Company, 340 Hardscrabble Road, Helper, Utah 84526. The parties may **from** time to time designate other individuals and addresses for notice of communication in writing, provided that such changes in designation are dispatched as provided in this Section. All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served and to have been duly given: (i) on the date of delivery, if delivered personally on the party to whom notice is given; or (ii) on receipt, if mailed to the party to whom notice is to be given by registered or certified mail, return receipt requested., postage prepaid and properly addressed or by other delivery service as outlined above.

SECTION 14.4 If any provision of this Coordination Agreement shall be held or be deemed to be or shall, in fact, be illegal, invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained illegal, invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections of this Coordination Agreement shall not affect the remaining portions of this Coordination Agreement or any part thereof.

SECTION 14.5 This Coordination Agreement contains headings only for convenience, which headings do not form part of and shall not be used in the construction of this Coordination

Agreement and are not intended to inure to the benefit of any person or entity not a party.

SECTION 14.6 All of the terms and provisions of this Coordination Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Except to a corporate parent, subsidiary or other affiliate, Freight Operator may not assign its rights or obligations under this Coordination Agreement.

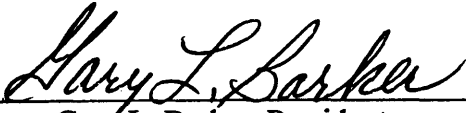
SECTION 14.7 **This** Coordination Agreement may be executed in wunterparts, each of which shall be considered an original, but all of which together shall wnstitute but one and the same instrument.

SECTION 14.8 This Coordination Agreement shall be governed by and construed under the laws of the State of Utah, and any dispute regarding this Coordination Agreement shall be resolved in a **court** of competent jurisdiction within the State of Utah.

SECTION 14.9 Notwithstanding any other provision of this Coordination Agreement, third party claims that accrued or arose prior to the Closing Date, including but not limited to the Goebel case, shall be governed exclusively by the terms and provisions of the March 31, 1992 Administration and Coordination Agreement.

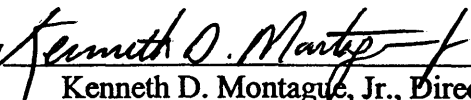
IN WITNESS WHEREOF, the parties hereto have caused this Coordination Agreement to be executed as a sealed instrument as of the date **first** set forth above by their duly authorized representatives.

**UTAH RAILWAY COMPANY**

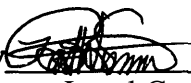
By   
Gary L. Barker, President

**UTAH TRANSIT AUTHORITY**

By   
John M. English, General Manager

By   
Kenneth D. Montague, Jr., Director  
of Finance and Administration

APPROVED AS TO FORM:

By   
Legal Counsel

Amended Administration and Coordination Agreement

LIST OF EXHIBITS

Exhibit A - [Supply detailed description, including mileposts, of all trackage on Right of Way; such trackage is the trackage subject to the Freight Operator's Freight Easement.]

Exhibit B - [**Present** Condition of Tracks and Signal Facilities]

## SALT LAKE CITY

Dead-End Track  
Providing Service  
To Newspaper Agency  
Corporation

South Temple

900 South

1300 South

This segment of PASSENGER  
ONLY trackage is exclusive, is  
street running, and is not suitable  
for freight traffic

## SOUTH SALT LAKE

Husler Team Track

3900 South

Murray Team Track

Interchange Track

Link Track connecting to UPRR System

5300 South

Pallas Yard

6400 South

MURRAY

Access Track to Light Rail Vehicle Maintenance Shop.

Also known as the Lovendahl Branch and as the  
Midvale Spur. Connects to the Union Pacific  
RR System at ★. This passenger trackage is not  
available for freight traffic

MIDVALE ★

## SANDY

10000 South

Black - PASSENGER TRACKAGE  
Red - JOINT TRACKAGE  
Green - FREIGHT TRACKAGE  
Purple - FOREIGN TRACKAGE

Intermountain Farmers'  
Association

## DRAPER

Salt Lake County/Utah County Line  
End UTA owned railroad Right-of-Way  
but connecting to Union Pacific RR System



EXHIBIT A - CONTINUED

FREIGHT TRACKAGE SHALL ALSO INCLUDE ALL INDUSTRY SPUR TRACKS AND **SIDINGS (FROM THE POINT ON THE OUTSIDE OF DERAIL) ALONG THE RIGHT OF WAY** INCLUDING BUT NOT LIMITED TO THE **FOLLOWING:**

- Henderson Wheel & Rim Spur
- Dunn Oil Spur
- National Wood Spur
- Intermountain Lumber Spur
- Standard Builders Spur
- Georgia Pacific Spur
- Wasatch Metal Spur
- Morgro Spur
- Ash Grove Cement Spur
- **Brookfield** Products Spur
- Murray Elevator Spur
- Murray Team Tracks
- Ash Grove Siding
- Metro West Spur
- Intermountain Farmers Spur

## **EXHIBIT B**

Present Condition of Freight Trackage for Freight Operator Maintenance **Purposes:**

**Pallas** Yard and Murray Team Freight Trackage - Class Two

Freight Trackage Between 1300 South and 900 South - Class Two

Freight Trackage Between 10000 South and Utah County Line - Class Three

Italicized, underlined words = Addition to text  
Struck out words = Removal of text

**AMENDED ADMINISTRATION AND COORDINATION AGREEMENT**

This AMENDED ADMINISTRATION AND COORDINATION AGREEMENT (the “Coordination Agreement”) is made as of the ~~31<sup>st</sup> day of March, 1993~~ day of \_\_\_\_\_, 1999, between Salt Lake City Southern Railroad Co., Inc., a ~~Texas~~ Delaware corporation (“SLSFreight Operator”), and Utah Transit Authority, a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended (“UTA”).

WITNESSETH:

WHEREAS, pursuant to the Purchase and Sale Agreement between Union Pacific Railroad Company (“UPRR”) and UTA, dated as of October 30, 1992 (the “Purchase Agreement”), UPRR conveyed to UTA certain right of way, trackage and other assets and improvements ~~located on UPRR’s Provo Subdivision Line, and on UPRR’s Lovendahl Spur also known as the Midvale Lead,~~ (more fully described and defined below as the “Right of Way”) excluding a freight railroad operating easement which was retained by UPRR;

WHEREAS, pursuant to a Permanent Freight Railroad Operating Easement agreement between UPRR and SLSFreight Operator, dated as of March 31, 1993 (the “Easement Agreement”), UPRR ~~has~~ conveyed to SLSFreight Operator ~~as of the date of this Coordination Agreement a~~ the freight railroad operating easement on the Right of Way (defined below as the “Freight Easement”) in order to enable SLSFreight Operator to provide common carrier rail freight operations on the Right of Way;

~~WHEREAS, the parties hereto (UTA and SLS) will be sharing usage of the Right of Way~~

~~under terms and conditions set forth below; and~~

~~WHEREAS, the parties desire to clarify and establish their respective rights and obligations with respect to SLS's common carrier rail freight operations on the Right-of-Way and UTA's construction of additional trackage and provision of passenger service on the Right-of-Way;~~

WHEREAS, on March 31, 1992, UTA and Freight Operator, then a Texas corporation, executed a predecessor Administration and Coordination Agreement that governed the joint use of the Right of Way prior to UTA's construction of Passenger Service improvements to the Right of Way;

WHEREAS, UTA has now substantially completed construction of such Passenger Service improvements, and the parties wish to set forth the terms and conditions pursuant to which the parties will jointly use the Right of Way for both Freight Rail Service and Passenger Service operations; and

WHEREAS, the parties agree that (except as set forth in Section 3.3 and Section 14.9 hereof) this Coordination Agreement will supersede and replace the March 31, 1992 Administration and Coordination Agreement.

NOW, THEREFORE, in consideration of the premises, reservations, covenants and undertakings contained herein, ~~SLS and UTA~~ UTA and Freight Operator covenant and agree as follows:

## SECTION 1. DEFINITIONS

The following terms and phrases shall be defined as follows for the purposes of this Coordination Agreement:

"Closing Date" shall ~~have the meaning ascribed in the Purchase Agreement, which is the date the sale of assets from UPRR to UTA is closed and which closing is to take place, if practical by December 31, 1993, but not later than June 1, 1993~~ mean the date of execution of this Coordination Agreement.

"Coordination Agreement" shall mean this Amended Administration and Coordination Agreement, which supersedes and replaces the predecessor Administration and Coordination Agreement between SLSFreight Operator and UTA executed on March 31, 1993.

"Easement Agreement" shall mean that certain ~~freight railroad operating easement and the assignment agreement, concerning~~ Permanent Freight Railroad Operating Easement setting forth the rights and obligations to provide Freight Rail Service, by and between UPRR and SLSFreight Operator and dated as of March 31, 1993.

~~"Freight Preference Period"~~ "Exclusive Freight Period" shall have the meaning ascribed in Section 5.4 hereof.

~~"Passenger Preference Period"~~ "Exclusive Passenger Period" shall have the meaning ascribed in Section 5.4 hereof.

"Freight Easement" shall mean the easement acquired by SLSFreight Operator for common carrier rail freight operations on the Right of Way pursuant to the terms of the Easement Agreement.

~~"Freight Operator"~~ "SLS" shall mean Salt Lake City Southern Railroad Co., Inc., a ~~Texas~~ Delaware corporation.

"Freight Rail Service" shall mean the common carrier rail freight operations to be conducted by SLSFreight Operator on the Right of Way.

"Freight Trackage" shall mean all trackage and track-related facilities affixed to the Right of Way which are designated as Freight Trackage as of the Closing Date and as shown in the attached Exhibit "A" (which is incorporated herein by this reference), any Joint Trackage and/or Passenger Trackage which is later designated by UTA to be Freight Trackage pursuant to Section 2.3 hereof, or any additions to the existing trackage and truck-related facilities constructed by ~~SLS~~Freight Operator on the Right of Way after the Closing Date pursuant to Section 4.1 hereof.

"Hazardous Materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, oil of any kind or in any form (including petroleum, fuel oil, diesel oil, crude oil or any fraction thereof), and any other substance defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, or any other federal, state, or local environmental law, regulation, ordinance, rule or bylaw, whether existing as of the date hereof: previously enforced, or subsequently enacted.

"Joint Trackage" shall mean ~~the~~all trackage and track-related facilities affixed to the Right of Way which are designated as Joint Trackage as of the Closing Date ~~that was included in the Freight Easement, (described in Exhibit "A" hereto) unless such trackage is re~~and as shown in the attached Exhibit "A," or any Freight Trackage or Passenger Trackage designated by UTA to be Joint Trackage pursuant to Section 2.3 hereof. However, notwithstanding the foregoing, the term 'Joint Trackage' shall not include any portion of the access track connecting the UTA main line (a/k/a the Provo Subdivision Line) to UTA's Lovendahl Maintenance Facility.

“Loss or Damage” shall mean all costs, liabilities, judgments, fines, fees (including without limitation reasonable attorneys’ fees and disbursements) and expenses (including without limitation defense expenses) of any nature arising from or in connection with death of or injury to persons, including without limitation employees of the parties; or damage to or destruction of property, including the Joint Trackage, the Freight Trackage, the Passenger Trackage or any property on the Right of Way, in connection with Freight Rail Service or Passenger Service on the Right of Way; or business losses (including without limitation the economic loss related to lost Passenger Service or lost Freight Rail Service), or the costs necessary to mitigate or cover such business losses, resulting from or in connection with an act or omission giving rise to a claim for Loss or Damage.

“Modification” or “Modifications” shall mean alterations or additions to, or removal of, then-existing trackage on the Right of Way, including but not limited to new connections; and changes in railroad communication systems, ~~signals~~ or dispatching facilities.

“Modification Agreement” shall mean a written agreement between the parties hereto entered to allow construction and use of a Modification.

“Passenger Service” shall mean the transportation of passengers on all or any portion of the Right of Way, which shall be provided by UTA or its designee.

“Passenger Trackage” shall mean all ~~segments of trackage constructed by UTA on~~ and track-related facilities affixed to the Right of Way ~~after which are designated as Passenger Trackage as of~~ the Closing Date ~~pursuant to Section 4.2 or 4.4 hereof, and as shown in the attached Exhibit "A," any segments of trackage and track-related facilities constructed by UTA~~

on the Right of Way after the Closing Date pursuant to Section 4.2 (absent some other designation by UTA) or 4.3 (if and to the extent Passenger Trackage is being realigned) hereof,  
or any Freight Trackage or Joint Trackage hereafter designated by UTA to be Passenger Trackage pursuant to Section 2.3 hereof. UTA hereby designates, pursuant to Section 2.3 hereof, the access track connecting the UTA mainline (a/k/a the Provo Subdivision Line) to UTA's Lovendahl Maintenance Facility as "Passenger Trackage."

"Purchase Agreement" shall mean that certain Purchase and Sale Agreement by and between UTA and UPRR, dated as of October 30, 1992.

"Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

"Right of Way" shall mean the following described portions of the property interests conveyed by UPRR to UTA pursuant to the terms and conditions of the Purchase Agreement, except to the extent that such property interests were specifically excluded from the scope of the Freight Easement retained by UPRR and transferred to Freight Operator: all rights of way, trackage, and structures included in or adjacent to the property described in Parcels No. 1 and 2 of Exhibit "A" to the Purchase Agreement, including all real property shown and described in the Maps and other documents regarding the Right of Way which were included in Exhibit "A" to the Purchase Agreement, and all fixtures, tracks, rails, ties, switches, crossings, tunnels, bridges, trestles, culverts, buildings, structures, facilities, leads, spurs, turnouts, tails, sidings, team tracks, signals, crossing protection devices, railroad communications systems, poles and all other operating appurtenances that are situated: (1) on or adjacent to the trackage formerly constituting part of UPRR's Provo Subdivision Line from the Salt Lake County/Utah County boundary line



(approximately UPRR milepost 775.19) to the Ninth Street Junction (which is on the North side of 900 (NINTH) South Street in Salt Lake City at approximately UPRR milepost 798.74); and (2) on or adjacent to the trackage formerly constituting UPRR's Lovendahl Spur, also known as the Midvale Lead, which departs from the trackage referenced above in a southwesterly direction at approximately 6400 (SIXTY-FOUR HUNDRED) South Street in Murray, Utah (approximately former UPRR milepost 790.52), crossing under both I-15 and the Denver and Rio Grande Western Railroad Company ("D&RGW") main line, and then heading south to approximately 7400 South, to the point of intersection with the D&RGW right of way, a distance of approximately 1.4 miles.

*"Routine Maintenance" shall include inspections, testing, rail profiling, adjustments, lubricating, welding, respiking, surfacing, maintenance of surfaces at grade crossings, tamping and any other routine and ordinary maintenance, repair and renewal functions on the Joint Trackage and arising from the normal usage of the Joint Trackage, all of which shall be performed by UTA.*

*"TRAX" shall mean the light rail transit system currently constructed by UTA, a portion of which is situated upon the Right of Way and any current or future extensions to such light rail transit system.*

*"TRAX Control Center" shall mean the entity designated by UTA to authorize and monitor the movement of vehicles, individuals or other objects along the Joint Trackage and Passenger Trackage, which department must give advance authorization prior to either party entering, occupying or exiting the Joint Trackage.*

"UTA" shall mean Utah Transit Authority, a public transit district organized under Title

17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended, and its successors or assigns.

## SECTION 2. FREIGHT RAIL SERVICE; PASSENGER SERVICE

### SECTION 2.1 Pursuant to the terms and conditions of the Easement Agreement,

SLSFreight Operator shall have the exclusive right and obligation to provide Freight Rail Service on the Freight Trackage and the Joint Trackage. SLSFreight Operator shall have no right or obligation to conduct, and shall not conduct, directly or indirectly, Freight Rail Service on the Passenger Trackage or any other activity whatsoever on the Right of Way that is not necessary ~~to~~ for Freight Rail Service. UTA shall have no right or obligation to conduct, and shall not conduct, directly or indirectly, Freight Rail Service on the Right of Way.

SECTION 2.2 UTA shall have the exclusive right to conduct, by itself or through UTA's designee or otherwise, Passenger Service on the Right of Way. SLSFreight Operator shall have no right or obligation to conduct, and shall not conduct, directly or indirectly, Passenger Service on the Right of Way; provided, however, that UTA and SLSFreight Operator may arrange, under a separate written agreement, for SLSFreight Operator to perform certain services on behalf of UTA with respect to the Passenger Service.

SECTION 2.3 UTA may ~~from~~ time to time, upon thirty (30) days written notice to SLSFreight Operator, change any track designation (Freight Trackage, Passenger Trackage or Joint Trackage) to any other track designation; provided, however, that no such change in track designation shall unreasonably interfere with SLSFreight Operator's Freight Rail Service on the Right of Way; and provided further, that the parties may agree to immediate track redesignations to respond to emergencies or the needs of the parties. Notwithstanding the foregoing, UTA may

not, after the Closing Date, designate trackage as Freight Trackage without the written consent of SLS Freight Operator if such trackage is (1) then being used for Passenger Service, or (2) then not being used for Freight Rail Service. In order to ensure safe, economical and reliable Freight Rail Service and Passenger Service on the Right of Way, the parties shall ~~establish a~~ Coordination Committee hold track access meetings weekly, or as otherwise established by UTA. A representative of Freight Operator with authority to bind Freight Operator with respect to operational issues shall attend all track access meetings. ~~The Coordination Committee will convene to resolve those administrative and coordination matters designated for Coordination Committee resolution by the terms of this Coordination Agreement as well as any other matters, upon agreement of the parties. The Coordination Committee shall be composed of two representatives from each party. The chief executive officer of each of SLS and UTA also shall be ex officio members of the Coordination Committee.~~

SECTION 2.4 Freight Operator shall make time@ reports to all federal, state and local regulatory agencies having jurisdiction over Freight Operator's activities. Freight Operator shall also be responsible for performing all inspections required by the Federal Railroad Administration or other regulatory agencies as the result of the existence of Freight Rail Service on the Right of Way. Freight Operator hereby agrees to indemnify UTA with respect to, and hold UTA harmless from, any Losses or Damages sustained by UTA as the result of Freight Operator's failure to timely file reports, to make required inspections or to perform other tasks required by federal, state or local regulations by virtue of the existence of Freight Rail Service on the Right of Way. Freight Operator shall deliver to UTA one copy of every report or other document relating to the Right of Way which is filed with or received from a federal, state or

local regulatory or safety agency. Such reports or documents shall be delivered to UTA within three (3) business days of the filing or receipt by Freight Uveratur.

SECTION 2.5 Freight Uveratur shall make all Freight Trackage and yards appurtenant to such Freight Trackage available for inspection by UTA upon reasonable notice.

SECTION 2.6 Freight Operator's use of the Right of Way shall be limited to the movement of locomotives, freight cars and other truck equipment over the Joint Trackage and the Freight Trackage as necessary for the provision of Freight Rail Service, as well as the incidental storage of freight cars on the Right of Way. Except for mechanical failures, accidents, derailments or similar emergencies, Freight Uveratur shall not be permitted to fuel, service, maintain or repair any rail vehicle or related equipment upon the Right of Way.

### SECTION 3. MAINTENANCE; ALTERATIONS

SECTION 3.1 SLSFreight Operator shall be responsible for all maintenance, repair and renewal of the Freight Trackage and shall maintain, repair and renew the same to the standards it deems necessary for Freight Rail Service; provided, however, that SLSFreight Uveratur shall, at a minimum, maintain, repair and renew the Freight Trackage so as to preserve the present condition of track and signal facilities, as described on the attached Exhibit "B" ~~hereto~~ (which is incorporated herein by this reference). SLSFreight Operator shall bear all costs and expenses of maintenance, repair and renewal of the Freight Trackage. Nothing herein shall relieve SLSFreight Operator of the obligation to perform maintenance, repair and renewal on the Freight Trackage in a good and workmanlike manner and in compliance with all applicable laws and regulations including without limitation those involving truck and signal safety and weed control.

SECTION 3.2 UTA shall be responsible for the maintenance, repair and renewal of the Passenger Trackage and shall maintain, repair and renew the same to the standards it deems necessary for Passenger Service; UTA shall bear all costs and expenses of maintenance, repair and renewal of the Passenger Trackage.

SECTION 3.3 Commencing on December 4, 1999, and subject to Sections ~~3.4 and 10.2~~ SLS shall be responsible for and shall pay the costs of the maintenance, repair and renewal of the Joint Trackage and shall maintain, repair and renew the same to the standards it deems necessary for Freight rail Service; provided that ~~CTC~~ shall, at a minimum, maintain, repair and renew the Joint Trackage so as to preserve the present condition of track, grade crossings and signal facilities, as described in Exhibit "B" hereto-12.2 and 12.4, UTA shall assume and maintain responsibility for the performance of Routine Maintenance of the Joint Trackage. Routine Maintenance of the Joint Trackage prior to December 4, 1999 shall be governed by the terms of the March 31, 1992 Administration and Coordination Agreement. After December 4, 1999, UTA shall maintain the Joint Trackage to the standards it deems necessary for Passenger Service. SLS Freight Operator hereby acknowledges that the present condition of the Joint Trackage is sufficient for its Freight Rail Service. Nothing provided herein shall ~~relieve SLS of the~~ be construed as limiting Freight Operator's obligation to ~~perform maintenance, repair and renewal on the Joint Trackage in a good and workmanlike manner and in compliance with all applicable laws and regulations~~ any portion of the Joint Trackage that is wholly or partially destroyed or damaged by the actions or omissions of Freight Operator.

SECTION 3.4 The parties shall cooperate to ensure that maintenance, rehabilitation, repair or renewal of the Right of Way does not unreasonably interfere with UTA's Passenger

Service or Freight Operator's Freight Rail Service. ~~Upon written notice to SLS at any time, but at least sixty (60) days prior to commencement of Passenger Service, UTA shall undertake and assume all costs of maintenance, repair and renewal of the Joint Trackage. Upon assumption of maintenance, repair and renewal of the Joint Trackage, UTA shall maintain, repair and renew the Joint Trackage to the standards it deems necessary for Passenger Service; provided that UTA shall, at a minimum, maintain, repair and renew the Joint Trackage so as to preserve the track to FRA Class I track and grade crossings and signal facilities to their then current condition. SLS hereby acknowledges that the present condition of track and signal facilities is sufficient for its Freight Rail Service. If UTA fails to maintain, repair and renew the Joint Trackage in accordance with the standard set forth above, SLS shall have the right to maintain, repair and renew the Joint Trackage to the standard necessary to fulfill its rail carrier obligations.~~

#### SECTION 4. CONSTRUCTION; MODIFICATIONS

SECTION 4.1 If ~~SLS~~Freight Operator reasonably determines that Modifications are required to accommodate its Freight Rail Service over the Freight Trackage or the Joint Trackage, ~~SLS~~Freight Operator shall bear all expenses in connection with such Modifications, including without limitation the annual-expense (for so long as such Modifications are a part of the Freight Trackage or the Joint Trackage) of maintaining, repairing, inspecting, and renewing such Modifications, including any increased operating costs associated with Passenger Service. ~~SLS~~Freight Uverutor shall not commence construction or other work in connection with such Modifications to the Joint Trackage or the Freight Trackage without ~~enter into~~ into ~~into~~ executing a Modification Agreement with UTA ~~and obtaining UTA's written consent~~. The parties shall; ~~through the Coordination Committee,~~ negotiate in good faith to enter into a Modification

Agreement for SLSFreight Operator's Modifications to the Joint Trackage or the Freight Trackage necessary for Freight Rail Service, but such Modifications shall not interfere with or impede Passenger Service over the Right of Way. All Modifications made by SLSFreight Operator to the Freight Trackage or the Joint Trackage within the Right of Way shall become the property of UTA.

SECTION 4.2 UTA plans to construct additional trackage (which, in the absence of some other designation, shall initially be deemed to be Passenger Trackage) on the Right of Way-se ~~that, through usage of existing and such additional trackage, the Right of Way may accommodate Freight Rail Service and Passenger Service.~~ UTA shall have the right to construct such additional trackage as it deems necessary; provided, however, that no such construction shall unreasonably interfere with SLSFreight Operator's Freight Rail Service on the Right of Way but that SLSFreight Operator shall reasonably cooperate with UTA so as to allow for the construction of additional trackage on the Right of Way. ~~If necessary,~~ UTA and SLSFreight Operator, ~~through the Coordination Committee,~~ shall cooperate to secure (from a third party independent contractor) temporary substitute service during construction or modification periods; ~~†~~ The cost of substitute service to freight customers during construction or modification periods shall not be borne by SLSFreight Uverutur. UTA shall be responsible for the construction of additional trackage for Passenger Service on the Right of Way and shall construct the same to the standards it deems necessary for Passenger Service; UTA Freight Operator shall nut bear anyall costs and expenses of construction of such additional trackage.

SECTION 4.3 UTA shall have the right, upon thirty (30) days written notice to SLSFreight Operator, to realign the Freight Trackage, the Passenger Trackage or the Joint

Trackage on the Right of Way; provided, however, that no such realignment shall unreasonably interfere with ~~SLS~~Freight Operator's Freight Rail Service ~~but that SLS~~. Freight Operator shall reasonably cooperate with UTA so as to allow for such realignment. Freight Operator shall not bear the cost and expense of such realignments.

SECTION 4.4 If UTA determines that Modifications to the Joint Trackage or the Passenger Trackage (after construction) are required to accommodate its Passenger Service over the Joint Trackage or the Passenger Trackage, UTA shall bear all expenses in connection with construction of additional, bettered, or altered facilities, including without limitation the ~~annual~~ expense (for so long as such additional, bettered, or altered facilities are a part of the Joint Trackage or the Passenger Trackage) of maintaining, repairing, inspecting, and renewing such additional or altered facilities. All additions, alterations and improvements made by UTA to the Joint Trackage or the Passenger Trackage shall become the property of UTA.

SECTION 4.5 Excluding only @-construction under Section 4.2 and 4.3 hereof, ~~(ii)~~ ~~ordinary maintenance and repair work on the~~ Routine Maintenance of the Joint Trackage ~~(if UTA is maintaining the Joint Trackage pursuant to Section 3.4)~~, and ~~(iii)~~ emergency work required for immediate safety reasons, UTA shall notify ~~SLS~~Freight Operator in writing of any proposed work on the Joint Trackage and shall submit plans of any Modifications thereto. The parties; ~~through the Coordination Committee,~~ shall cooperate in good faith to ensure that such Modifications do not unreasonably interfere with or impede Freight Rail Service over the Right of Way.

## SECTION 5. OPERATIONS

SECTION 5.1 UTA shall have the exclusive authority to manage, direct and control all



activities on the Passenger Trackage. UTA shall have the exclusive authority to control the operations of all vehicles and equipment and the movement and speed of the same on the Passenger Trackage. ~~SLS~~Freight Operator shall not have any right to operate on the Passenger Trackage.

SECTION 5.2 ~~SLS~~Freight Operator shall ~~have exclusive authority to~~ manage, direct and control all railroad and railroad-related operations on the Freight Trackage provided only that Freight Operator's use of the Freight Trackage shall not interfere with Passenger Service. Subject to the preceding sentence, ~~SLS~~Freight Operator shall have & exclusive authority to control the operations of all ~~trains, locomotives, railcars and rail vehicles~~ and equipment and the movement and speed of the same on the Freight Trackage. ~~UTA shall not have any right to operate on trackage then designated as Freight Trackage.~~

SECTION 5.3 Except as set forth in Sections ~~5.4-5.27~~, the trains, locomotives, rail cars and rail equipment of either party may be operated on the Joint Trackage without prejudice or partiality and in such a manner as will result in the most economical and efficient movement of all traffic.

SECTION 5.4 In order to ensure safe, economical and reliable Freight Rail Service and Passenger Service, the parties hereby establish: (i) an Exclusive ~~a Freight Preference Period~~ for the ~~Right-of-Way~~ Joint Trackage between the hours of 12:00 midnight and 5:00 a.m., Monday through Friday, inclusive; and (ii) an Exclusive ~~Passenger Preference Period~~ for the ~~Right-of-Way~~ Joint Trackage between the hours of 5:01 a.m. and 11:59 p.m., Monday through Friday, inclusive, and all day Saturday and Sunday. Freight Operator has inspected the Right of Way and reviewed the records of the previous freight operator pertaining to Freight Rail Service on

the Right of Way, which consists of approximately 2,500-3,400 cuss ver year as of the Closing  
Dated on such investigation and review, SLS Freight Operator has determined that it can  
provide Freight Rail Service within the Exclusive a-Freight Preference Period. SLS agrees to  
employ such equipment and employees necessary to provide Freight Rail Service within the  
above Freight Preference Period. The Coordination Committee shall, at either party's request,  
meet to negotiate in good faith regarding proposed changes to the Freight Preference Period and  
the Passenger Preference Period. If for whatever reason Freight Operator believes it cannot  
provide Freight Rail Service within the Exclusive Freight Period, Freight Operator shall adjust  
its business or operations to allow all Freight Rail Service to be provided without expansion or  
extension of the Exclusive Freight Period. Without limiting the generality of the foregoing,  
SLS Freight Operator adjustments to business or uveratiuns could include the dedication of  
additiunal crew and equipment resources.

SECTION 5.5 ~~During the Freight Preference Period, UTA shall not be authorized to~~  
~~operate trains or conduct Passenger Service on the Joint Trackage or the Passenger Trackage,~~  
~~without special permission from the dispatcher. During the Passenger Preference Period, SLS~~  
~~shall not be authorized to operate trains or conduct Freight Rail Service on the Joint Trackage or~~  
~~the Freight Trackage, without special permission from the dispatcher. Freight Operator~~  
acknowledges the obligation of UTA to provide Passenger Service and UTA acknowledges the  
common carrier obligations of Freight Operator und this section shall be construed consistent  
with and limited by such respective obligations. Freight Overator acknowledges that certain  
special circumstances (e.g., weather or other service emergencies) or special events may require  
temporary disruptions to Freight Rail Service, UTA may operate exclusively on the Joint

Trackage during such events, notwithstanding the Exclusive Freight Period ; provided, however, that UTA shall provide Freight Operator with at least thirty (30) days notice of modifications to the Exclusive Freight Period required by special events or circumstances which permit such advance notice or, in the case of emergencies, with as much prior notice as is practicable under the circumstances: and provided further, that UTA shall take all reasonable steps to minimize to the extent practicable the disruption to Freight Rail Service resulting from the said special circumstances or events. UTA shall not be held liable for any disruption to Freight Rail Service caused by exercising its rights under and consistent with this provision. UTA and Freight Operator shall cooperate to minimize, to the extent possible consistent with local public transit needs and common carrier obligations, any potential adverse impact to the Freight Rail Service customers. UTA shall not be permitted to operate on the Joint Trackage during the Exclusive Freight Period pursuant to this Section 5.5, and neither party shall be permitted to operate outside its respective exclusive operating period on the basis of an agreement between the parties resulting from other exceptional circumstances unless and until specifically authorized by the TM Control Center after proper notification is made to the other party. In such event, the TRAX Control Center shall take such measures as it deems reasonably appropriate and necessary to ensure that Freight Rail Service and Passenger Service are not conducted simultaneously on the Joint Trackage.

SECTION 5.6 ~~During the Freight Preference Period~~Once Freight Operator has obtained authorization to enter the Joint Trackage as set forth in Section 5.8, SLS Freight Operator shall manage, ~~direct~~ and control, at ~~SLS Freight Operator's~~ sole expense, all ~~freight railroad and freight railroad-related operations~~ Freight Rail Service operations on the Joint Trackage during

~~the Exclusive Freight Period~~ and shall direct dispatching and control the entry and exit of all trains, locomotives, rail cars and rail equipment and the movement and speed of the same on the Joint Trackage and the Freight Trackage.

SECTION 5.7 ~~During the Passenger Preference Period~~, UTA shall manage, direct and control, at UTA's sole expense, all ~~activities~~ Passenger Service operations on the Joint Trackage ~~during the Exclusive Passenger Period~~. ~~During such period, UTA shall manage, direct and control all activities on the Joint Trackage and shall direct dispatching and the UTA, through the TRAX Control Center, and consistent with Sections 5.4 and 5.5 of this Coordination Agreement, shall also manage and control access to the Joint Trackage and the entry and exit of all trains, locomotives, rail cars and rail equipment and the movement and speed of the same on upon and from the Joint Trackage and the Passenger Trackage by either party. The TRAX Control Center shall implement such rules, regulations, procedures and policies as may be necessary and appropriate to ensure that an absolute temporal separation of Freight Rail Service and Passenger Service is maintained on the Joint Trackage.~~

SECTION 5.8 ~~The TRAX Control Center shall be staffed at all times, including during the Exclusive Freight Period. The Freight Operator shall obtain prior authorization from the TRAX Control Center before entering, occupying and/or exiting the Joint Trackage. Freight Operator shall have the obligation to notify the TRAX Control Center on the UTA recorded telephone or radio links each time entry and exit clearance on the Joint Trackage is sought. Freight Operator shall thereafter notify the TRAX Control Center each time it has entered or exited Joint Trackage pursuant to such authority. A representative of Freight Operator with decision making authority and power to bind Freight Operator with respect to operational issues~~

must be accessible by telephone or pager on a twenty-four (24) hour basis. Freight Operator must have a fax machine for other agreed upon method to receive positively verified information) available to train crews or will be required to visit the TRAX Control Center in person to receive operating clearances. The Freight Operator's train crews must also be equipped at all times with radios and working telephone communication in order to facilitate communications with the TRAX Control Center. Freight Operator shall be subject at all times to the direction of the TRAX Control Center when using the Joint Trackage and shall comply in all respects with all applicable operating rules, regulations and procedures of UTA, TRAX and the TRAX Control Center.

SECTION 5.9 Freight Oweratur shall immediately notify the TRAX Control Center of any event causing damage to the Right of Way or appurtenant UTA property, any event which may delay the Freight Operator from clearing the Joint Trackage at the end of the Exclusive Freight Period , and any other event which has the potential to delay or interfere with Passenger Service. Freight Operator shall use its best efforts to clear the Joint Trackage prior to the end of the Exclusive Freight Period.

SECTION 5.10 SLSFreight Operator shall pay all taxes, assessments, fees, charges, costs and expenses assessed by third parties related solely to Freight Rail Service on the Right of Way or the ownership of the Freight Easement. To the extent that such are applicable, UTA shall pay all taxes, assessments, fees, charges, costs and expenses related solely to Passenger Service on the Right of Way or ownership thereof. The parties shall negotiate in good faith to allocate assessments, fees, charges, costs and expenses related to the Joint Trackage or the shared use of the Right of Way; ~~provided however, that nothing in this Section 5.8 shall be construed to~~

~~require either party to pay real estate or ad valorem taxes; provided further, that nothing in this~~  
~~Section 5.8 shall be construed to require either party to pay real estate or ad valorem taxes~~  
~~assessed against the other party..~~

## SECTION 6. CLEARING OF OBSTRUCTIONS, DERAILMENTS AND WRECKS

SECTION 6.1 If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, any train, locomotive, rail car or rail equipment of *SE&Freight Operator* becomes stalled or unable to proceed under its own power or unable to maintain proper speed on the Right of Way or if, in an emergency, crippled or otherwise defective cars are set out of a *SLSFreight Operator* train on the Right of Way, then UTA shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such train, locomotive, car or equipment, or to properly move the disabled equipment off the Right of Way, and *SLSFreight Operator* shall reimburse UTA for the reasonable and necessary cost of rendering any such assistance.

SECTION 6.2 In the event of any derailment or accident of a *SLSFreight Operator* train, *SLSFreight Operator* shall clear the Right of Way of all obstructions ~~within a reasonable time~~ in the most expedient practicable manner. *SLSFreight Operator* also shall perform any rerailling or wrecking train service as may be required in connection with such derailment or wreck, in accordance with industry practices. In the event that *SLSFreight Operator* does not clear the Right of Way of obstructions ~~within a reasonable time~~ in the most expedient practicable manner or in the event that such derailment has the possibility of interfering with passenger operations, UTA may immediately clear the Right of Way of obstructions and *SLSFreight Operator* shall reimburse UTA for all reasonable and necessary costs incurred in

performing such service.

## SECTION 7. ALLOCATION OF LIABILITY

SECTION 7.1 Both parties shall undertake to comply with all applicable federal, state and local laws and regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of either party to comply with such laws, rules, regulations or orders with respect to the use of the Right of Way results in any fine, penalty, cost or charge being assessed against the other party, or any other Loss or Damage, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend and hold harmless the other party for such amount.

SECTION 7.2 Notwithstanding ~~(i)~~ anything else contained in this Coordination Agreement or ~~(ii)~~ otherwise applicable law regarding the allocation of liability based on fault or otherwise, as between the parties hereto, liability for Loss or Damage resulting from or in connection with the maintenance, construction, operations or other acts or omissions of either party shall be borne and paid by the parties as follows:

(a) When such Loss or Damage results from or arises in connection with the maintenance, construction, operations or other acts or omissions of only one of the parties, regardless of any third party involvement, such Loss or Damage shall be borne by that party; and

(b) When such Loss or Damage results from or arises in connection with the acts or omissions of both parties, or of third parties, or from unknown causes, Acts of God, or any other cause whatsoever, such liability shall be borne by the party or parties responsible under applicable law.

SECTION 7.3 Each party agrees that it will pay for all Loss or Damage the risk of which

it has herein assumed, the judgment of any court to the contrary and otherwise applicable law regarding liability notwithstanding, and will forever indemnify, protect, defend and hold harmless the other party, its successors and assigns, from such payment.

SECTION 7.4 ~~In the event that both parties hereto shall be liable under this Coordination Agreement for any claim, demand, suit or cause of action, and the same shall be compromised and settled by voluntary payment of money or valuable consideration by one of the parties, release from liability will be taken in the name of both parties and all of each party's officers, agents, and employees. Neither party shall make any such compromise or settlement in excess of \$25,000 without prior, written authority of the other party having liability, which consent shall not be unreasonably withheld, but any settlement made by one party in consideration of \$25,000 or less shall be a settlement releasing all liability of both parties and shall be binding upon both parties.~~ [former 7.5] In case a lawsuit or lawsuits shall be commenced against either party hereto for or on account of any Loss or Damage for which the other party may be solely or jointly liable under this Coordination Agreement, the party thus sued shall give the other party timely written notice of the pendency of such suit, and thereupon the party so notified may assume or join in the defense thereof, and if the party so notified is liable therefor under this Coordination Agreement, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from all Loss or Damage in accordance with the liability allocation set forth in this Coordination Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified, and said opportunity to assume or join in the defense of the action has been afforded, the party so notified shall to the extent of its liability



under this Coordination Agreement be bound by such judgment.

SECTION 7.5 [former 7.6] Nothing in this Section 7 shall be construed as a waiver by UTA of any immunity, defense or requirement provided pursuant to Title 63, Chapter 30, Utah Code Annotated 1953, as amended, or applied so as to effectively constitute such waiver.

#### SECTION 8. ENVIRONMENTAL REPORTING AND LIABILITY

SECTION 8.1 Freight Operator shall have a continuing obligation to provide UTA with detailed and updated information regarding the volume, type and destination of Hazardous Materials which are transported on or stored along the Right of Way. In addition to its monthly reporting requirement, as specified in Section 12.3, Freight Operator shall immediately notify UTA in writing of any material change in Hazardous Materials transportation or storage on the Right of Way. For purposes of the Section 8.1, a material change shall mean: (i) the introduction of a substantially different commodity along the Right of Way; (ii) the delivery of Hazardous Materials to a new destination on the Right of Way; or (iii) an actual or projected change of more than 50% in the annual delivery volume of Hazardous Material to any destination along the Right of Way

SECTION 8.2 Freight Operator shall defend, indemnify and hold UTA harmless against and in respect of, any Loss or Damage (including without limitation reasonable legal, accounting, consulting, engineering and other expenses) that may be imposed on, incurred by, or asserted against UTA as a direct or indirect result of Freight Operator's use, transportation or storage of Hazardous Materials: provided that nothing set forth solely in this Section 8.2 shall be construed to require Freight Operator to indemnify and hold harmless UTA against and with respect to the acts or omissions of UTA or third parties.

SECTION 8.3 UTA shall defend, indemnify and hold Freight Operator harmless against and in respect of any Loss or Damage (including without limitation reasonable legal, accounting, consulting, engineering and other expenses) that may be imposed on, incurred by, or asserted against Freight Operator as a direct or indirect result of UTA's use, transportation or storage of Hazardous Materials: provided that nothing set forth solely in this Section 8.3 shall be construed to require UTA to indemnify and hold harmless Freight Operator against and with respect to the acts or omissions of Freight Operator or third parties.

SECTION 8.4 Neither party shall cause nor allow to be caused the Release of any Hazardous Materials into the track, ballast, soil or any other part of the Right of Way. Any party responsible for such a Release shall defend, indemnify and hold the other party harmless against and in respect of any Loss or Damage (including without limitation reasonable legal, accounting, consulting, engineering and other expenses) that may be imposed on, incurred by, or asserted against such party as a direct or indirect result of such Release +

SECTION 8.5 Freight Operator shall be responsible for and shall bear the costs of prompt cleanup and removal of any Hazardous Materials, residue or other material associated with Freight Rail Service arising after the Closing Date which is found to be fouling the track, ballast, soil or any other part of the Right of Way. UTA shall be responsible for and shall bear the costs of prompt cleanup and removal of any Hazardous Materials, residue or other material associated with Passenger Service which is found to be fouling the track, ballast, soil or any other part of the Right of Way. The cleanup required by this section shall be undertaken in a manner which minimizes disruption to Passenger Service and Freight Rail Service.

SECTION 9. [former Section 91 TERM; TERMINATION

SECTION 9.1 This Coordination Agreement shall ~~terminate upon the termination of the Freight Easement~~ have an initial term of five (5) years, and shall continue thereafter until a termination or transfer of the Freight Easement or us otherwise mutually agreed between the parties.

SECTION 9.2 This Coordination Agreement shall immediately terminate upon the termination of the Freight Easement, or upon a transfer of the Freight Easement to an entity other than the Freight Operator, or a corporate parent, subsidiary or other affiliate of Freight Operator.

SECTION 9.3 [former 9.2] Termination of this Coordination Agreement shall not relieve either party of their obligations or liabilities to the other party arising prior to such termination.

SECTION 10. [former Section 9] COMPLIANCE WITH LAWS

SECTION 10.1 UTA and ~~SLS~~ Freight Operator shall comply with the provisions of all applicable laws, regulations, and rules respecting the operation, condition, inspection, and safety of their respective trains, locomotives, cars and other equipment operated over the Right of Way. Each party shall indemnify, protect, defend and hold harmless the other, its affiliates, and any of its directors, officers, agents and employees from and against all fines, penalties, and liabilities imposed upon the other party, its affiliates or any of its directors, officers, agents, or employees under such laws, rules and regulations by any public authority or court having jurisdiction, when attributable to its failure to comply with the provisions of this section.

SECTION 11. [former Section 10] CASUALTY LOSSES

SECTION 11.1 In the event that any portion of the Right of Way that is being used by UTA for the continued provision of Passenger Service is damaged or destroyed by flood, fire,

civil disturbance, earthquake, storm, sabotage or act of God, or accidents or vandalism caused by third parties or for which the cause is unknown, then, UTA may either (i) repair, or cause to be repaired, that portion of the Right of Way so damaged or destroyed to substantially the same condition as existed prior to such damage or destruction, or (ii) replace, or cause to be replaced, such portion with property of like kind, condition or quality. The cost and expense of such repair or replacement shall be borne by UTA.

SECTION 11.2 In the event that any portion of the Right of Way that is being used by ~~SLS~~Freight Operator for the continued provision of Freight Rail Service, and which is not also being used for Passenger Service, is damaged or destroyed by flood, fire, civil disturbance, earthquake, storm, sabotage or act of God, or accidents or vandalism caused by third parties or for which the cause is unknown, then, ~~SLS~~Freight Operator may either: (i) repair, or cause to be repaired, that portion of the Right of Way so damaged or destroyed to substantially the same condition as existed prior to such damage or destruction; or (ii) replace, or cause to be replaced, such portion with property of like kind, condition or quality. The cost and expense of such repair or replacement shall be borne by ~~SLS~~Freight Operator; ~~provided~~, however, that ~~SLS~~Freight Operator shall not be obligated under this Section ~~11.2~~ ~~10.2~~ to repair or replace the damaged or destroyed portion of the Right of Way if ~~in SLS's good faith judgment the cost thereof of repair or replacement~~ would be ~~excessive or unreasonable taking into account the profitability of SLS's freight operations on the Right of Way, unless UTA shall agree to reimburse SLS for such cost.~~ unreasonable or excessive given: (i) the Freight Rail Service conducted on such portion of the Right of Way; or (ii) UTA's ability to terminate this Freight Easement (and, in turn, this Agreement) on short notice, except that this proviso shall not apply if and to the extent that UTA

agrees to give ~~SLS~~Freight Operator sufficient time to recoup the costs of any such repair or replacement out of future earnings related to such repaired or replaced portion of the Right of Way.

SECTION 11.3 Except when subject to Section 7, in the event any portion of the Right of Way is damaged or destroyed by accidents caused by either party or vandalism by the employees or agents of either party, the party that caused the accident or whose employees or agents caused the vandalism shall bear the cost and expense thereof.

SECTION 12. [former Section 11]COMPENSATION

SECTION 12.1 Except as otherwise specifically provided in this Coordination Agreement, ~~SLS~~Freight Operator and UTA shall have no obligation to pay or otherwise compensate each other in connection with this Coordination Agreement.

SECTION 12.2 Freight Operator shall remit to UTA a monthly fee for use of the Joint Trackage and for the Routine Maintenance costs for the Joint Trackage incurred by UTA equal to three (3) mils per gross ton mile of Freight Operator's equipment transported on the Right of Way during the preceding month including without limitation locomotives, loaded cars, empty cars, maintenance equipment and other vehicles or equipment used in the provision of Freight Rail Service. The monthly fee shall be savable as set forth in Section 112.5. Nothing provided in this Section 12.2 shall be construed to offset any other obligation of Freight Owerator as set forth in this Coordination Agreement.

SECTION 12.3 Freight Operator shall deliver to UTA, as soon as practicable after the end of each month, such traffic data and other information reasonably necessary to monitor and audit the monthly fee payable to UTA pursuant to Section 12.2. This data shall also include

detailed information on the volume and type of materials (including, as specified in Section 8.1, Hazardous Materials) transported on or stored along the Right of Way. UTA agrees, to the extent permissible by law, to protect the confidentiality of any data provided by the Freight Operator under this provision.

SECTION 12.4 Freight Operator shall be solely liable for any Loss or Damage to the Joint Trackage caused by any action whatsoever of Freight Operator. Unless otherwise agreed between the parties, UTA shall perform such work as may be necessary to restore the Joint Trackage or otherwise mitigate the Loss or Damage sustained by UTA. UTA shall be permitted to perform the repair to the standard deemed necessary by UTA to ensure that the use of the Joint Trackage for Passenger Service is not in any way adversely affected by the Loss or Damage previously caused by Freight Operator, and in a manner that will ensure that the useful life of the Joint Trackage is not diminished by the actions of Freight Operator. UTA agrees that all costs and expenses incurred by UTA pursuant to this Section 12.4 will be incurred in good faith.

SECTION 12.5 All payments due to either party under this Coordination Agreement shall be paid within thirty (30) days after receipt of an invoice therefor, by check delivered to the address of the payee as set forth in Section 14.4 hereof; provided, however, that in the event of a good faith dispute relating to any such payment, the disputed portion of the invoice shall be paid, with full reservation of rights to possible reimbursement upon resolution of such dispute. Any payments not made within thirty (30) days of an invoice therefor or void under protest due to a dispute shall thereafter be subject to interest, which shall accrue at the highest lawful rate for the forbearance of money and which interest shall accrue to the benefit of the prevailing party.

SECTION 12.6 Upon request, a party disputing the accuracy of any invoice shall be entitled to receive from the billing party copies of all such supporting documentation and/or records as are kept in the ordinary course of the billing party's business and which are reasonably necessary to verify the accuracy of the invoice as rendered. Each party shall also have the right upon reasonable notice to inspect, examine, copy and audit such books, records and supporting documents of the other party as reasonably relate to the calculation of any fees, charges, reimbursements or other assessments claimed by such other party pursuant to this Coordination Agreement.

### SECTION 13. INSURANCE

SECTION 13.1 ~~SLSFreight Operator~~, at its sole cost and expense, shall procure or cause to be procured and maintain or cause to be maintained during the continuance of this Coordination Agreement, railroad operating and liability insurance covering liability assumed by ~~SLSFreight Operator~~ under this Coordination Agreement with a limit of not less than Twenty-Five Million Dollars (\$250,000,000) combined single limit for personal injury and property damage per occurrence, with deductible or self insurance not greater than ~~One Hundred Fifty~~ Thousand Dollars (~~\$1050,000~~). ~~SLSFreight Operator~~ shall furnish to UTA certificates of insurance evidencing the above coverage in the form of a policy (or policies) at the time of execution of this Coordination Agreement. Such insurance shall contain a contractual liability endorsement which will cover the obligations assumed under this Coordination Agreement and an endorsement naming UTA as "additional insured." In addition, such insurance shall contain notification provisions whereby the insurance company agrees to give thirty (30) days written notice to ~~the~~ UTA of any change in or cancellation of the policy. All of these endorsements and

notice provisions shall be stated on the certificate of insurance which is to be provided to UTA.

SECTION 14. [former Section 13]GENERAL PROVISIONS

SECTION 14.1 ~~This Coordination Agreement and the agreements referenced herein constitute the entire agreement between the parties hereto with respect to the subject matter contained herein and there are no agreements, understandings, restrictions, warranties or representations between the parties other than those set forth or provided for herein. All Exhibits attached hereto are hereby incorporated by reference into, and made part of, this Coordination Agreement.~~ [Former Section 13.2] This Coordination Agreement may not be amended except by an instrument in writing signed by the parties hereto.

SECTION 14.2 Waiver of any provision of this Coordination Agreement, in whole or in part, can be made only by an agreement in writing signed by the parties and such waiver in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

SECTION 14.3 A notice or demand to be given by one party to the other shall be given in writing by personal service, telegram, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such party as follows:

(a) In the case of a notice or communication to UTA, Attention: UTA Director of Rail Services. P. O. Box 30810, Salt Lake City, Utah 84130-0810, with a copy to UTA General Manager, P. O. Box 308 10, Salt Lake City, Utah 84130-08 10, and an additional copy to ~~William D. Oswald, Attorney for the Purchaser, 201 South Main Street, 12th Floor, Lake City, Utah,~~



~~84111~~ General Counsel's Office, P. O. Box 30810, Salt Lake City, Utah, 84130-0810.

(b) In the case of a notice or communication to ~~SLS~~Freight Operator, Attention: Executive Vice President, Utah Railway Company, 340 Hardscrabble Road, Helper, Utah 84526, with a copy to Accounting Department, Utah Railway Company, 340 Hardscrabble Road, Helper, Utah 84526. General Manager, Carl Hollowell, P. O. Box 57366, Murray, UT 84157, with a copy to the President of RailTex Services, Inc., 4040 Broadway, Suite 200, San Antonio, TX 78209 ~~or addressed in such other way in respect to either party as that party may, from time to time, designate in writing~~ The parties may from time to time designate other individuals and addresses for notice of communication in writing, provided that such changes in designation are dispatched as provided in this Section. All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served and to have been duly given: (i) on the date of delivery, if delivered personally on the party to whom notice is ~~given or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below;~~ or (ii) on receipt, if mailed to the party to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid and properly addressed.

SECTION 14.4 If any provision of this Coordination Agreement shall be held or be deemed to be or shall, in fact, be illegal, invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or

circumstance or of rendering any other provision or provisions herein contained illegal, invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections of this Coordination Agreement shall not affect the remaining portions of this Coordination Agreement or any part thereof.

SECTION 14.5 This Coordination Agreement: (i) contains headings only for convenience, which headings do not form part of and shall not be used in the construction of this Coordination Agreement; and (ii) is not intended to inure to the benefit of any person or entity not a party.

SECTION 14.6 All of the terms and provisions of this Coordination Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Except to a corporate parent, subsidiary or other affiliate, ~~SLS~~Freight Operator may not assign its rights or obligations under this Coordination Agreement.

SECTION 14.7 This Coordination Agreement may be executed in counterparts, each of which shall be considered an original, but all of which together shall constitute but one and the same instrument.

SECTION 14.8 This Coordination Agreement shall be governed by and construed under the laws of the State of Utah, ~~including conflict of laws principles and any dispute regarding this~~  
Coordination Agreement shall be resolved in a court of competent jurisdiction within the State of Utah.

SECTION 14.9 Notwithstanding any other provision of this Coordination Agreement,  
third party claims that accrued or arose prior to the Closing Date, including but not limited to

the Goebel case, shall be governed exclusively by the terms and provisions of the March 31, 1992 Administration and Coordination Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Coordination Agreement to be executed as a sealed instrument as of the date first set forth above by their duly authorized representatives.

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